



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

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 200<sup>th</sup> session (Dhaka, 5 April 2017) <sup>1</sup>***

The Governing Council of the Inter-Parliamentary Union,

*Referring* to the cases of the following 15 parliamentarians from the opposition Cambodian National Rescue Party (CNRP), who are all long-standing and prominent members of the CNRP leadership, Mr. Chan Cheng, Ms. Mu Sochua, Mr. Keo Phirum, Mr. Ho Van, Mr. Long Ry, Mr. Nut Romdoul, Mr. Men Sothavarin, Mr. Real Khemarin, Mr. Sok Hour Hong, Mr. Kong Sophea, Mr. Nhay Chamroeun, Mr. Sam Rainsy, Mr. Um Sam An, Mr. Kem Sokha and Ms. Thak Lany, and the decision adopted at its 199<sup>th</sup> session (October 2016, Geneva),

*Referring* to the hearings held with the Cambodian delegation to the 136<sup>th</sup> IPU Assembly and with Ms Saumura Tioulong on behalf of the CNRP,

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

*Recalling* the letters dated 11 July and 11 October 2016 of the Secretary General of the National Assembly of the Kingdom of Cambodia, the information submitted by the complainants and reliable third parties, as well as the hearings conducted with the Cambodian delegation and the complainants at the 135<sup>th</sup> IPU Assembly (October 2016, Geneva),

*Taking into account* that the complainants' claim that the cases under examination demonstrate that the ruling party is attempting to weaken, silence and exclude the opposition in the lead-up to the upcoming 2017 and 2018 local and national elections by various means, including: (i) acts of intimidation and

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The delegation of Cambodia expressed its reservations regarding the decision.



pressure; (ii) physical violence against members of parliament; (iii) political and judicial harassment characterized by the multiplication of groundless criminal prosecutions, unfair trials and court convictions, as well as charges kept dangling to maintain a permanent threat of arrest; (iv) exclusion from political participation and from entry into Cambodia of the former leader of the opposition; and (v) threats of suspension and dissolution of the CNRP and of a future ban on the political activities of its newly designated leadership pursuant to the recently passed amendments to the 1997 political party law,

*Recalling* the following information already on file on the individual situation of the 15 members of parliament whose cases have been referred to the Committee on the Human Rights of Parliamentarians since July 2014:

- **Mr. Chan Cheng**, a member of the National Assembly, was convicted to two years' imprisonment on 13 March 2015. His parliamentary immunity has not been lifted by the current legislature. He is free, pending the final decision of the appeals court. The appeal has been pending for two years. The 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 parties relating to the contesting of the 2013 election results;
- **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 was consistent with what legally constituted the crime of insurrection. 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 almost three years after the protest in question;
- **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 Sok Hour 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. His immunity was not lifted because the authorities considered that he had been arrested in flagrante delicto;
- **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 to that end 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. The international NGO, Human Rights Watch (HRW), conducted thorough investigations into the incident and concluded, in a

report published in May 2016, that the trial was designed to cover up ultimate responsibility for the crime, rather than uncover it;

- **Mr. Sam Rainsy**, the then 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 defamation court case. He went into exile in November 2015 to avoid imprisonment. On 18 October 2016, the Prime Minister issued a ban to prevent Mr. Sam Rainsy from returning to Cambodia after the latter announced his wish to return from exile to participate in the upcoming elections;
- **Mr. Um Sam An**, a 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 complainants, the case was triggered following comments and videos he posted on Facebook in 2015 about the Viet Nam-Cambodia border issue, in particular assertions that the Government used “fake maps” to delineate the border. His parliamentary immunity was not lifted. According to the complainants, the authorities argued that he was arrested in flagrante delicto because the crime was still ongoing as long as his comments remained on Facebook (although the court denied him bail on the grounds that there was a risk that he would then destroy evidence by removing the comments from Facebook);
- **Mr. Kem Sokha**, First Deputy Speaker of the National Assembly of Cambodia until October 2015 and current President of the CNRP, has faced intimidation and harassment since April 2015, including repeated threats, an attack on his residence (October 2015), his removal from office as first Deputy Speaker of the National Assembly (October 2015), and the “Mon Srey” case was levelled against him and has been ongoing since late February 2016. Although his immunity has not been lifted, an attempt to arrest Mr. Kem Sokha was made in May 2016 and he spent months holed up at the CNRP headquarters under de facto house arrest, according to the complainants. Mr. Kem Sokha was convicted to a five-month prison term on 9 September 2016 for refusing to appear for questioning;
- **Ms. Thak Lany**, a 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 complainants, the senator has denied making any such 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, but she went in exile,

