



Inter-Parliamentary Union

For democracy. For everyone.

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

CMBD/59 - Um Sam An

CMBD/60 - Kem Sokha

CMBD/61 - Thak Lany (Ms.)

Decision adopted by consensus by the IPU Governing Council at its 199th session (Geneva, 27 October 2016) ¹

The Governing Council of the Inter-Parliamentary Union,

Referring to the cases of 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 the decision adopted at its 198th session (Lusaka, March 2016),

Having also before it the cases of Mr. Um Sam An, Mr. Kem Sokha and Ms. Thak Lany, members of the National Assembly and the Senate of Cambodia from the CNRP, which were considered by the Committee on the Human Rights of Parliamentarians pursuant to the Procedure for the examination and treatment of complaints (Annex 1 of the Revised Rules and Practices),

Referring to the final report on the visit of the Committee conducted to Cambodia in February 2016 (CL/199/11(b)-R.1),

Taking into account the letters dated 11 July and 11 October 2016 of the Secretary General of the National Assembly of the Kingdom of Cambodia, and the information submitted by the complainant and reliable third parties,

Referring to the hearings held with the Cambodian delegation to the 135th IPU Assembly and Mr. Sam Rainsy (Geneva, October 2016),

Recalling the following information already on file regarding the cases of the following 12 opposition parliamentarians:

- 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 and 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 and the appeal is pending. His parliamentary immunity has not been lifted. He is free;
- 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. The Committee received clear video evidence that the members of parliament had tried to prevent and stop the violence (although protesters did not listen to them), while no evidence has been submitted to prove their alleged direct involvement in the violence, or that the violence fitted the legal requirements of the crime of insurrection. Their parliamentary immunity has not been lifted. The members of parliament concerned 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 charges, however, remain pending against them. A confidential judicial investigation is still ongoing and no date has been set for a trial. They are free;
- 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. Sok Hour Hong discussing his views about the Viet Nam-Cambodia border, a controversial and sensitive issue in Cambodia, and showing a copy of an article of a 1979 Viet Nam-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, which had started in October 2015, 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. 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, has been targeted by an ever-increasing number of court cases initiated against him since November 2015 (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,

Further recalling the following information in relation to the prior treatment of the cases:

- The Committee decided at first, on an exceptional basis, 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". The culture of dialogue was seen by both parties as crucial to ending the past prevailing culture of violence. It 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;
- The Cambodian delegation to the 133rd IPU Assembly (Geneva, October 2015) welcomed the Committee's proposal to conduct a visit to Cambodia. The visit was conducted from 15 to 17 February 2016 by its members, Mr. Ali A. Alaradi and Mr. Alioune Abatalib Gueye. 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. 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,

Considering that the Governing Council subscribed to the Committee's preliminary observations and recommendations on the visit at the 134th IPU Assembly (Lusaka, March 2016), which have now been fully confirmed. The final report of the visit has further included specific conclusions on each individual case before it and found that the 12 parliamentarians have been victims of violations of their fundamental rights. It made concrete recommendations to resolve their situation in compliance with the relevant national and international legal framework,

Considering that the official observations of the National Assembly of Cambodia on the report of the visit, shared in a letter dated 11 July 2016, have further confirmed the positions previously expressed by the authorities during the visit and have been duly annexed to the final report; that the authorities deny that any violations of human rights have been committed in the cases at hand and continue to claim that all opposition parliamentarians concerned are criminals who must be punished in accordance with the law; that, accordingly, this is a purely judicial matter for the court to decide and not a political matter that can be resolved through the culture of dialogue, as political dialogue cannot replace or violate the law in their view,

Considering that, following the visit of the Committee, both parties expressed their wish to resume the political dialogue, but that it has remained stalled to date. No progress has been made on the cases under examination. The situation has further deteriorated according to the following information and allegations submitted by the complainant and reliable third parties, on which the observations of the authorities have not been received,

- **Deterioration of the situation of Mr. Sam Rainsy:**
 - On 28 July 2016, Mr. Sam Rainsy was found guilty of defaming the President of the National Assembly, according to the complainant. The trial was held in the absence of the defendant and of his lawyers. The verdict was delivered after merely 10 minutes of deliberation. The court decision made no reference to the right to freedom of expression or parliamentary immunity. Mr. Sam Rainsy has appealed the conviction;
 - A series of new criminal cases have also been brought against Mr. Sam Rainsy, according to the complainant, including: (i) new defamation charges brought in early August 2016 by the Prime Minister in relation to remarks made by Mr. Sam Rainsy that allegedly suggested the involvement of the Prime Minister in the murder of political analyst Kem Ley; (ii) a new arrest warrant issued against Mr. Sam Rainsy in late August 2016 accusing him of complicity in forgery, using fake public documents and incitement in

relation to yet another case related to the Cambodia-Viet Nam border controversy; (iii) another defamation complaint filed by the CPP website administrator after Mr. Sam Rainsy claimed that the CPP had created fake Facebook accounts to “like” Mr. Hun Sen’s page so as to obtain more “likes” than Sam Rainsy’s; (iv) a new complaint was allegedly lodged on 20 October 2016 by the Minister of Interior in relation to a call for mass protests made by Mr. Sam Rainsy in September;

