



**Special Representative of the Secretary-General
for Human Rights in Cambodia**

តំណាងពិសេសរបស់លោកអគ្គលេខាធិការទទួលបន្ទុកសិទ្ធិមនុស្សប្រចាំកម្ពុជា



**The Removal of Immunity of Sam Rainsy Party members of the
National Assembly and the arrest of Cheam Channy**

In view of the well-documented lack of independence of Cambodia's judiciary, the Special Representative is most concerned about the lifting of the immunity on Thursday, 3 February 2005 of three Sam Rainsy Party members of the National Assembly, Sam Rainsy, Chea Poch and Cheam Channy, and the arrest of the latter on the same day. The National Assembly vote was taken in closed session by hand-count. 98 of 103 members voted to remove the immunity of Chea Poch. 97 of 104 members voted to remove the immunity of Cheam Channy and Sam Rainsy. Sam Rainsy and Chea Poch immediately left the country.

The lifting of the immunity and the arrest come as the latest of several actions in recent months which cast doubts on the commitment of the two parties in Cambodia's coalition government, the Cambodian People's Party and FUNCINPEC, to a genuine pluralistic democratic system. These include a refusal to grant the Sam Rainsy Party any seats in the commissions of the National Assembly, an agreement between the two ruling parties to postpone the constitutionally required Senate elections, and a failure to ensure that village chiefs are selected by the elected commune councils as provided for in the Law on Commune Administration.

While the lifting of the immunity of Sam Rainsy and Chea Poch relates to defamation complaints, the arrest of Cheam Channy is linked to an accusation made by the Prime Minister on 18 July 2004, three days after the formation of the new Government on 15 July, that the Sam Rainsy Party was organizing a secret military force. Few outside military intelligence and the Military Court seem to have given credibility to these allegations, and senior CPP government officials have publicly declared that the authorities have found no evidence of an armed force being created.

Cheam Channy was arrested at approximately 7 p.m. on 3 February following the lifting of his immunity and a warrant for his arrest issued by the Office of the Military Prosecutor. Charges include "organized crime" and "fraud" according to Article 36 and Article 45 of the Provisions relating to the Judiciary and Criminal Law and Procedure Applicable in Cambodia during the Transitional Period (UNTAC Law). Cheam Channy was taken to the Office of the Military Prosecutor for questioning, and then to the Military prison in Phnom Penh which is adjacent to the Prosecutor's Office. Efforts by the Office of the High Commissioner in Cambodia to obtain access to him continue.

The Special Representative calls for Cheam Channy's immediate and unconditional release. Cheam Channy is a civilian and, as such, is not subject to military jurisdiction.

Immunity is intended to protect members of the National Assembly from possibly groundless proceedings or accusations that may be politically motivated or made in bad faith. Its proper working is fundamental to guaranteeing the independence of the National Assembly. Article 80 of Cambodia's 1993 Constitution provides that: "The accusation, arrest or detention of a member of the Assembly shall be made only with the permission of the Assembly or by the Standing Committee of the Assembly between sessions, except in case of flagrante delicto. In that case, the competent authority shall immediately report to the Assembly or to the Standing Committee for decision." It further provides that: "The decision made by the Standing Committee of the Assembly shall be submitted to the Assembly at its next session for approval by a 2/3 majority vote of the Assembly members".

These developments raise concerns about an increasingly autocratic form of government, and the future of democracy in Cambodia. The Special Representative calls on the National Assembly to immediately restore immunity to all three members of the National Assembly, to make public the minutes of its closed meeting, and to ensure that members of the opposition party are given seats in its commissions.

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