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Committee on the Human Rights of Parliamentarians Report of the visit to Cambodia

15 - 17 February 2016

CMBD/48 - Mu Sochua
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/27- Chan Cheng
CMBD55 - Sok Hour Hong
CMBD/56 - Kong Sophea
CMBD/57 - Nhay Chamroeun
CMBD/58 - Sam Rainsy

Executive summary

A delegation of the Committee on the Human Rights of Parliamentarians conducted a visit to Cambodia on 15 to 17 February 2016. Its first aim was to gain a better understanding of the cases of 12 opposition parliamentarians and the political and human rights context in which they occurred. Its second was to search for satisfactory solutions to the cases.

The cases closely relate to the political situation in Cambodia since the July 2013 elections, and to relations between the ruling and opposition parties. They raise serious human rights concerns. Particular concerns essentially relate to respect for: (i) freedom of expression and of assembly - including permissible restrictions of these rights under international law; (ii) standards of due process and fair trial; and (iii) parliamentary immunity. The cases present strong similarities to past cases that the Committee has examined in Cambodia. They appear to follow a long-standing pattern of serious human rights violations about which the IPU has repeatedly issued formal decisions over the last 20 years.

The visit was a positive first step: the delegation heard all versions of the facts and gathered useful information. After the mission however, no progress was made towards settling the cases. The cases involve serious concerns and are set against a further deterioration of the political situation in Cambodia. It was for those reasons that the Committee submitted its preliminary findings and recommendations and that the Governing Council adopted them at the 134th IPU Assembly in March 2016. The Governing Council expressed deep concern at the situation. It urged the Cambodian authorities – including the Parliament – and all political actors in Cambodia to urgently find long-term solutions that complied with international human rights standards. The Governing Council further emphasized that the fast-approaching elections made it critical for the ruling party and the opposition to promptly resume political dialogue.

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A. INTRODUCTION

1. Five cases concerning 12 Cambodian opposition MPs had been referred to the Committee when the visit took place. The cases were all closely related to the political situation in Cambodia since the July 2013 elections and to the tense relations between the ruling Cambodian People's Party (CPP) and the main opposition, the Cambodia National Rescue Party (CNRP). The CPP is led by Prime Minister Hun Sen and the CNRP by Mr. Sam Rainsy and his deputy Mr. Kem Sokha.

2. Pursuant to a confidential decision adopted during the 133rd IPU Assembly (October 2015), the Committee decided to conduct a visit to Cambodia. The Cambodian delegation to the 133rd IPU Assembly welcomed the proposed visit and the parliamentary authorities confirmed their approval of the visit on 23 December 2015. The visit was conducted from 15 to 17 February 2016 by Mr. Ali A. Alaradi and Mr. Alioune Abatalib Gueye, with the assistance of Ms. Gaëlle Laroque of the IPU Secretariat.

3. The visit had two main objectives: first, for the Committee to gain a better understanding of the cases of 12 opposition parliamentarians who had been referred to the Committee, and of the political and human rights context in which they occurred; second, for the Committee to help find satisfactory solutions in the cases at hand, in line with Cambodia's constitutional framework and international human rights law. The delegation 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. Since the referral of the cases, the Committee had indeed taken exceptional decisions under its procedure to examine all Cambodian cases confidentially and therefore did not refer them to the IPU Governing Council, despite serious human rights concerns. The rationale was exclusively to give an opportunity to the parties to find a swift satisfactory settlement through political dialogue, as a fragile "culture of dialogue" between the Cambodian People's Party (CPP) and the Cambodian National Reserve Party (CNRP) had been established in 2014. In its decision adopted in October 2015, the Committee reminded the parties that its decisions were being kept *"confidential for the time being, on an exceptional basis, so as to enable the parties to reach a solution, and point[ed] out that it [would] review this decision at its next session on the basis of the progress achieved in the cases by then and of the outcome of the visit to Cambodia."*

4. The delegation regretted, and was surprised to note, that the authorities did not respect the confidentiality of the visit, or seem to attach much importance to the fact that the Committee had kept the decisions confidential. The authorities invited the media to attend official meetings and made public statements throughout the delegation's visit, some of which did not reflect appropriately the views and concerns expressed by the delegation or the Committee.

5. During its three-day visit, the delegation held meetings with parliamentary authorities, executive and judicial authorities; political parties (including most of the parliamentarians involved in the cases at hand and their lawyers) and third parties from the diplomatic community and civil society.¹ The delegation wishes to thank the Cambodian authorities for their welcome and the assistance provided to the delegation throughout its visit. The delegation notes with particular appreciation that it was able to meet with most of the authorities and persons it had requested to meet, including Senator Sok Hour Hong at Prey Sar detention centre. In the absence of the Prime Minister, who was abroad attending a US-ASEAN summit, the delegation was pleased that it had been able to meet with the Deputy Prime Minister and Minister of the Interior.

B. INFORMATION GATHERED DURING THE MISSION

1. Political and human rights situation at the time of the visit

6. Since the last legislative elections in 2013, the political situation in Cambodia has been marked by repeated turmoil. Prime Minister Hun Sen's party, the CPP, won 68 of the 123 seats in the National Assembly. The opposition CNRP won 55 seats, nearly doubling the 29 that it won at the last election. The CNRP contested the election results. It claimed that there had been widespread fraud,

¹ See Annex I for the list of the persons met during the mission.

refused to sit in Parliament and demanded fresh elections. Protests multiplied, some of which were brutally repressed according to United Nations and civil society reports. The Government issued an unlimited blanket ban on all public demonstrations in January 2014. Small-scale protests and the boycott of the National Assembly continued as political talks failed to produce an agreement between the two parties. In the midst of this political stand-off, accusations were made against several vocal members of the opposition, including eight parliamentarians-elect (see cases CMBD48-54 and CMBD/27).

