



Inter-Parliamentary Union
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Cambodia

CMBD/27- Chan Cheng
CMBD/48 - Mu Sochua (Ms.)
CMBD/49 - Keo Phirum
CMBD/50 - Ho Van
CMBD/51 - Long Ry
CMBD/52 - Nut Romdoul
CMBD/53 - Men Sothavarin
CMBD/54 - Real Khemarin

CMBD/55 - Sok Hour Hong

CMBD/56 - Kong Sophea
CMBD/57 - Nhay Chamroeun

CMBD/58 - Sam Rainsy

***Decision adopted by consensus by the IPU Governing Council
at its 198th session (Lusaka, 23 March 2016) ¹***

The Governing Council of the Inter-Parliamentary Union,

Referring to five cases referred to the Committee on the Human Rights of Parliamentarians concerning the following 12 parliamentarians from the opposition Cambodian National Rescue Party (CNRP): (i) Mr. Chan Cheng; (ii) Ms. Mu Sochua, Mr. Keo Phirum, Mr. Ho Van, Mr. Long Ry, Mr. Nut Romdoul, Mr. Men Sothavarin and Mr. Real Khemarin; (iii) Mr. Sok Hour Hong; (iv) Mr. Kong Sophea and Mr. Nhay Chamroeun; and (v) Mr. Sam Rainsy, leader of the opposition; and which have been kept confidential pursuant to section 22(i) of the Rules and Practices of the Committee on the Human Rights of Parliamentarians and its Procedure for the examination and treatment of complaints, respectively since 2011 (i), 2014 (ii) and 2015 (iii, iv and v),

Considering the following information on file:

- Mr. Chan Cheng, a member of the National Assembly, was convicted to two years' imprisonment on 13 March 2015 after long-dormant proceedings, which were believed to have been dismissed in 2012, were suddenly re-activated in mid-2014 amid a tense political standoff between the ruling and opposition party. Mr. Chan Cheng has appealed the court ruling, which appeal is pending. He is free and able to exercise his parliamentary mandate;
- Ms. Mu Sochua, Mr. Keo Phirum, Mr. Ho Van, Mr. Long Ry, Mr. Nut Romdoul, Mr. Men Sothavarin and Mr. Real Khemarin, all members of the National Assembly, were arrested on 15 July 2014, with other opposition activists, after a demonstration calling for the reopening of the Phnom Penh protest site known as Freedom Park (or Democracy Plaza) had turned violent. They were charged as criminal instigators by a Phnom Penh court for leading an insurrectional movement, committing aggravated intentional violence and inciting others to commit an offence,



and face up to 30 years in prison. They were released on bail on 22 July 2014, after the announcement of a political agreement between the Government and the opposition to end the political crisis. The investigation is still ongoing and no date has been set for the trial of the members of parliament concerned. They are free and able to exercise their parliamentary mandate;

- Mr. Sok Hour Hong, a senator, was arrested and charged after a video clip was posted on the Facebook page of the leader of the opposition, Mr. Sam Rainsy, on 12 August 2015. The video clip featured Mr. Hong discussing his views about the Vietnamese-Cambodian border, a controversial and sensitive issue in Cambodia, and showing a copy of an article of a 1979 Vietnam–Cambodia treaty, providing that the border would be dissolved and re-delineated, which proved to be incorrect. On 13 August 2015, the Prime Minister of Cambodia accused the senator of treason and ordered his arrest. The senator was subsequently detained on 15 August 2015 and charged with forging a public document, using a forged public document and inciting social disorder. He could incur up to 17 years of imprisonment. His immunity was not lifted because the authorities considered that he had been arrested in *flagrante delicto*. He remains in detention, as his requests for pretrial release have been systematically rejected by the court. The trial started in October 2015 and has since been suspended on repeated occasions;
- Mr. Kong Sophea and Mr. Nhay Chamroeun, members of the National Assembly, were dragged from their cars and violently beaten as they were leaving the National Assembly on 26 October 2015. An anti-opposition protest organized by the ruling party was in progress in front of the National Assembly at that time. Neither security officers of the National Assembly, nor police officers present, took any action before, during or after the assault, as shown on video clips of the incident. The assault left both members of parliament with significant injuries. The attack was condemned by the National Assembly and an investigation was initiated, leading to the arrest of three suspects in November 2015 after they reportedly confessed to being involved in the violence. However, they have not yet been held accountable and no further action has been taken against the other assailants or the instigator(s), despite complaints lodged by the members of parliament concerned and clear video records of the assault showing the identity of the attackers and the fact that they were communicating to others through walkie-talkies;
- Mr. Sam Rainsy, the leader of the opposition and a member of the National Assembly, was targeted by four separate court cases between November 2015 and January 2016 (including one related to the case of Senator Sok Hour Hong for posting the video clip on his Facebook page). His immunity was not lifted, but his parliamentary mandate was revoked in connection with the first court case. He has been forced to go into exile to avoid imprisonment since November 2015,