- The complainant alleges that, on 18 October 2016, the Prime Minister issued instructions to all relevant authorities to “use all ways and means” to prevent Mr. Sam Rainsy from returning to Cambodia after the latter had announced his wish to return from exile in order to participate in the upcoming elections.
- **Investigations into the October 2015 attack against Mr. Kong Sophea and Mr. Nhay Chamroeun**
 - Reliable third parties have indicated that the three suspects arrested after confessing the crime were convicted to four years’ imprisonment (including three years suspended) on 27 May 2016. Neither the complainant, nor the authorities, have shared any information to date on this significant development;
 - The international NGO Human Rights Watch (HRW) stated, in a report published in late May 2016 after conducting thorough investigations into the incident, that the suspects admitted that they were members of the Prime Minister’s bodyguard’s unit, but maintained that they had not acted on orders from superiors but solely out of individual personal anger. HRW, however, concluded that the trial was designed to cover up the ultimate responsibility for the crime, rather than uncover it, on the grounds that: (i) the attack had all the hallmarks of an operation carried out by the Cambodian State security forces; (ii) the confessions of the suspects took place in dubious circumstances and were not consistent with the clear video evidence recorded; (iii) the suspects refused to answer questions about their chain of command during the public trial hearings; (iv) the judges blocked all attempts by the lawyers of the two members of parliament to question the suspects about the role of their superiors and whether they had received orders to participate in the attack. The judges and the prosecution argued that these lines of inquiry were outside the scope of the trial and the evidence showing the direct involvement of many others in the attack was ignored during the trial; (v) investigations into the instigators, planners and other participants in the attack against the members of parliament were blocked despite clear evidence;
 - The European Parliament resolution dated 9 June 2016 has called on the Cambodian government to ensure full and impartial investigations into the attacks, with the participation of the United Nations.
- **New cases referred to the Committee on the Human Rights of Parliamentarians**
 - According to the complainant, the three following parliamentarians of the CNRP have also been targeted by politically motivated prosecutions, violations of parliamentary immunity and of their fundamental rights to freedom of expression and association, non-discrimination and to standards of due process;
 - **Mr. Um Sam An**, a CNRP member of the National Assembly, was arrested on 11 April 2016 upon his return to Cambodia and convicted on 10 October 2016 to two and a half years of imprisonment for inciting violence and discrimination. According to the complainant, the case was triggered following comments and videos he posted on Facebook in 2015 about the Cambodia-Viet Nam border issue, in particular assertions that the Government used “fake maps” to delineate the border. His parliamentary immunity was not lifted. According to the complainant, the authorities have argued that he was arrested in flagrante delicto because the crime continued as long as his comments were not removed from Facebook (although the court denied him bail on the grounds that there was a risk that he would destroy evidence by removing the comments from Facebook if he was granted a provisional release);
 - **Mr. Kem Sokha** is Vice President of the CNRP and its acting President since Mr. Sam Rainsy went into exile again in October 2015. He was the first Vice President of the

National Assembly of Cambodia until October 2015 and remains a member of the National Assembly to date. According to the complainant, Mr. Kem Sokha has allegedly been the victim of the following harassment since April 2015: repeated threats (particularly from April to October 2015); an attack on his residence (October 2015); his removal from office as first Vice President of the National Assembly (October 2015); and the “Mon Srey” case, which has been ongoing since late February 2016. In that case, it is claimed that Mr. Kem Sokha had an affair with his hairdresser and gave her expensive gifts. Although his immunity has not been lifted, an attempt to arrest Mr. Kem Sokha was made in May 2016 and he has been holed up at the CNRP headquarters since that date under de facto house arrest, according to the complainant. Mr. Kem Sokha was also convicted to a six-month prison term on 9 September 2016 for refusing to appear for questioning;

- **Ms. Thak Lany**, a CNRP member of the Senate, was accused by the Prime Minister of slander and incitement in early August 2016, after a video was posted online in which she appears to be suggesting that the Prime Minister was involved in the murder of political analyst Kem Ley. According to the complainant, the senator has denied making such a statement and claims that the video has been edited. The senator was summoned to appear before the prosecutor twice before her parliamentary immunity was lifted on 1 September 2016. Ms. Thak Lany is currently in exile. Her trial is due to take place on 28 October 2016.