7. On 22 July 2014, the Government and opposition found a political agreement to end the crisis. CNRP members then took up their seats in the National Assembly. On 5 August 2014, all detained opposition MPs were granted bail and sworn into Parliament.

8. After the July 2014 agreement, a mechanism known as the “culture of dialogue” was established between the CPP and CNRP “to solve all national problems in accordance with democratic principles and the rule of law”.² It was the first time that Prime Minister Hun Sen and Mr. Rainsy had met regularly. They discussed various issues over a period of several months, which created a lot of hope among Cambodian people. The culture of dialogue was a fragile and unprecedented mechanism in Cambodia. Both parties saw it as crucial to ending the culture of violence that had prevailed previously.

9. It was primarily between July 2014 and mid-2015 that the culture of dialogue opened more space for political debate, including within parliament. The mechanism allowed both parties to make progress on important questions of national interest, particularly electoral issues. A law was eventually agreed and passed to establish a new electoral commission. The law provided for additional guarantees of independence and impartiality, including an equal number of representatives from both parties. The amendment of the internal regulations of the National Assembly was another positive development brought about by the culture of dialogue. The regulations were amended to formally recognize the leader of the opposition in the National Assembly as a partner for dialogue with the Government “with regard to any national issues”. A number of CNRP MPs were also appointed as chairpersons of standing parliamentary committees.

10. Most of the delegation’s interlocutors observed that the dialogue enabled CNRP MPs to participate actively in parliamentary work with the CPP for the first time. In their view, it resulted in a stronger and more credible parliamentary institution. It was the first time that substantive debates had taken place between the two parties in Parliament, including over difficult issues. Long-standing points of disagreement were voiced and discussed during the debates. More parliamentarians than ever before asked to take the floor during these debates and were granted permission to express their opinions. The activities of parliamentary committees also reportedly increased. Invitations were sent to Ministers to appear before parliament and answer questions. Individual MPs also wrote to the National Assembly, the Government and the King seeking information and immediate action from the executive on various matters. The delegation found that it only took a few months of regular dialogue between the ruling party and the opposition to initiate a different, more effective and democratic dynamic in the Cambodian Parliament. The delegation believes that its continuation would have further consolidated this fragile dynamic. It is convinced that it could have had a long-lasting positive impact on Cambodian people.

11. During the delegation’s visit, it was confirmed that political dialogue had been interrupted since October 2015 after tension between the CPP and CNRP had resumed. Reasons for the tension included:

² Article 1 of the 22 July Agreement on political resolution between the CPP and the CNRP states that “Both parties agree on political resolution by working together within the assembly to solve all national problems in accordance with democratic principles and the rule of law”. Pursuant to article 4: “[...] Both parties agree to study aiming to amend the internal regulations of the assembly so that this institution can fulfil its task correctly and effectively, among those are lifting up the roles and power of the assembly-seated party that rejects to join with the government in accordance to the constitution, laws and factual legal interactions”. Article 6 also provides that: “Both parties agree to conduct reform and strengthen the important national institutions especially all independent institutions enabling to serve the nation and citizens in accordance to democracy of pluralism and the rule of law”.

- Public statements made by the CNRP which were about sensitive questions such as the national border and/or criticized the Prime Minister or other CPP officials;
- Public statements by the Prime Minister and other high-level CPP officials expressing anger at the CNRP and threatening reprisals;
- The arrest and continued detention of Senator Sok Hour Hong in August 2015 (see case CMBD/55);
- The beating of two members of the National Assembly, Mr. Kong Sophea and Mr. Nhay Chamroeun in late October 2015 (see cases CMBD/56 and CMBD/57);
- Threats made against Mr. Kem Sokha, the Vice-President of the National Assembly and deputy leader of the CNRP, and an attack on his residence, to which the police failed to respond despite calls for help. These incidents coincided with Mr. Sokha's removal from the Vice-Presidency in a vote that was contested by the opposition;
- The revocation of the parliamentary mandate of the leader of the opposition in November 2015 and a series of new cases brought against him (see case CMBD/58).

12. These new actions taken against opposition parliamentarians came against a backdrop of shrinking political space. They followed the adoption of several laws restricting fundamental freedoms and the arrest, prosecution and conviction of increasing numbers of opposition supporters and members of civil society. The United Nations Office of the High Commissioner for Human Rights (OHCHR), the European Union and the United States of America have issued statements of concern about the worsening climate for opposition politicians and civil society organizations in Cambodia. The media and other domestic and international observers have gone as far as referring to a "crackdown on the opposition".

13. The delegation noted with concern that civil society organizations, representatives of Western States and the international media had expressed fears about the likelihood of an upsurge in repression and violence in the lead-up to the 2017 and 2018 elections. The delegation was told that Cambodian politicians had a strong tendency to see political power as a matter of life and death rather than something that one is expected to regularly hand over to another political force. Since 2013, the CNRP's popularity had risen due to the first successful merger of several opposition parties and an unprecedented level of social media activity and youth engagement. As a result, some felt that the Cambodian people may decide to vote for a change of leadership in the future. For those people, an alternance of power remained hard to imagine or accept in Cambodia, even though it would be normal in any democracy. In their opinion, the recent crackdown may signal a return to past authoritarian tactics. Those included attacks against opposition leaders and its most proactive members and were used to weaken and silence the opposition. Concerns were expressed that the crackdown may soon be followed by the dissolution of the CNRP or other measures preventing key opposition figures from standing for election.

