

**Mandates of the Special Rapporteur on the rights to freedom of peaceful assembly and of association
and the Special Rapporteur on the situation of human rights in Cambodia**

REFERENCE:
UA KHM 7/2016

25 November 2016

Excellency,

We have the honour to address you in our capacity as Special Rapporteur on the rights to freedom of peaceful assembly and of association and Special Rapporteur on the situation of human rights in Cambodia, pursuant to Human Rights Council resolutions 24/5 and 30/23.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received regarding the situation of Mr. **Sam Rainsy**, leader of the opposition Cambodia National Rescue Party (CNRP), who has been prohibited from entering the country, less than a year before communal elections. He has been in self-imposed exile since November 2015, following charges he faces in at least three criminal cases, as well as convictions in three other cases, in relation to defamation, incitement to commit a felony, and incitement to discriminate.

Mr. Sam Rainsy was the subject of a joint urgent appeal dated 21 December 2015, see A/HRC/32/53 case No. [KHM 7/2015](#). Mr. Sam Rainsy's age is 67, and he holds Cambodian citizenship and carries a Cambodian passport.

According to the information received:

On 12 October 2016, the Secretary of State of the Council of Ministers, Mr. Tekreth Samrach, issued letter No. 151RBK to Mr. General Sok Phal, Director-General of the General Department of Immigration, asking him "to take precautionary measures to avoid the return" of Mr. Sam Rainsy to Cambodia "without knowledge of the competent authorities", following a Security Committee meeting on 29 September 2016 and the remarks of Samdech Prime Minister Hun Sen dated 26 September 2016. In the letter, he summarises the measures raised at the Security Committee meeting, namely that: (i) "all airlines operating flights to Cambodia shall not authorize the said person to get on a plane heading to Cambodia and are required to provide regular factual reports on whether this person buys a ticket to travel to Cambodia"; (ii) in case that Mr. Rainsy travels to Cambodia by plane, "the plane would be turned back and not be authorized to land in Cambodia"; (iii) "in case any plane carrying Sam Rainsy lands in any airport in Cambodia, it shall not be authorized to let its passengers out and would be turned back"; and (iv) in case Mr. Rainsy "gets out

of the plane, the immigration police shall take actions according to legal procedures to prevent him from entering Cambodia, and take whatever measure necessary.”

In order to effectively implement the content of the above letter, on 18 October 2016, General Sok Phal issued a subsequent letter to all Deputy Director-Generals and Directors of Departments of the General Department of Immigration to pay attention to, and be reminded about, checks at the three international airports: Phnom Penh, Siem Reap and Preah Sihanouk, and at all international border checkpoints; to immediately report if Mr. Sam Rainsy leaves from an airplane at any of the airports or from any international border checkpoint; to take legal actions to prevent him from entering Cambodia; and to thoroughly and effectively take other necessary measures.

Serious concern is expressed that the order to prevent Mr. Sam Rainsy from entering Cambodia is violating his rights to freedom of movement and to enter his own country. Further concern is expressed that the charges and convictions against Mr. Sam Rainsy appear to be related to his political views and leadership of the main opposition party, and the exercise of his rights to freedom of expression and freedom of association. Further concern is expressed that these last measures against the leader of the CNRP may indicate a continued trend of suppression of criticism against the Government ahead of the forthcoming 2017 communal and 2018 national elections, in an attempt to silence the voice of the political opposition.

While we do not wish to prejudge the accuracy of these allegations, we would like to refer your Excellency’s Government to the international principles and norms applicable to the present case.

We would like to refer to articles 12, 19, 22 and 25 of the International Covenant on Civil and Political Rights, ratified by Cambodia on 26 May 1992, which guarantee the rights to freedom of movement including to return to one’s own country, to freedom of expression and opinion, to freedom of association and to participation in public affairs respectively.

As stated in the Human Rights Committee’s General Comment No 25 on Article 25 (Participation in public affairs and the right to vote), “any conditions which apply to the exercise of the rights protected by article 25 should be based on objective and reasonable criteria. [...] The exercise of these rights by citizens may not be suspended or excluded except on grounds which are established by law and which are objective and reasonable.”

As further stated in the Human Rights Committee’s General Comment No. 27 on Article 12 (Freedom of movement), “liberty of movement is an indispensable condition

for the free development of a person.” The Committee also expressed that “[i]n no case may a person be arbitrarily deprived of the right to enter his or her own country. The reference to the concept of arbitrariness in this context is intended to emphasize that it applies to all State action, legislative, administrative, and judicial; it guarantees that even interference provided for by law should be in accordance with the provisions, aims and objectives of the Covenant and should be, in any event, reasonable in the particular circumstances.” Additionally, the Human Rights Committee “considers that there are few, if any, circumstances in which deprivation of the right to enter one’s own country could be reasonable.”

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency’s Government to safeguard the rights of the above-mentioned person(s) in compliance with international instruments.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and any comment you may have on the above-mentioned allegations.
2. Please provide the full details of the legal grounds for the instructions from the Council of Ministers and the General Department of Immigration.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person responsible of the alleged violations.

Your Excellency’s Government’s response will be made available in a report to be presented to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of our highest consideration.

Maina Kiai
Special Rapporteur on the rights to freedom of peaceful assembly and of association

Rhona Smith
Special Rapporteur on the situation of human rights in Cambodia