Taking into account that the Committee decided at first to treat the cases as confidential in order to give an opportunity to the parties to find a solution through political dialogue, given that such dialogue resumed between the ruling Cambodian People's Party (CPP) and the CNRP following a July 2014 agreement. This agreement put an end to the 2013 post-election crisis and established a mechanism for dialogue between the two main political parties represented in parliament, known as the "culture of dialogue". While still new and fragile, the culture of dialogue has been seen by both parties as crucial to ending the past prevailing culture of violence. It has opened more space for political dialogue within the parliamentary institution and allowed the parties to achieve progress on some issues of national interest between July 2014 and mid-2015,

Considering that the Cambodian delegation to the 133rd IPU Assembly (Geneva, October 2015) welcomed the Committee's proposal to conduct a visit to Cambodia and that the visit was conducted from 15 to 17 February 2016 by its members, Mr. Ali A. Alaradi and Mr. Alioune Abatalib Gueye,

Considering that the visit had two main objectives: first, for the Committee to gain a better understanding of the cases of the 12 opposition parliamentarians concerned, and of the political and human rights context in which they occurred; second, to help promote satisfactory solutions in the cases at hand, in line with Cambodia's constitutional framework and international human rights law; that the Committee considered its visit as a "visit of last resort", after extensive time had repeatedly been given by the Committee to both parties to find negotiated solutions,

Taking into account that, during its visit, the delegation was able to hold most of the meetings it had requested, including with the parliamentary, executive and judicial authorities, the two main political parties, most of the parliamentarians concerned, as well as third parties such as the Cambodia Office of the United Nations High Commissioner for Human Rights (OHCHR), foreign diplomats and key representatives of civil society; that the delegation's request to visit Senator Sok Hour Hong at Prey Sar detention centre was eventually granted on the last day of its visit; and that it was able to meet with the Deputy Prime Minister and Minister of the Interior in the absence of the Prime Minister, who was abroad attending a US-ASEAN summit,

Considering that the final mission report will be presented to the Governing Council at its next session during the 135th IPU Assembly (October 2016), after being shared with all parties for their observations, but that the Committee wishes to share the following preliminary observations and recommendations of the delegation – to which it has subscribed - in the absence of progress in the cases, in light of its serious underlying human rights concerns and given the further deterioration of the political situation in Cambodia in recent months:

- Lack of progress in the cases and concerns about long-standing and serious underlying human rights violations
 - The delegation found that no progress had been made in resolving any of the cases. It will report on its case-by-case specific findings in its mission report after reviewing the detailed information and documentation provided on each case and all applicable legal provisions;
 - However, the delegation found that the cases and the recent action taken against the opposition follow a long-standing pattern in Cambodia on which the Committee and the Governing Council have repeatedly pronounced themselves over the last 20 years and raise serious concerns about the protection of the fundamental rights of parliamentarians irrespective of their political affiliation. The applicable Cambodian legal framework, its compatibility with international human rights standards, but also its effective implementation in practice, are at the heart of the following recurring issues of concern, which have been largely left unaddressed by the Cambodian authorities to date:
 - Systemic violations of the right to freedom of expression and peaceful assembly (abusive and disproportionate charges triggered in response to the public expression of dissenting political views, leading to trials that are unfair or left dangling for years; disruption, prohibition, repression or use of excessive force in relation to opposition protests);
 - Serious shortcomings in the conduct of judicial proceedings that often fall below international standards of due process and fair trial, particularly in relation to the right of defence, and concerns about the lack of independence of the judicial branch and the interference of the executive;
 - The lack of protection of the fundamental rights of members of parliament (irrespective of their political affiliation) by the institution of parliament itself and other relevant authorities, which has been particularly obvious in the long-standing procedure and practice followed in relation to the lifting of parliamentary immunity and the revocation of the parliamentary mandate of opposition members of parliament;
 - The delegation found that these critical and long-standing concerns have not been addressed, despite the amendments made to some of the relevant laws and regulations in the recent past and repeated offers of technical assistance by the IPU to assist the Cambodian authorities to address these issues;
- Deterioration of the political situation and current status of the political dialogue
 - The delegation was able to confirm that the “culture of dialogue” was first suspended in August 2015 after the arrest of Senator Sok Hour Hong and then abruptly interrupted in late October 2015, following what domestic and international observers have qualified as a “crackdown on the opposition”. A series of actions were taken against the opposition following demonstrations organized in France against Prime Minister Hun Sen during his official visit to Paris on 25 October 2015. Supporters of the Prime Minister and the CPP

responded to the protests in France by organizing protests in Phnom Penh on 26 October 2015 calling for the immediate resignation of Mr. Kem Sokha, the deputy leader of the CNRP and the Vice-President of the National Assembly. The delegation was told that he had been threatened and that his residence had been attacked by protesters. The police allegedly failed to intervene, despite repeated calls for help. Shortly after, Mr. Kem Sokha was removed from the position of Vice-President of the National Assembly in a vote that was boycotted by the opposition;

- The delegation also observed that a tense political and security situation prevailed in Phnom Penh during its visit. There were persistent rumours that the opposition would be attacked in reprisal should opposition protests be organized in the United States during a US-ASEAN Summit attended by the Prime Minister. Fearing violence, Mr. Kem Sokha had requested protection measures, but his request had remained unanswered. There were fears that there would be a repeat of the incidents of October 2015. The delegation therefore raised the issue with the Deputy Prime Minister and Minister of the Interior, who was responsible for granting adequate protection measures to opposition parliamentarians and politicians. The Deputy Prime Minister informed the delegation that he had just instructed the police to follow up on the request and take all appropriate measures. Mr. Sokha confirmed that his request had been granted and no protests or incidents subsequently occurred;
- Given the tense political situation at the time of its visit, the delegation decided to focus largely on the need for the ruling party and the opposition to resume political dialogue urgently and to continue using this framework to resolve the cases at hand. The delegation encouraged the ruling party and the opposition to reactivate and strengthen the “culture of dialogue” in view of the upcoming 2017 and 2018 elections. It observed that a stronger mechanism for political dialogue is generally needed in Cambodia, particularly to prevent the escalation of political disputes in times of tension and political dissension. Disagreements between the two main political parties, and their subsequent expression in public – be it through public statements, social media or the organization of protests – should not, in its opinion, systematically lead to renewed political crisis. A stronger and effective mechanism would contribute to creating more space for constructive political debate generally. Such debate should be inclusive, transparent and constructive. It would also prevent the parties from resorting back to old practices of issuing media statements accusing one another and initiating a repressive judicial response;
- General position of the Cambodian authorities
- The Cambodian authorities have reaffirmed that they consider that there have been no violations of human rights in the cases at hand. They have clearly stated their views that the parliamentarians concerned are guilty of the offences for which they are being prosecuted and should therefore face the consequences of their acts pursuant to the Constitution of Cambodia and in order to protect the rule of law in Cambodia. They have further expressed strong views that repressive legal action was needed to preserve peace and stability in Cambodia whenever words were spoken, written or posted on social media, which in their view risked creating social disorder or inciting unrest. References to the civil war were made extensively to justify this position, particularly in connection with the upcoming elections and the need to maintain economic growth;
- According to the authorities, judicial procedures have been triggered and it is up to the judiciary to handle the cases in accordance with Cambodian laws. Parliament and the executive branch have asserted that the settlement of the cases is a purely judicial matter. They consider that they cannot interfere pursuant to the principle of separation of powers and the independence of the judiciary;
- The Cambodian authorities have also stated that they have difficulty in seeing how the cases could be resolved as part of the culture of dialogue, as they do not consider that they fall within the political issues of national interest covered by the July 2014 agreement between the CPP and the CNRP. They have asserted that political solutions could not be promoted because they would violate the Cambodian Constitution. On the other hand, they reaffirmed that they were supportive of the resumption of political dialogue and believed that it was an important, although difficult, process;