14. During the visit, the political and security situation in Phnom Penh was very tense. Rumours persisted that there would be reprisal attacks against the opposition if protests were organized in the USA. A USA-ASEAN summit had been taking place in the USA at the time, and the Prime Minister had been attending. There were fears that the incidents of October 2015 would be repeated. Mr. Kem Sokha, against whom direct threats were made, requested protection measures, but his request remained unanswered. The delegation raised the issue with the Deputy Prime Minister and Minister of the Interior. The Interior Minister, who is responsible for handling protection requests, told the delegation that he had just instructed the police to follow up on the request and to take all appropriate measures. Mr. Sokha subsequently confirmed that his request had been granted. No further incidents were reported.

2. Information gathered on the individual cases of alleged violations of the fundamental rights of the 12 MPs

15. The case-by-case findings below are the result of a thorough review of the detailed information concerning each case that had been provided before, during and after the visit. That information includes extensive documentation (including all applicable constitutional and legal provisions) but also video and photo records. Only a brief summary of the most relevant information available has been included in this

report for practical reasons. The delegation wishes to point out that the Cambodian authorities only provided verbal responses during the visit. Before and after the visit, they never responded to requests for additional information and supporting documentation.

2.1 Case of Mr. Chan Cheng (CMBD/27)

Date of referral	November 2011
Prior decisions	Committee (confidential): 136 th session (January 2012); 137 th session (April 2012); 143 rd session (January 2014); 148 th session (October 2015) Governing Council: 134 th Assembly (March 2016).
Factual overview	Mr. Chan Cheng, a member of the National Assembly, was convicted to two years' imprisonment on 13 March 2015 for aiding and abetting the escape of a prisoner in 2011 with his lawyer. Mr. Cheng has appealed the court ruling, which appeal is pending. The long-dormant proceedings were believed to have been dismissed in 2012. They were suddenly re-activated in mid-2014 amid the political standoff between the ruling and opposition party. He is free and able to exercise his parliamentary mandate.

16. The visit confirmed that there are two contradictory versions of the facts underlying the case. The Minister of Justice told the delegation that Mr. Cheng had abused his status as a member of the National Assembly in order to help a detainee to escape. The delegation put it to the Minister that Mr. Cheng alleged that he (Mr. Cheng) had not facilitated an escape but rather prevented an illegal detention, as no arrest warrant had been issued for the detainee. The Minister denied the allegation. He affirmed that an arrest warrant had been issued, but that Mr. Cheng and his lawyer had chosen to ignore it. He explained that no one had dared to arrest them because of Mr. Cheng's parliamentary privilege.

17. Mr. Cheng and his lawyer (who was himself convicted on similar charges) confirmed allegations that had been made previously. The allegations outlined that a judge had verbally ordered the arrest of a prisoner (whom the lawyer was representing) but had not issued an arrest warrant. As a result, the detention was illegal under Cambodian law. The lawyer therefore left with his client and Mr. Cheng (who was waiting in his car outside) and they drove away unhindered. In the view of Mr. Cheng and his lawyer, that was not an escape: dozens of court and prison officers were present and no one tried to stop them. When charges were pressed at a later stage, Mr. Cheng and his lawyer were not even informed. They believed that the decision to prosecute had been made on political grounds and reaffirmed their prior claims that the proceedings had not been conducted in compliance with due process or the laws of Cambodia. In their view, the timing of the reopening of the case and the belated conviction were a good example of the court being used as a political instrument. Mr. Cheng and his lawyer had not received any information about the status and schedule of their appeal. The authorities were not able to provide the delegation with any update on the appeal or explanation of the timing or grounds of the case being reopened. The delegation noted that Mr. Cheng and his lawyer were convinced that the pending appeal would be heavily influenced by political developments. They believed that it would either drag on for years in order to exert pressure on them, or result in a sudden harsh prison term whenever it suited the authorities. Mr. Cheng also reminded the delegation that, in 2011, his immunity had been lifted in a manner found to be in violation of due process by the IPU Committee. In 2013, he had been re-elected and has enjoyed parliamentary immunity again since August 2014. His opinion was therefore that, for the court to proceed with the case, the new National Assembly should first have lifted his parliamentary immunity.

2.2 Case CMBD48 et al. ("Freedom Park case") - Ms. Mu Sochua, Mr. Keo Phirum, Mr. Ho Van, Mr. Long Ry, Mr. Nut Romdoul, Mr. Men Sothavarin and Mr. Real Khemarin

Date of referral	July 2014
Prior decisions	Committee (confidential): 145 th session and 148 th session Governing Council: 134 th Assembly (March 2016)
Factual overview	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 from the CNRP, 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 faced 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. Their immunity was not lifted. They are free and able to exercise their parliamentary mandate.
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2.2.1 Parliamentary status of the seven persons concerned and parliamentary immunity

18. During its visit, the delegation noted that the position of the authorities remained unchanged. They continued to consider that the persons concerned had not been parliamentarians and had not enjoyed parliamentary status or immunity at the time of the protest and their arrest. The authorities contend that no immunity applied because the MPs were still boycotting Parliament and had not yet been sworn in. The delegation also noted that the authorities did not dispute that the MPs currently enjoyed immunity and had done so since August 2014.

19. The delegation was troubled however by the assertions of several authorities, including the Minister of Justice and CPP members of the National Assembly. According to them, it was perfectly in line with Cambodian law for the court to pursue a preliminary investigation and summon the MPs for questioning; the MPs should have appeared in court, regardless of their parliamentary immunity. The delegation was particularly alarmed that the Minister of Justice affirmed that “parliamentary immunity does not prevent the court from summoning MPs but it only prevents the court from ordering an MP’s arrest if that MP does not respond to a summons”; and that “by refusing to appear before the court, MPs were using and abusing their parliamentary privilege so as to hinder the work of the judiciary.”

