



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 201st session (St. Petersburg, 18 October 2017)¹***

The Governing Council of the Inter-Parliamentary Union,

Referring to the cases of the above-mentioned 15 parliamentarians from the opposition Cambodian National Rescue Party (CNRP), who are all long-standing and prominent members of the CNRP leadership, and to the decision adopted at its 200th session (Dhaka, 5 April 2017),

Referring to the letters of 3 and 28 September 2017 of the Secretary General of the National Assembly, the video material provided by the latter as well as the information provided by the complainants and reliable third parties,

Referring to the hearings held during the 137th IPU Assembly (St. Petersburg, October 2017) with the Cambodian delegation and with Ms. Mu Sochua, member of the National Assembly of Cambodia and Vice-President of the CNRP, as part of the Committee's effort to continue hearing both sides in a systematic manner to promote dialogue, and to the additional videos and documents provided by both parties at that time,

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 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 2017 and 2018 local and national elections by various means, including: (i) acts of intimidation and pressure; (ii) physical violence against members of parliament; (iii) political and judicial harassment characterized by multiple 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

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The delegation of Cambodia expressed its reservations regarding the decision.

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 extensive information on file and the serious concerns expressed in prior decisions on the serious abuses committed against the 15 members of parliament whose cases have been referred to the Committee on the Human Rights of Parliamentarians since July 2014 and the fact that no progress whatsoever has been made towards a satisfactory settlement,

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

- The July 2014 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 the following developments that have occurred in the individual cases before the Committee since the 136th IPU Assembly and the information and allegations shared by both parties in that respect:

- The Court of Appeal has upheld a series of first-instance prison sentences against the opposition parliamentarians concerned. It upheld Mr. Sok Hour’s seven-year sentence on 29 June 2017, after a half-day hearing; it upheld Mr. Sam Rainsy’s 20-month sentence – for defamation and incitement in allegedly accusing the Prime Minister of being behind the murder of political analyst Kem Ley – on 13 August 2017; and it also upheld, on 29 August, an 18-month sentence against Senator Thak Lany, also for defamation: he allegedly accused Prime Minister Hun Sen, in a video clip, of being behind Kem Ley’s assassination;
- Mr. Kem Sokha, the current President of the CNRP, was arrested on 3 September 2017 at his home after midnight, and was transferred 200 km out of the capital to the remote Correctional Centre 3, where he allegedly remains detained in solitary confinement and under 24-hour video surveillance in his cell. He faces a prison sentence of 15 to 30 years for committing the crime of “conspiracy with a foreign power”, defined as “having a secret agreement with a foreign state or its agents with a view to fomenting hostilities or aggression against the Kingdom of Cambodia” (article 443 of the Criminal Code). The core evidence supporting the charges is a video of a public speech he gave to the diaspora in Australia in late 2013. The video has been online since its 2013 initial broadcast. The authorities have shared the full video, as well as a three-minute edited clip containing what they consider to be the most incriminating words said by Mr. Kem Sokha. The transcript of this clip states the following:
 - “In 1993, when I first became member of parliament, the Americans, the US government invited me as the first Khmer politician to visit the US in order to understand the democratization process, which they helped. I have visited there

every year since 1993. In my last visit, they decided that I must step outside the politics for a while in order to have a change in Cambodia. Then, in 2002 I quit the politics, the political party to which I was affiliated and created an organization called 'Cambodian Human Rights Centre'. Why did they need to create this centre? They said if we want to change the leadership we cannot fight the top. Before changing the top level, we need to uproot the lower one. We need to change the lower level first. It is a political strategy in democratic country. And the USA that has assisted me, they asked me to take the model from Yugoslavia, Serbia, where they can change the dictator Milosevic. You know Milosevic had huge number of tanks. But they can change by using this strategy and they take this experience for me to implement in Cambodia. But, no one knew about this. However, since we are now reaching at this stage, today I must tell you about this strategy. We will have more to continue and we will succeed. I do not do anything at my own will. I have experts, university professors in Washington D.C., Montreal, Canada, hired by the Americans in order to advise me on the strategy to change the leaders. And, if I follow such a tactic and strategy, and still if we could not win, I do not know what else to do?";