- The Cambodian authorities, particularly the parliamentary authorities, acknowledged that existing Cambodian laws and regulations could be further reviewed and improved as long as it would be considered beneficial to the Cambodian people. The human rights parliamentary committees of the National Assembly and the Senate expressed particular interest in learning more from the experience of other countries and parliaments and about relevant international standards;
- The delegation observed that, at no point during the visit did any of the Cambodian authorities express clearly the will to resolve the cases at hand or to attempt to make progress towards a satisfactory settlement,

Further considering that the delegation left Cambodia with some optimism after both parties expressed their wish to resume the political dialogue, and the Deputy Prime Minister pledged to meet with the CNRP to that end; that a meeting did take place on 19 February 2016, although the cases at hand and their resolution were apparently not discussed; that, however, no further meetings were convened between the ruling and opposition party thereafter and the political dialogue remains stalled to date,

Taking into account that the Cambodian authorities have not shared any subsequent information or responded to the requests for updated information since the visit; that, according to recent information shared by the complainants and third parties, no further progress has been made on the cases – quite to the contrary as; (i) on 4 March 2016, the court rejected Senator Sok Hour Hong's latest appeal against his prolonged pretrial detention; the court did not address the medical issues and the concerns raised by the senator in relation to his health; it denied him pretrial release on the grounds that it would create chaos and social disorder; and (ii) yet another series of charges were brought against Mr. Sam Rainsy in early March 2016,

Bearing in mind the following in relation to Cambodia's international obligations to respect, protect and promote fundamental human rights:

- As a party to the International Covenant on Civil and Political Rights, Cambodia is bound to respect international human rights standards, including the fundamental rights to freedom of expression, freedom of assembly, equality before the law and to a fair trial conducted by an independent and impartial court;
- Following the 2nd cycle of the universal periodic review (UPR) of Cambodia, conducted by the United Nations Human Rights Council in 2014, the Cambodian authorities accepted, inter alia, recommendations to "promote a safe and favourable environment that allows individuals and groups to exercise the freedoms of expression, association and peaceful assembly and put an end to harassment, intimidation, arbitrary arrests and physical attacks, particularly in the context of peaceful demonstrations" and "take all necessary measures to guarantee the independence of justice without control or political interference" (Report of the Working Group on the UPR of Cambodia A/HRC/26/16);
- The United Nations Special Rapporteur on the human rights situation in Cambodia observed, following her visit to Cambodia in September 2015 and in her oral report to the United Nations Human Rights Council on 29 September 2015, that there was a general consensus among civil society actors in Cambodia that the space for the peaceful exercise of these freedoms was shrinking as the country moved towards the 2017 local elections and the 2018 National Assembly elections. She pointed out that, during her mission, she had noticed widely diverging interpretations of permissible restrictions of the rights to freedom of expression, assembly and association under international human rights law, and recalled that a balance between protecting these freedoms and maintaining public order needed to be struck fairly and in accordance with international human rights law, something that she would be paying close attention to during her mandate,