2.2.2 Violation of freedom of assembly and freedom of expression

20. The complainants contend that the seven parliamentarians were exercising their rights to peaceful assembly and to express their political views. According to the complainants, the charges were brought against CNRP parliamentarians to pressure the CNRP into accepting a political agreement. In the complainants’ view, the charges were maintained so as to keep the CNRP in check and to weaken and silence the opposition in Parliament. In their view, the MPs concerned did not commit any criminal offence during the protest. They acknowledged that the protest turned violent but affirmed that the MPs did not directly participate in or incite violence. On the contrary, the complainants maintain that the seven MPs made extensive efforts to restrain protesters and stop the violence, which was provoked by the security forces.

21. The authorities reaffirmed to the delegation the uncontested view that violence was committed during the protest. They also reaffirmed that the seven parliamentarians bore responsibility for the violence. However, they could not explain what the parliamentarians had done wrong or provide any proof of the parliamentarians’ direct involvement in the violence. The delegation did not obtain clear factual explanations about what behaviour or criminal action specifically triggered their individual criminal responsibility, how the violence itself could have been constitutive of the crime of insurrection; and what incriminating evidence was available. The Minister of Justice confirmed to the delegation that none of the MPs had directly committed violent acts during the protest. However, he added: “only the court has all the information; we do not know what was happening behind the scenes; the rally could not have happened without a leader; according to the law, the leaders of a protest are criminally responsible for inciting violence where it occurs, even if they told protesters not to resort to violence”.

22. The delegation attempted to establish the exact role of the seven MPs during the protest. It used materials provided by both parties, including photos and video recordings of the protest on 15 July 2014 and witness statements. During its visit, the delegation also met people who were present at the protest as observers. The delegation did not find any evidence that the seven parliamentarians directly participated in the acts of violence or incited the protesters to it. It also found no evidence that the violence committed fitted the legal requirements of the crime of insurrection under the criminal code. The code states that insurrection must be “liable to endanger the institutions of the Kingdom of Cambodia or

violate the integrity of the national territory". In fact, the delegation found evidence that the MPs had tried to prevent and stop the violence, although protesters did not listen to them.

23. In relation to freedom of assembly, the delegation reviewed the facts and the applicable legislation in depth. The delegation draws attention to the following:

- Freedom Park was a designated area for demonstrations in Phnom Penh under the 2009 law on peaceful assembly. Normally, only prior notification (not prior authorization) was required to organize a protest with a maximum of 200 persons at Freedom Park. In early 2014, however, there was a violent and fatal crackdown on demonstrations. The Minister of Interior then issued an unlimited blanket ban on protests and Freedom Park was fenced off. The United Nations Special Rapporteur on the human rights situation in Cambodia and civil society organizations considered the ban to be a violation of the Constitution of Cambodia, the 2009 law, and international human rights standards;
- Despite the significant effect of the ban, small-scale peaceful gatherings continued to routinely take place. They called for the re-opening of Freedom Park and the lifting of the ban. Third parties assessed that the 15 July 2014 protest posed no real threat;
- Under the 2009 law on peaceful assembly, the authorities are entitled to stop a protest if it takes place without prior notification or if the peaceful assembly turns violent. In case of violence, the authorities are required to immediately take measures to prevent the violence and then to stop the protest (article 20). Security forces deployed to maintain public order at protests are required to protect the peaceful demonstration and not interfere with its conduct. They should wear proper uniforms and "adhere to the attitude of absolute patience" (articles 17 and 19). However, there has been no public response to the calls of civil society and the UN for swift, impartial and transparent investigations into the violence committed on 14 July 2014 and at other demonstrations held in the post-election period. Neither has there been a response to calls for all persons responsible to be brought to justice, including the law enforcement personnel responsible for provoking violence and using excessive force. Only members of the opposition have been detained and prosecuted.
- The video records of the 14 July 2014 protest show clearly that security personnel did not adhere to an "attitude of absolute patience" and did not try to talk to the protesters. Instead, they started tearing down banners and beating protesters with sticks. That provoked the outrage of the crowd and the subsequent violence. The delegation failed to understand the reasons why only municipal security guards had been deployed. With the exception of the authorities - which did not comment on the issue - the delegation was informed that: municipal guards had been accused of committing serious abuses in previous protests but had not been held accountable; and that municipal guards lacked appropriate training and had no legal status as law enforcement officers under Cambodian law. The delegation was disturbed to learn that police officers with appropriate training had apparently been inside a compound that was a few meters away and had looked on as the violence occurred.
- Under article 16 of the 2009 law, leaders of peaceful assemblies are responsible for "taking appropriate measures to ensure that the demonstration will proceed peacefully". They are required to inform participants about their own responsibilities, to cooperate with security officers and relevant authorities and "to conserve order properly and duly". Under article 27 of the 2009 law, if a peaceful assembly turns violent, "those who commit offences injuring or causing death..." shall be punished. The delegation notes that it received little information on the identity of the leaders or organizers of the 14 July protest. In the delegation's view, it is not established that the seven CNRP MPs were in charge of the protest. It appears that the protest was organized at the grassroots level by supporters and not the CNRP leadership. The delegation observes that, in any case, this is irrelevant: under international law, the right to freedom of peaceful assembly protects the organizers of protests against bearing responsibility for the unlawful behaviour of others as long as the organizers have taken all appropriate action to try to prevent and stop such behaviour.

2.2.3 *Status of judicial proceedings and alleged lack of due process*

24. The MPs concerned and the CNRP told the delegation that, while no trial had taken place, the charges remained dangling above them. They had no information on the status of the proceedings against them, other than a regular reminder from the authorities that they could be re-arrested at any time. The authorities confirmed that the preliminary investigation was still ongoing and that the case of the seven MPs had been separated from those of the other suspects detained on similar charges. In July 2015, the other suspects – 16 opposition members and activists arrested during and after the protest – were tried and sentenced to long periods of imprisonment. International observers and Cambodian civil society organizations considered it unfair. According to them, no incriminating evidence was provided during the public hearings to prove that the suspects had individually taken part in the violence, or incited it in any way. The delegation learned that the appeal trial was due to start in March 2016.