- In a letter dated 28 September 2017, the Secretary General of the National Assembly confirmed that the video "shows the connection with a foreign country in the support, assistance, planning and intent to carry out a regime change, modelled from Yugoslavia and Serbia, to overthrow the democratically elected government of Cambodia". The Cambodian delegation to the 137th Assembly has confirmed that the words spoken by Mr. Kem Sokha show clearly that he had a plan to topple the government by force; that this is clear because he referred to the manner in which the regime change took place in Serbia and in the former Yugoslavia and to the overthrow of President Milošević; and that the plan to topple the government by force has been in motion for some time, at least since 2013, and continues to the present day; this was demonstrated, according to the delegation, by the very fact that the video was still available online, hence the need to arrest him preventively rather than wait for a coup to take place to arrest him in flagrante delicto; the delegation stated that only Mr. Kem Sokha is currently affected by the charges. The CNRP is still operating and working in Cambodia to this day. Only a few CNRP members have left the country and the delegation stated that it did not understand why they claimed to have received threats;
- The complainants alleged that the charges are groundless and politically motivated. They further alleged that parliamentary immunity and standards of due process have once again been violated in this case. They pointed out that in the incriminated 2013 video speech, Mr. Kem Sokha had only explained the role of the opposition and his plans to strengthen the Cambodian political opposition through means including training and advice (including from US experts and professors), public communication and media work and the organization of public gatherings and protests, in order to eventually win the elections. They emphasized that Mr. Kem Sokha and the CNRP had always advocated regime change through peaceful and constitutional means and that this was the very essence of the role and existence of an opposition party in any democratic country. The CNRP insisted that it had only acted within the framework of the Constitution and laws of Cambodia. Mr. Sam Rainsy called the move a "gross attempt to decapitate the opposition" prior to the elections. This allegation has been strongly echoed by many local and international actors. On 4 September 2017, the United Nations High Commissioner for Human Rights expressed serious concern that Mr. Kem Sokha had apparently been arrested without respect for his due process guarantees or his parliamentary immunity and that "numerous public statements by the Prime Minister and high-ranking officials about Mr. Kem Sokha's supposed guilt breach the presumption of innocence and the right to a fair trial";
- According to the Secretary General's letter of 28 September 2017 referenced above, the Standing Committee of the National Assembly met on 7 September to review Mr. Kem Sokha's arrest, including the detention order and reports submitted by the prosecution, and found it to be in compliance with Article 80 of the Constitution. It convened an extraordinary plenary session on 11 September 2017 to adopt a proposal to authorize the continuation of judicial proceedings in view of the gravity of the crime and the strong evidence presented (the video clip). No members of the opposition were present at the

time of the vote. The Cambodian authorities claim that parliamentary immunity was not applicable because the crime was committed in flagrante delicto. The Cambodian delegation to the 137th Assembly explained that even if the video and the words of Mr. Kem Sokha dated back to 2013, the fact that they have remained available on line was constitutive of an in flagrante delicto offence as the crime had continued since 2013 for this reason; no reasons were provided to explain why Mr. Kem Sokha was suddenly arrested on 3 September in the middle of the night;

- The Committee on the Human Rights of Parliamentarians has been requested by the complainants to visit Mr. Kem Sokha in detention and has expressed the wish to meet with Mr. Kem Sokha at the earliest convenience; the Cambodian delegation to the 137th IPU Assembly has indicated that the National Assembly would facilitate this and liaise with all relevant authorities in order to seek their official response and authorization;
- According to the complainants, on 4 September 2017, the Prime Minister issued public statements warning that the CNRP faced dissolution if it “dared to appear to protect” Mr. Kem Sokha, and that other CNRP members, as well as foreign nationals, would be investigated for their involvement in the alleged plot to topple the government. The public threat was repeated on 11 September 2017 after CNRP parliamentarians unanimously called for his release and attempted to visit him in prison. Since that time, opposition MPs have allegedly been labelled as “rebels”, placed under constant surveillance and repeatedly intimidated. According to the information shared by Ms. Mu Sochua during the hearing held at the 137th IPU Assembly, most of the senior CNRP leadership and about half of opposition MPs, including herself, have been forced to flee Cambodia in the past few days out of fear of reprisals after they received a message warning them of their imminent arrest and of the impending dissolution of the CNRP. Ms. Mu Sochua has expressed the view that today Cambodian opposition parliamentarians and members no longer have any freedom to express their opinions, to meet or gather peacefully or to move around freely inside or outside of Cambodia, and that she fears for her safety and for the safety of all CNRP parliamentarians and members. She has expressed the wish to return to Cambodia to continue exercising her parliamentary and opposition duties and ensure that the voice of the Cambodian people who elected the CNRP to Parliament is respected. She expressed the wish of the CNRP for political dialogue to resume,

