Amnesty Possible Without Premier Request: Analysts

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While some ruling government officials maintain that opposition leader Sam Rainsy can only receive a royal pardon with a request from the prime minister, legal observers say that practice is only a matter of courtesy.

Opposition lawmakers and other legal professionals say a royal pardon is up to the king himself, Norodom Sihamoni.

The king was sent a letter this week by opposition party lawmakers seeking a reprieve for their leader, Sam Rainy, who was removed from parliament this month.

The letter, signed by 24 Sam Rainsy Party lawmakers, comes as the party faces the prospect of the 2012 and 2013 elections without its leader, who is in exile and facing criminal convictions in Cambodia. Some political analysts have warned that elections will have less legitimacy in the eyes of the international community if they are held without the leader of the opposition.

Ou Virak, director of the Cambodian Center for Human Rights, told VOA Khmer that a royal pardon, by law, need not be requested by the prime minister. Such a request has only become a practice, he said.

“It’s because the prime minister has the power,” he said. “That’s why generally there is a request from the premier—and because [Sam Rainsy’s] case is political, whether or not there is amnesty might depend on the approval of the premier of Cambodia.”

The request from the Sam Rainsy Party to the king was not outside the law, he said, but it could put some political pressure on Norodom Sihamoni, who has remained relatively outside the political arena since taking the thrown in 2004.

“I would say that the king would have some consequences, because in Cambodia the political situation, the issue of politics, needs approval from the prime minister,” he said. “So it may be that the king has to wait for a sign from the prime minister.”
In recent weeks, ruling party officials have said a request from the prime minister can provide amnesty for criminals who have served at least two-thirds of their sentence, a reference to a law distinct from the constitutional provision for general royal amnesty.

Kao Supha, a Cambodian lawyer, said the king does have a right to pardon criminals, although he “always” waits for a request from the prime minister as a matter of course.

“If [a request for pardon] is directly submitted to the king, the king will send a letter to the prime minister, to allow the prime minister to submit a request back to His Majesty,” he said.

Last week, the Supreme Court upheld decisions by lower courts that found Sam Rainsy guilty of racial incitement and destruction of property, for destroying markers near the Vietnamese border. With no further legal recourse, the National Assembly removed him from his seat as a representative of Kampong Cham province. That means the only way he can regain his parliamentary seat is to be pardoned.

The constitution, in Article 27, stipulates: “The king shall have the right to grant partial or complete amnesty.”

Son Chhay, a National Assembly lawmaker for the Sam Rainsy Party, said this means the king has individual authority, even if in practice a request typically comes from Prime Minister Hun Sen.

“As a habit, so far, His Majesty gives special favor to the prime minister, in order to offer the premier the honor of making a request for amnesty,” he said.