25. The authorities, particularly the Minister of Justice, affirmed that a political solution to the case had been discussed; but that the judiciary was independent and that the victims deserved justice. According to the authorities, the National Assembly had discussed the possibility of suspending the prosecution of the seven MPs under article 80(5) of the Constitution. However, the three-quarters majority required to effect that suspension was not reached. The authorities said that competent courts would therefore resolve the case as it would any other: in line with the Constitution and laws of Cambodia. They contended that, due to the separation of powers, the executive and legislative branches could not intervene to expedite the process or suggest a possible outcome. The delegation was unable to obtain satisfactory information justifying why the preliminary investigation has been open for over two years without any progress, while other suspects in the same case had been swiftly convicted and given heavy sentences. The authorities failed to provide clear information on the prosecution's evidentiary basis for the charges brought and the reasons why the proceedings had not yet been ended by the relevant authorities.

26. The delegation noted that the authorities had made numerous public statements that pointed to the guilt of the parliamentarians concerned. The delegation observed that the authorities had used similar language during discussions about the case when the delegation had visited. For example, it was deeply troubled to hear that most authorities, including the Minister of Justice, said that the parliamentarians should prove their innocence if they were not guilty. That would entirely reverse the burden of proof on the defendants, whereas the burden should primarily rest with the prosecutor's office.

27. The complainants reaffirmed that the proceedings were politically motivated. They said that the parties had agreed to resolve the case as part of the July 2014 political agreement. However, the charges had not been dropped. On the contrary, charges were kept dangling above opposition parliamentarians so as to intimidate them and silence the opposition party, they contended. A CNRP member of the National Assembly told the delegation "it's like a tie around us – when tension happens they order our appearance in court to remind us that they can do whatever they want whenever they want". The delegation was told that the parliamentarians concerned, and more broadly all opposition MPs, felt restricted in the exercise of their duties and considered that they could not fulfil their role effectively as an opposition party in these circumstances.

2.3 Case of Senator Sok Hour Hong (CMBD/55)

Date of referral	August 2015
Prior decisions	Committee (confidential): 148 th session (October 2015) Governing Council: 134 th Assembly (March 2016)
Factual overview	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 <i>in flagrante delicto</i> . He remains in detention, as his requests for pretrial release have been systematically rejected by the court despite health issues. The trial started in October 2015 and has been suspended on repeated occasions.
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2.3.1 Parliamentary immunity and *flagrante delicto*

28. **Positions of the parties:** The Senate did not lift Mr. Hong's parliamentary immunity. The authorities explained that he was caught "in flagrante delicto" or caught "red handed forging a public document". They contend that, as a result, no prior authorization from the Senate was required under the Constitution. According to them, it was sufficient for the Senate to be informed of the arrest, which it was.

29. The delegation noted that the official letters informing the Senate of the arrest did not mention parliamentary immunity or include any reasons why this particular situation constituted *flagrante delicto*. The authorities also failed to provide the delegation with convincing information about the factual basis and supporting evidence about why this constituted *flagrante delicto*. During the meeting with the Minister of Justice and Prosecutor General, the delegation was told: "We had to act quickly. Under the flagrante delicto procedure, we only had seven days to act. Otherwise, the senator may have found a majority in the Senate to suspend the charges. So we arrested him and the investigation was done afterwards".

30. According to the CNRP, the senator did not commit any criminal offence, whether *in flagrante delicto* or not (see below for more details); in the view of the CNRP, the extremely broad interpretation of the definition of *in flagrante delicto* aims to circumvent the ordinary procedure for lifting parliamentary immunity. According to the CNRP, the Senate failed to request any detailed information from the authorities or to carry out any verification before voting. It did not even discuss the issue of parliamentary immunity or the alleged infringement of the Senator's fundamental rights. Both parties further confirmed that the senator had not been invited before the Senate to present his version of the facts, and had not had any opportunity to defend himself at that stage. The authorities' response was that neither the Constitution, nor the law included such a requirement.

31. According to the complainants, the senator was presumed guilty from the outset and the procedure followed was unconstitutional. In their view, parliamentary immunity should have been lifted first (with a two-thirds majority). Only then could a second vote (requiring a three-quarters majority) have taken place on the suspension – rather than the continuation – of the proceedings. The authorities told the delegation that the procedure required the judicial authorities to go ahead unless a three-quarters majority of the Senate voted to suspend the charges. The official documents provided to the delegation confirm that the Senate Permanent Committee called for a full session of the Senate on 17 August 2015 to "review and decide whether to allow the legal proceedings against Senator Hong to continue". The 47 CPP members of the Senate all voted in favour of continuing the proceedings, while the 11 CNRP senators boycotted the vote in protest.

32. **Constitutional and legal framework applicable:** Article 104(2) of the Constitution of Cambodia provides that, in case of a flagrante delicto offence, the competent authority shall immediately report to the Senate and "request permission". Article 7 of the law on the Statute of Senators states that "any senator who is caught committing a criminal offence in flagrante delicto may be accused, arrested or detained in accordance with law and procedure after his/her parliamentary immunity has been lifted". Neither the Constitution nor the law appear to provide for a procedure that would have allowed the Senate to approve the continuation of legal proceedings instead of lifting parliamentary immunity. Article 104(5) of the Constitution authorizes the Senate to vote on the suspension of the detention and prosecution of one of its members. In terms of guarantees of due process, article 8 of the law on the Statute of Senators requires an explanatory statement to be submitted by the executive branch with a proposal to lift an MP's parliamentary immunity. Article 14 of the law on the Statute of Senators guarantees that a senator whose parliamentary immunity has been lifted and who has been accused by the court shall have the same rights and privileges as other senators. Article 7 provides that the procedure shall be conducted in accordance with the law. Article 38 of the Constitution of Cambodia provides that every Cambodian citizen shall be presumed innocent

until finally convicted by the court and that every citizen shall have the right to defend himself or herself through the judicial system.