Considering that the authorities of Cambodia have not provided any official information or their observations on the new cases and allegations submitted to the Committee,

Considering further that the complainant claims that the cases of the 15 CNRP members of parliament under examination demonstrate that the ruling party is attempting to weaken and silence the opposition in order to derail the upcoming 2017 and 2018 local and national elections by excluding the leaders and key members of the main opposition party in Cambodia from standing in the elections and campaigning freely, including by putting them in jail, in exile or by maintaining dangling charges and permanent threats of arrest against them; that the CNRP continues to boycott parliamentary work and has submitted a petition to the King to facilitate a solution to the ongoing political crisis,

Considering that, in the past few months, an increasing number of States and international organizations, including the United Nations, have expressed deep concern about the deterioration in the political and human rights situation in Cambodia, in particular the worsening climate for opposition politicians and human rights activists in Cambodia given the escalation of politically motivated charges, judicial harassment and acts of violence. They have urged the Government of Cambodia to ensure full respect for human rights, including the freedoms of expression, association and assembly, and to adhere strictly to international fair-trial standards, thus ensuring that the law is applied without discrimination on any ground. They have called for the urgent resumption of political dialogue between the CPP and the CNRP and for the creation of a political environment in which opposition parties and civil society can all function freely and without fear of arrest or persecution, so that Cambodia is able to conduct free and fair elections which would ensure the legitimacy of the next government. In a resolution adopted on 9 June 2016, the European Parliament has recalled that a non-threatening environment of democratic dialogue is essential for political stability, democracy and a peaceful society, and urged the Government to take all necessary measures to ensure the security of all democratically elected representatives of Cambodia, irrespective of their political affiliation. It has urged the Cambodian authorities to revoke the arrest warrant for and drop all charges against the opposition leaders and CNRP parliamentarians, as well as to reinstate them immediately and restore their parliamentary immunity,

Considering that two separate hearings were held with the Cambodian delegation to the 135th IPU Assembly, on the one hand, and with the leader of the Cambodian opposition, Mr. Sam Rainsy, on the other hand; that they reaffirmed their previous positions on the cases; that they stated their respective will to work in the best interests of the Cambodian people and to resume the political dialogue; that they both appealed to the IPU to assist them to that end; that furthermore:

- Mr. Sam Rainsy confirmed that he had been banned from returning to Cambodia and participating to the upcoming electoral process by the Prime Minister and expressed concern at the fairness of the upcoming electoral process if the CNRP is unable to participate fully and freely;

- The delegation stated that it hoped that progress could be achieved on the cases by the next IPU Assembly. It observed that the CNRP was among the 58 political parties registered for the upcoming elections and could participate to the electoral process; only the members who had committed crimes were prevented from participating and the party was free to appoint new leaders who would be able to stand in the elections. No court decision prevented Mr. Kem Sokha from leaving the CNRP headquarters and he had been able to do so to register as a voter. Freedom of speech in Cambodia was different from other western countries and needed to be balanced with the need for stability in the country. Only “genuine criticism” of the Prime Minister was authorized. The opposition party would not be in the current situation if it stopped “putting gas into the fire” and adopted a more constructive stance, going beyond constant criticism of the Prime Minister and of the Royal Government of Cambodia,

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 and to participate in public affairs. Restrictions on freedom of expression and freedom of association are only permitted when they are absolutely necessary to protect the rights of others or in case of a serious threat to public security, and such restrictions should be proportionate to their purpose, limited in scope and duration, and subject to independent judicial review, in line with article 19 of the International Covenant on Civil and Political Rights and the IPU resolution on freedom of expression and the right to information adopted at the 120th IPU Assembly (Addis Ababa, 10 April 2009);
- Following the second 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),

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: (1) members of the National Assembly and the Senate shall enjoy parliamentary immunity; (2) no member of parliament shall be prosecuted, detained or arrested because of opinions expressed in the exercise of his/her duties; (3) a member of parliament may only be prosecuted, arrested or detained with the permission of parliament; (4) in cases of flagrante delicto offences, the competent authority shall immediately report to parliament and request permission; (5) such permission requires the lifting of parliamentary immunity by a two-thirds majority vote; and (6) parliament can request the suspension of the detention or prosecution of any member of parliament following a three-quarters majority vote,

1. *Thanks* the Committee for the final report of its visit to Cambodia and *endorses* its conclusions and recommendations; *notes* the observations conveyed by the Cambodian authorities and *further thanks* both parties for sharing their respective views with the Committee;
2. *Notes with consternation* that no progress has been made in resolving the cases and that the situation has further escalated;
3. *Is deeply concerned* that a total of 15 opposition parliamentarians, including the leaders of the main opposition party, continue to face serious violations of their fundamental

rights and are therefore being prevented from effectively playing their role as parliamentarians and members of the opposition freely without fear of persecution, particularly given the fast-approaching local and national elections;

4. *Once again urges* the Cambodian authorities to ensure full respect for human rights and that the law is applied without discrimination; *renews its call* 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;
5. *Continues to consider* that it is critical for the ruling party and the opposition to resume the political dialogue towards building a stable political environment in which there is sufficient space for dissent and for the peaceful exercise of the freedoms of expression, association and peaceful assembly in the context of the fast-approaching elections; *is convinced* that making progress towards sustainable solutions on the individual cases in compliance with human rights standards would pave the way for the resumption of a constructive political dialogue and contribute to creating a political environment conducive to the conduct of free and fair elections; *reiterates* the availability of the IPU to facilitate the political dialogue and to provide technical assistance to the Cambodian parliament;
6. *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;
7. *Requests* the Committee to continue examining this case and to report back to it in due course.