Also bearing in mind Chapter 3 of the Constitution of Cambodia on the rights and obligations of Khmer citizens, in particular article 31, which states that "The Kingdom of Cambodia recognizes and respects human rights as stipulated in the United Nations Charter, the Universal Declaration of Human rights and the covenants and conventions related to human rights (...)" as well as article 80 and 104 which provide that members of the National Assembly and the Senate shall

enjoy parliamentary immunity and that “No Member of the National Assembly shall be prosecuted, detained or arrested because of opinions expressed in the exercise of his/her duties”,

1. *Thanks* the Cambodian authorities for accepting the visit and for the assistance provided to the delegation; *considers* that the conduct of the visit and the discussions that took place were a positive first step; *regrets* nevertheless that no subsequent information has been shared since by the authorities;
2. *Takes note* of the preliminary observations of the Committee on the visit; and *eagerly awaits* the final mission report at the next IPU Assembly (October 2016);
3. *Notes with deep regret* that not only has no progress yet been achieved to resolve the cases of the 12 opposition parliamentarians concerned, but that the situation of some of them has further deteriorated recently, as has the general political situation in Cambodia, given the interruption of the culture of dialogue since mid-2015;
4. *Expresses deep concern* at the serious human rights issues underlying the cases; and *urges* the Cambodian authorities, as well as all political actors in Cambodia, to find long-term solutions to these issues urgently in order to put an end to the continuous reoccurrence of similar cases in the future – not only in the interests of the institution of parliament and of individual parliamentarians – but first and foremost in the interest of the Cambodian nation as a whole; *is further convinced* that long-term solutions can only be sustainable and effective if they are in strict compliance with international human rights standards and best practices applicable in democratic parliaments;
5. *Calls on* all branches of power and all political parties to work hand in hand to ensure that:
 - (i) There is full respect for parliamentary immunity and for the parliamentary mandate conferred upon members of parliament by the Cambodian population, as well as for their rights to freedom of expression and peaceful assembly, the right to an independent judiciary and to fair judicial proceedings – including by bringing relevant legislation and regulations in line with international standards and the practices of democratic parliaments;
 - (ii) Persons who have instigated and perpetrated attacks, threats and intimidation against parliamentarians are held accountable and that, in the future, systematic protection measures are promptly granted and effectively put in place by the relevant authorities whenever parliamentarians feel under threat;
 - (iii) Ongoing judicial processes against the parliamentarians concerned are completed without undue delay in a fair, independent, impartial and transparent manner, including – when warranted by exculpatory evidence and mitigating circumstances – by decisions to drop or requalify charges, discontinue proceedings or acquit the suspects, in line with the relevant provisions of the Code of Criminal Procedure and the Constitution of Cambodia, which require respect for the presumption of innocence and the rights of the accused;
6. *Considers* that it is critical that the ruling party and the opposition resume the political dialogue towards building a stable political environment in which there is sufficient space for dissent and for the peaceful exercise of freedoms of expression, association and peaceful assembly in the context of the fast-approaching elections; *is further confident* that the resumption of a political dialogue would help the parties to find satisfactory solutions to the cases at hand;
7. *Highly values* the efforts undertaken by the Cambodian Parliament as part of the culture of dialogue; *earnestly believes* that the parliamentary institution has a special duty in upholding the rights of all its members irrespective of their political affiliation and in ensuring that these rights are also duly upheld by the executive and judiciary at all times; *encourages* the Cambodian Parliament to play a proactive role in promoting satisfactory solutions in the cases at hand and in strengthening the protection of the fundamental rights of its members in the future;

8. *Renews* its offer of technical assistance to assist the Cambodian Parliament and other relevant authorities in addressing the abovementioned issues of concern so as to strengthen parliamentary democracy and the rule of law in Cambodia; *wishes to be kept apprised* of the response of the Cambodian Parliament, as well as of future developments related to the cases of the 12 opposition parliamentarians under examination;
9. *Requests* the Secretary General to convey this decision to the competent authorities, the complainant and any third party likely to be in a position to supply relevant information;
10. *Requests* the Committee to continue examining this case and to report back to it in due course.