2.3.2 Detention of the senator

33. On instructions from the Prime Minister, the Prosecutor opened a criminal case against Senator Hong. On 13 August 2015, Mr. Hong received an order requesting him to present himself for questioning by 28 August 2015. On 14 August 2015, Mr. Hong replied that he would do so the following Monday (17 August). He was however arrested the next morning and placed in pre-trial detention at Prey Sar jail (also known as CC1 prison) in Phnom Penh, where he remained during the delegation's visit to Cambodia.

34. The Interior Minister eventually authorized the delegation to visit the senator in prison on the last day of its visit and after it had had to insist with the authorities. The delegation was able to speak freely and at length with the senator. He did not complain about his conditions of detention, which were poor but no different from other detainees in that prison. The senator confirmed that he suffered from chronic health issues, which had worsened in detention, and that he had been denied access to appropriate medical care. He further confirmed that the courts had systematically rejected all his requests for bail. Following the delegation's visit, a hearing took place on 26 February 2016 to examine another of the senator's appeals against his prolonged pretrial detention, this time on medical grounds. The court rejected the appeal on 4 March 2016 on the grounds that his release would create chaos and social disorder.

2.3.3 Violation of freedom of expression

35. Mr. Sok Hour Hong was charged with forgery of a public document, use of a forged public document and inciting social disorder (articles 629, 630 and 495 of the penal code). The delegation heard that the parties shared two different versions of the facts with the delegation.

36. **Version of authorities:** The authorities consider that the senator committed a serious criminal offence by forging an international treaty related to border issues and using it online to incite violence and social disorder. The Minister of Justice explained the following to the delegation: "the senator posted online a document that was not true; a treaty in which some words were forged by him; the forged words stated that Cambodia had lost some territory which was false; such statement was likely to create unrest in Cambodia, where border issues are extremely sensitive and have resulted in violent incidents in the past; saying that Cambodia signed a treaty that gave land to Vietnam was very serious and amounted to calling the government a traitor, something that the CNRP had already done in the past; therefore there were valid grounds to arrest him because it affected the security of Cambodia; after his arrest, an investigation was initiated for the judges to establish how he obtained and forged the document and the manner in which he commented on the issue on the video posted on Facebook. The investigation was conducted by the court which is fully independent and is now in charge of completing the trial proceedings until there is a final verdict".

37. The Minister of the Interior, representatives of the CPP and the Vice-Chairman of the Senate parliamentary commission on human rights concurred with the Justice Minister's words. They condemned the "dangerous situation created by the senator" who "manipulated a national security document and incited to violence, ... [and] publicized untrue information to convince the public that the Government had agreed to review the border delineation". They also noted that all that was "in line with the usual political propaganda used by the CNRP to oust the Government". They recalled that the Government had established a committee that was working on border issues, and that the opposition should let the committee do its work. The delegation noted that it was a very sensitive topic and that its official interlocutors were clearly infuriated by the behaviour of the CNRP in this respect. They alluded to Mr. Rainsy's prior declarations, according to which the Government committee was using fake maps to address the border issue. Asked whether the posting of the video had resulted in actual violence, they explained that the offence of "incitement" did not require the actual occurrence of violence: a high risk of violence was sufficient for the offence to apply. The delegation noted that civil society, third parties, and the Chairman of the Senate parliamentary commission on human rights (a member of the CNRP) affirmed that dissemination of the video and the incorrect treaty provision had not caused any social disorder in Cambodia.

38. **Version of the complainants:** Senator Sok Hour Hong and the complainants consider that the senator did not commit any offence but rather shared a document and expressed an opinion about a sensitive issue of national interest that was critical of the Government's policy. The complainants contend that the senator's detention and proceedings against him are politically motivated in that they aim to intimidate and weaken the opposition and violate freedom of expression. The delegation noted that the senator and the CNRP fully acknowledged that the document posted on Facebook was an inaccurate version of the treaty and that the senator had made a mistake. However, in their opinion, such a mistake did not constitute a criminal offence. It was made in good faith: the senator confirmed that he had no prior knowledge that the document was inaccurate and had no intention of committing any harm. Instead, his intention had been to provoke a discussion on a topic of national interest on which the CNRP held strong dissenting views from the Government.

39. The senator told the delegation: "I expressed my views on this issue. Parliamentarians are allowed to express themselves on any topic, including sensitive issues like border delineation. These issues are of deep concern to the Cambodian population and it is the duty of the opposition to address them when the government refuses to do so and the population has complaints about it." He confirmed to the delegation that he did not write the provision of the treaty on which the case against him centres, but downloaded the whole document from the internet in good faith in 2006. The delegation noted that civil society organizations, including the international NGO Human Rights Watch, stated that they were familiar with both the original and the document posted by the senator and that the problem was one of poor translation. They generally believed, as did other third parties that the delegation met, that it was credible that Mr. Hong had not known that the version of the treaty he had downloaded was not authentic. The delegation was informed that, when it turned out that the document posted was inaccurate, the CNRP had immediately removed the video and the treaty from Facebook. The CNRP had then tried to meet the Prime Minister to apologize and resolve the situation through dialogue. Instead, legal action was immediately taken. The senator told the delegation that he was still ready and willing to issue an apology if that could help to resolve the case.