*Recalling* the following in relation to the political dialogue and the 2016 Committee visit to Cambodia:

- This political 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 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. It failed, however, to address and resolve the cases at hand;
- In February 2015, the Committee conducted a “visit of last resort” to Cambodia, after extensive time had repeatedly been given to both parties to find negotiated solutions. The final report of the visit concluded that the parliamentarians had been – and continued to be – victims of serious violations of their fundamental rights. They were being prevented from effectively playing their role as parliamentarians and members of the opposition freely without fear of persecution;
- The National Assembly of Cambodia shared its official views in a letter dated 11 July 2016. It denied that any violations of human rights had been committed in the cases at hand and claimed that all opposition parliamentarians concerned were criminals who must be punished in accordance with the law. Accordingly, this was a purely judicial matter for the

Cambodian courts to decide and not a political matter that could be resolved through the culture of dialogue, as political dialogue could not replace or violate the law,

*Considering* that no progress has been made on the cases under examination, nor on the resumption of a constructive political dialogue, and that the situation has further deteriorated in recent months, as demonstrated by the following new developments of concern that have occurred since the 135<sup>th</sup> IPU Assembly, according to the complainants:

- The three bodyguards sentenced to four years' imprisonment (including three years suspended) after confessing to the beating of Mr. Kong Sophea and Mr. Nhay Chamroeun were released from jail after serving only one year. They were immediately reintegrated into the Prime Minister's bodyguard unit and promoted by the Prime Minister. The appeals lodged by both members of parliament against the lightness of the first-instance sentence have not been processed to date. The other assailants were not investigated or held accountable. Neither were suspected organizers and instigators, despite clear evidence;
- In November 2016, Mr. Kem Sokha's appeal was rejected by the court. On 2 December 2016, he was granted a royal pardon in respect of his conviction for failure to appear before the court. Relations between the CPP and the CNRP initially took a more positive tone after Mr. Kem Sokha's pardon. The CNRP lifted its boycott and resumed parliamentary work. On 6 December 2016, the Prime Minister granted Mr. Kem Sokha the status of minority leader in parliament (replacing Mr. Sam Rainsy). The main judicial proceedings in the "Mon Srey" case have, however, continued. A landmark decision of the United Nations Working Group on Arbitrary Detention was adopted on 18 December 2016. It concluded that the detention of the civil society members arrested in connection with the "Mon Srey" case was arbitrary;
- In late January 2017, Mr. Kem Sokha was stripped of the status of minority leader after the National Assembly amended its internal rules on 31 January 2016 upon the instructions of the Prime Minister. The provisions establishing a minority leader in parliament and formal status to the political opposition were repealed. They had been among the positive outcomes of the 2014 political agreement and had constituted the legal basis for the culture of dialogue;
- On 11 February 2017, Mr. Sam Rainsy resigned as leader of the CNRP to protect the party from being dissolved pursuant to legislative reform to amend the 1997 political party law. Mr. Kem Sokha took over as President of the CNRP following a CNRP Congress held on 2 March 2017. Ms Mu Sochua was elected Vice-President at that time, together with Mr. Eng Chhai Eang and Mr. Pol Ha;
- On 9 March 2017, amendments to the 1997 political party law were adopted after being fast-tracked by the Cambodian Parliament upon the request of the Prime Minister. The amended legislation gives unprecedented power to the executive and judicial branches to suspend and dissolve political parties. It prohibits people with criminal court convictions (including for minor offences) – such as Mr. Sam Rainsy – from holding senior positions in political parties. It also prohibits parties from receiving foreign funding. Pursuant to the amended law, if convicted of a criminal offence, a party leader will be banned from undertaking any political activity for a period of five years and his/her political party will be dissolved pursuant to a Supreme Court order. Numerous concerns have been voiced and conveyed to the Committee regarding the provisions of the amendments, which are couched in vague terms and appear squarely at odds with accepted restrictions on the right to freedom of association under international law (particularly with the requirements of necessity and proportionality). This is reflected in the legal analysis published on 28 March 2017 by the United Nations Office of the High Commissioner for Human Rights;
- Following the entry into force of the amendments, the Cambodian authorities challenged the newly elected CNRP leadership. The CNRP's request for re-registration, as required under the amended legislation, has therefore not been granted by the Minister of the Interior. The CPP has also threatened to sue the CNRP for insulting it and inciting social disorder on the grounds of the choice of the CNRP's electoral campaign slogan ("change commune chiefs who serve the party and replace them with commune chiefs who serve the people"). The CNRP is currently no longer recognized as a political party at a time