Taking into account public international reports by the United Nations and other international and regional organizations that the political space in Cambodia has further shrunk in recent months following an unprecedented crackdown on critical media outlets and civil society and that, according to the UN Special Rapporteur, the range of laws being employed to restrict criticism of the Government and quell political debate has continued to widen; and that, according to such reports, in addition to defamation and incitement, serious charges of secession, insurrection, forgery and treason have been made, and restrictions on the right to peaceful assembly have not been lifted,

Recalling that, on 9 March 2017, a fast-tracked amendment to the 1997 political party law gave unprecedented power to the executive and judicial branches to suspend and dissolve political parties. It prohibited people with criminal court convictions (including for minor offences), such as Mr. Sam Rainsy, from holding senior positions in political parties and also prohibited parties from receiving foreign funding. Under 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. The provisions of the amendments have been couched in vague terms and are considered squarely at odds with accepted restrictions on the right to freedom of association under international law, particularly the requirements of necessity and proportionality,

Considering further that, on 31 July 2017, the Law on Political Parties was amended again in order to ban parties from associating with, or using the voice, image or written documents of, anyone convicted of a criminal offence; political parties found in violation of the amendments can now be dissolved, barred from standing in elections or banned from all political activity for up to five years,

Considering that, according to the complainants, on 6 October 2017 the Minister of the Interior reportedly submitted an official request to the Supreme Court to dissolve the CNRP on the basis of the above-mentioned amendments; the CNRP fears that the Supreme Court will order the

dissolution of the party in the coming weeks and will deprive the party members of their elective mandates conferred by the people at the national and local levels, as well as exclude them from campaigning and running freely and fairly in the general elections scheduled for 29 July 2018; the CNRP has stated that the National Assembly had started discussing amendments to several pieces of legislation that would allow for the redistribution of all national and local CNRP seats to other parties should it be dissolved; that media reported that the amendments had been adopted on 16 October 2017; that this move calls into question the integrity and legitimacy of the institution of parliament in Cambodia as it no longer acts in compliance with the Constitution of Cambodia, according to the CNRP; it also calls into question the possibility for free and fair elections to be held in Cambodia next year, still according to the CNRP; the Cambodian delegation to the 137th IPU Assembly stated that it had not been informed that such amendments were being discussed in the National Assembly,

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, concerning 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: (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,

Taking into account that, at the 137th IPU Assembly, the Executive Committee and then the Governing Council urged the IPU leadership to continue to engage with the Cambodian authorities to help them comply with international standards and work towards a more peaceful and stable environment for the next elections,

1. *Thanks* both parties for sharing their views, supporting information and video materials;
2. *Expresses deep concern* at the further escalation of the human rights situation of opposition parliamentarians in Cambodia and at the lack of clear and convincing responses provided by the Cambodian authorities and by the Cambodian delegation to the 137th Assembly on the extremely serious concerns at hand;
3. *Concludes* that the videos of the 2013 speech of Mr. Kem Sokha contain nothing whatsoever that could constitute a criminal offence; *points out* that Mr. Kem Sokha at no point incited hatred or violence or uttered defamatory words in the incriminated videos and that he has emphasized that he aimed at bringing political change by winning the

elections; *considers* therefore that his freedom of expression has clearly been violated in the present case; *is deeply shocked* that this video has been used as evidence of treason, for which he faces up to 30 years in prison, and that it currently justifies his prolonged pre-trial detention in solitary confinement; *is also alarmed* at the clear violation of his parliamentary immunity in the absence of any criminal offence and of any flagrante delicto;

4. *Exhorts* all Cambodian authorities to immediately release and drop the charges against Mr. Kem Sokha, to allow him to resume his duties as a parliamentarian and as president of the opposition without further delay and restriction;
5. *Requests* the Secretary General to take all appropriate steps to organize a visit by a Committee delegation to Cambodia to meet with Mr. Kem Sokha in prison, and *appeals* to the Parliament of Cambodia to facilitate this visit at the earliest convenience while urging the authorities to release him and clear him of the charges in the meantime;
6. *Urges* the Cambodian authorities immediately to stop violating the fundamental rights of opposition members of parliament and to take urgent measures to end their ongoing harassment, as well as provide all appropriate guarantees to ensure that those who have gone into exile are able to return safely, without delay, to resume their political activities within the CNRP and to campaign freely in the run-up to the fast-approaching 2018 elections, without fears of further arrests and reprisals or of the dissolution of the only opposition party in parliament;
7. *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 alternated 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; and *considers* that it is crucial for the CNRP to be able to stand in the upcoming elections;
8. *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;
9. *Requests* the Committee to continue examining this case and to report back to it in due course.