2.3.4 Lack of due process and fair trial guarantees

40. The trial started with hearings in October and November 2015 and was marked by delays and adjournments. In February 2016, the trial was still suspended, pending an appeal lodged by the defence to the Court of Cassation.

41. The complainants have alleged that from the outset, the proceedings failed to comply with standards of due process. The senator was never given an opportunity to defend himself before he was arrested and charged; the presumption of innocence was therefore not respected. The complainants claimed that the judiciary had been heavily influenced by statements from the Prime Minister and high-level members of the CPP. The complainants provided further examples of public statements that government officials had made about the case: they alluded to the guilt of the senator, without giving him the benefit of the doubt.

42. The senator and his lawyer told the delegation that the prosecuting authorities and the judges had so far refused to investigate appropriately and to take into account existing exculpatory evidence and exonerating circumstances. The senator could not provide the investigators with the computer he used to download the document as he no longer possessed it. However, the version of the treaty on which the case centres was still online. According to them, the prosecution could therefore have conducted forensics verifications before bringing charges, instead of waiting for a verdict to check whether any exculpatory evidence was available. The lawyer told the delegation that he had been prevented from presenting evidence during the public hearings. The court allegedly refused to conduct the verifications and insisted instead on obtaining the senator's old computer. An appeal was lodged at the Court of Cassation and the trial was suspended. In the opinion of the senator and of his lawyer, the data needed to exculpate the senator could easily be retrieved from the internet by qualified experts and would demonstrate that the incorrect document had already been on the internet before the senator unknowingly downloaded it. According to them, this would demonstrate that the senator did not forge the treaty, or have the intention of creating disorder.

43. In response to the above allegations, the authorities denied violations of due process. They affirmed that the defence lawyer had refused to provide any evidence to the court and that it was his responsibility to do so if he was in possession of any exculpatory evidence. The Minister of Justice and the Prosecutor further told the delegation that if there was exculpatory evidence, the court would most certainly take it into account.

2.4 Case of Mr. Kong Sophea (CMBD/56) and Mr. Nhay Chamroeun (CMBD/57)

Date of referral	October 2015
Prior decisions	149 th session (January 2016): <i>Case declared admissible</i>
Factual overview	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, at the time of the visit, they had not yet been held accountable and no further action had 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.

44. The parties both agree that violence was committed against the two MPs and have expressed deep regret about the incident. What is disputed is the scope of the measures taken to ensure full accountability of the persons responsible. Also at issue is whether the assault was a regrettable isolated incident of violence committed by a few protesters, or a deliberate act of political violence, specifically targeting the two members of parliament, and through them, their party and fellow MPs.

2.4.1 *Alleged political violence*

45. The complainants and the CNRP have submitted significant information in support of their allegations. They allege that the parliamentarians were deliberately targeted in reprisal for the CNRP publicly criticizing the policies of the ruling party and of the Prime Minister and in response to the anti-government protest that had taken place the previous day in France. In their opinion, this is particularly apparent from the context, the identity of the assailants and the lack of response from the police.

- **Context:** The complainants pointed out that the Prime Minister had warned that CNRP members would face reprisals if pro-CNRP demonstrations went ahead in France during his official stay. The CPP protest was organized in response to a French rally. Its aim was to demand the resignation of Mr. Kem Sokha, Vice President of the National Assembly and deputy leader of the CNRP. Mr. Kem Sokha, who was also the victim of violence from protesters that day, told the delegation that the police had similarly failed to respond to his calls for help and protection. He had avoided going to the National Assembly because he feared for his life when he heard about the pro-CPP protest taking place at the gate of the Parliament compound.
- **Identity of assailants:** The complainants alleged that the attackers were military officers from the prime minister's security detail and that the attack was carefully planned and organized. Detailed information was provided in support of this allegation.
- **Lack of response of the security forces:** The various video records provided to the delegation by the complainants, as well as by third parties, demonstrate clearly that no security forces intervened to prevent or stop the violence, or to provide or facilitate medical assistance for the MPs. The assailants were allegedly able to walk away casually after the attack and an ambulance was prevented from reaching the injured MPs. This is striking, as the incident took place a few meters away from the gates of the National Assembly.

Furthermore, the complainants told the delegation that there were no security personnel in the vicinity of the National Assembly that day and that the ordinary security measures were not in place, or not functioning (including a lack of barbed wires barricades and security scanners). This was very unusual, especially with an important vote going on inside the National Assembly and a protest at its gate. All gatherings in front of the parliament were usually dispersed immediately. By contrast, the CPP supporters were allegedly allowed to move unhindered towards the gates of the compound. This was in stark contrast to prior protests, particularly those organized by groups criticizing the Government.

2.4.2 Action taken by the authorities in response to the incident

46. The Cambodian authorities, including the National Assembly, confirmed that they had strongly condemned the attack and called on the Government to conduct an investigation. The Minister of the Interior and Deputy Prime Minister then set up a special investigative commission. It was composed of members of the Interior Ministry and of the police, who were also CPP members.

47. Soon after the attacks, video and photos spread widely on social media. Three of the 10 to 20 direct perpetrators were soon identified as Sot Vanny, Mao Hoen and Chay Sarit. They were arrested on 2 November 2015. According to the authorities, they voluntarily surrendered in response to an appeal by the Prime Minister. The three men confessed to assaulting the MPs. They were charged with committing intentional violence, an offence which can be punishable by between two and five years' imprisonment. They were awaiting trial at the time of the IPU delegation's visit. The delegation was not able to obtain a satisfactory response about why no further action had been taken against the three men more than four months after the incident. The authorities confirmed that no one else had been taken into custody at that time. There was no clear indication that they intended to seriously investigate or hold accountable the organizers and instigators of the attack.