when the National Electoral Commission is due to finalize the list of candidates received for the local elections (which include CNRP candidates). A further legal cloud continues to hang over the new CNRP leadership, with the ongoing proceedings still dangling over Mr. Kem Sokha and Ms. Mu Sochua. This situation could result in the suspension and dissolution of the CNRP pursuant to amended political party law and deprive its new leaders of their right to participate in political activities for five years;

The following significant developments have occurred in the other cases under examination:

- New court cases have continued to be launched against Mr. Sam Rainsy. Four additional convictions were delivered in prior proceedings. He was found guilty in all cases. Sentences handed down totalled around eight years of imprisonment and heavy fines in early April 2017;
- Senator Sok Hour Hong was sentenced to seven years' imprisonment on 9 November 2016. The defence lawyers' requests for independent expert Internet analysis and to be granted an Internet connection in the court room, to demonstrate to the judges how he downloaded the litigious version of the 1979 treaty, were never granted during the proceedings. The appeal trial is scheduled to take place on 7 April 2017;
- Senator Thak Lany was convicted in absentia to 18 months in prison on 18 November 2016 after she went into exile. During the trial, the defence continued to assert that the video had been doctored and that Ms. Thak Lany had not made the incriminating statement, while prosecution witnesses claimed the contrary. The origin of the video clip was never made clear, according to the complainants. The presiding judge allegedly stopped the defence counsel when he began asking the prosecution witnesses who shot the video,

*Considering* the communications and renewed requests for information conveyed by the IPU Secretary General on behalf of the Committee on 12 and 23 November 2016 and 20 March 2017, to which no response from the Cambodian authorities has been forthcoming since the 135<sup>th</sup> IPU Assembly,

*Considering* that, since the submission of the initial complaint in July 2014, over a dozen official letters have been conveyed by the IPU to seek specific information, documentation and official observations from the parliamentary authorities on the cases at hand. However, the Cambodian authorities have only shared three responses in writing in three years, the last one dating back to October 2016. Those responses have been helpful but only addressed a few of the issues and information requests submitted. The authorities have failed to keep the Committee informed of new developments, such as the court verdicts delivered on the cases, and to provide supporting documentation, such as copies of the judicial decisions,

*Recalling* that 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 given the escalation of politically motivated charges, judicial harassment and acts of violence. These State and international organizations, including the UN, 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 that would ensure the legitimacy of the next government,

*Considering* the report entitled "Death Knell for Democracy – Attacks on Lawmakers and the Threat to Cambodia's Institutions" issued on 20 March 2017 by ASEAN Parliamentarians for Human Rights, and the findings and recommendations made by the United Nations OHCHR in the legal analysis of the amended political party law that was published on 28 March 2017,

*Considering* that the following information was shared during the two separate hearings held at the 136<sup>th</sup> IPU Assembly with the Cambodian delegation, on the one hand, and with a representative of the CNRP, on the other hand, in the Committee's effort to continue hearing both sides in a systematic manner to promote dialogue:

- Both parties have reaffirmed their previous positions on the individual cases and were unable to report any concrete progress. They expressed, first and foremost, fears and concerns about the broader security situation in Cambodia on the eve of crucial elections, which might result in the first ever political changeover since the end of the civil war in Cambodia, should the CNRP win the elections. This unprecedented situation is at the origin of fears that Cambodia may go back to a situation of violence reminiscent of the past, due to heightened political tensions;
- The Cambodian delegation to the 136<sup>th</sup> Assembly reaffirmed on these grounds that the top priority for the Cambodian authorities was to ensure peace and to prevent any social disturbance at all costs. In their view, political stability would bring about more economic development and lead to increasing respect for human rights in due time. Significant progress had already been made in that direction in recent years. The delegation reaffirmed that the opposition should therefore stop "putting gas into the fire" and adopt a more constructive stance; Mr. Sam Rainsy should "cool down". The delegation considered that, since his resignation, the new CNRP leaders had stepped down their rhetoric and the atmosphere had improved. They emphasized that they needed to work together and that the situation would improve after the elections. They affirmed that the political dialogue was an inclusive part of the CPP policy and that it had never stopped in their opinion. They claimed that Cambodia had always cooperated with the Committee and that the lack of written response resulted from a misunderstanding, communication problems and the lack of sufficient time provided to respond;
- Ms. Saumura Tioulong indicated during the hearing that prior concerns related to violations of the fundamental rights to freedom of opinion, expression, association and assembly remained unresolved. The current overall political environment was not conducive to free and fair elections. Mr. Sam Rainsy had been sidelined following the amendment of the political party legislation. Neither the ruling party nor the authorities had the right under international law and democratic principles to choose against whom they would compete in the next elections and that was in effect what was currently happening. There had been no progress since the designation of a new CNRP leadership, as the latter had not been cleared of pending criminal charges. The CNRP feared that it would be dissolved any day pursuant to the amended political party law. This would be tantamount to cancelling the popular vote conferred upon the 66 CNRP parliamentarians elected in 2013 and going back to a one-party system just before the local elections. The only solution was to find a way forward through dialogue, strict respect for human rights and key democratic principles with the assistance of international mediation. The ruling party should not be scared of the possibility of losing power for a few years, but should rather consider this as normal practice in any democratic regime, and hence a positive outcome of the democratic reforms undertaken in Cambodia in the past few years. Guarantees could certainly be negotiated and put in place to ensure a smooth and peaceful transition should political power alternate, so as to avoid any subsequent political revenge and alleviate any existing fears,

*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, freedom of association, equality before the law and to a fair trial conducted by an independent and impartial court and to participate in public affairs;
- 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* the fundamental principle of “liberal multi-party democracy” enshrined in article 1 and 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 articles 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. *Deplores* the lack of any concrete progress in resolving the cases at hand for the past two and a half years and the rare submission of a written response from the Cambodian authorities to IPU requests for information; *cannot but conclude* that there is a lack of political will on the part of the Cambodian authorities, including parliament, to resolve the cases;
2. *Expresses deep concern* at the escalation of the situation; *is particularly alarmed* at the allegations that the CNRP may be dissolved pursuant to the recently adopted amendments to the political party law, which do not comply with international standards on freedom of association and have clearly targeted Mr. Sam Rainsy and his party;
3. *Remains deeply concerned* that a large segment of opposition members of parliament, who make up the current leadership of the only opposition party in parliament, continue to face serious violations of their fundamental rights to freedom of opinion, expression, association and assembly; *considers* that these restrictions undermine their right to political participation, as they are being prevented from effectively carrying out their role as parliamentarians and members of the opposition freely without fear of persecution;
4. *Urges* the ruling party and the opposition once again to resume the political dialogue and to urgently resolve the individual cases at hand in strict compliance with human rights standards; *considers* that such dialogue can only be useful when there is sufficient opportunity for dissent and for the peaceful exercise of the freedoms of expression, association and peaceful assembly;
5. *Recalls* that, pursuant to the principles and values defended by the IPU, as enshrined in the Universal Declaration of Democracy adopted by the IPU in September 1997, “a state of democracy ensures that the processes by which power is acceded to, wielded and alternates allow for free political competition and are the product of open, free and non-discriminatory participation by the people, exercised in accordance with the rule of law, in both letter and spirit”; and *expresses the hope* for increased tolerance and acceptance of the role of the political opposition in Cambodia; *considers* that it is crucial for the CNRP to be able stand in the upcoming elections; *reiterates* the availability of the IPU to facilitate the political dialogue and to mediate in the crisis and to provide technical assistance to the Cambodian parliament to that end;
6. *Requests* the Secretary General to convey this decision to the competent authorities, the complainants 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.