48. The authorities wished to reassure the delegation that the investigation was still ongoing but failed to provide significant information to support that position. The authorities questioned the video records and regretted that witnesses had refused to cooperate. They pointed out that it was difficult to find conclusive evidence other than the confessions of the three suspects apprehended. The delegation was also shown a short edited excerpt of one of the videos of the attack and was told that it clearly demonstrated that Mr. Kong Sophea's driver could have driven on instead of stopping and that the two MPs had left the National Assembly before the end of the session: no further explanation was provided. The delegation was not given an opportunity to respond or ask further questions about the video, which it deeply regretted and questioned. The authorities did not provide video records of the incident or more information on the military status of the suspects.

49. Members of the CNRP and the complainants questioned the "voluntary confessions" of the suspects. They viewed the arrest as an attempt to cover up the direct involvement of the government in the attack by only going after those who had been clearly identified. They told the delegation that they expected the authorities to claim that the suspects had acted individually and were ordinary protesters despite strong evidence to the contrary. The delegation noted with concern that none of its interlocutors had faith that those who planned and organized the attack would be held accountable.

50. The delegation raised the issue of the protection of parliamentarians with the Interior Minister due to the serious nature of this incident and the renewed security threats against Mr. Kem Sokha and other CNRP parliamentarians at the time of the delegation's visit. The Minister said that on 4 November 2015, he had ordered security forces across Cambodia to strengthen security for politicians from all parties. Since then, politicians had been required to inform the authorities before travelling inside Cambodia and to cooperate with them to ensure their safety. However, CNRP officials stated that the order had not been implemented effectively and that they did not feel safe. Their members continued to routinely face difficulties. The Chairman of the Senate Commission on Human Rights, a member of the CNRP, also told the delegation that, whenever opposition MPs asked for protection, they received no response.

2.5 Case of Mr. Sam Rainsy (CMBD/58)

Date of referral	November 2015
Prior decisions	149 th session (January 2016): <i>Case declared admissible</i>
Factual overview	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 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.

51. The delegation was given contradictory versions by the complainants and the authorities.

2.5.1 *Version of the complainants*

52. During the visit, the complainant and members of the CNRP told the delegation that the revocation of Mr. Rainsy's parliamentary mandate and the subsequent accusations were unfounded and that Mr. Rainsy was once more being harassed for political reasons. They believed strongly that it was a purely political matter and yet another push from the CPP to weaken and silence the CNRP by directly targeting the party leader and prevent him from campaigning and running in the upcoming elections. They referred to the past abuses suffered by Mr. Rainsy and reminded the delegation that this was a long-standing pattern of behaviour from the CPP. In their opinion, a new departure was that the ruling party was using the judiciary to target popular social networks like Facebook where the CNRP was pro-active and successful.

53. In support of their allegations, they drew the delegation's attention to the timing of the "enforcement" of the 2013 verdict. This sudden judicial enforcement had coincided with the breakdown of political dialogue and came against a broader background of political repression against the opposition and civil society. The complainants also pointed out that in previous months, the Prime Minister had made several public statements threatening that Mr. Sam Rainsy would be arrested if he continued mobilizing people against him.

54. They further claimed that Mr. Rainsy's parliamentary immunity had been violated and that his parliamentary mandate had been arbitrarily revoked. They recalled that Mr. Rainsy had been granted a royal pardon in 2013 and sworn into Parliament in 2014. If a final conviction had remained pending against him, his parliamentary mandate could not have been confirmed by the National Assembly at that time. He had been exercising his parliamentary mandate since that date and should have been allowed to continue, as his immunity had not been lifted by the National Assembly. They claimed that, as the ruling party did not have the required two-thirds majority to revoke Mr. Rainsy's mandate, it had decided instead to revoke his mandate on 16 November 2015 through a majority vote of the Permanent Bureau of the National Assembly on a request from the Minister of Justice. That procedure was not provided for in the Constitution or other laws and there was no precedent for it in Cambodia. According to the complainants, the revocation process that was followed further violated standards of due process. It regrettably followed the National Assembly's long-standing practice of not giving MPs any opportunity to defend themselves before their parliamentary mandates were revoked.

2.5.2 *Version of the authorities*

55. The delegation only discussed this case with the authorities in general terms. The authorities consistently said that Mr. Rainsy was not above the law, and that he should account for his behaviour and face justice. They considered that the cases were a purely legal matter unrelated to the political situation. During a meeting with the Minister of Justice, Ministry officials explained that Mr. Rainsy chose to go into exile himself after a final conviction was implemented against him. They explained that the court decision had been finalized because Mr. Rainsy had withdrawn his appeal from the appeal court. That meant that the original decision of the court had been automatically implemented. They also indicated that his parliamentary immunity could only be restored if Mr. Rainsy was granted a royal pardon pursuant to article 80 of the Constitution.

56. They observed that the defamation case was a civil procedure that was only punishable by a fine. They said that the problem arose from the comments he made and not from the video itself. They considered that he had accused the current President of the National Assembly, Mr. Heng Samrin (who at the time was in charge of the country), of condemning the King to death, which was false. According to them, as everyone in Cambodia loved the King, making this type of statement incited the general public to anger and hatred and also deeply affected the reputation of Mr. Heng Samrin. They contended that, by sharing false information online, Mr. Rainsy was deliberately setting out to confuse the public in order to damage the reputation of others for political gain.

C. OBSERVATIONS AND RECOMMENDATIONS FURTHER TO THE MISSION

57. During the 134th IPU Assembly (March 2016), the Committee endorsed and conveyed to the IPU Governing Council the delegation's general preliminary observations and recommendations, which addressed the overarching issues of common concern underlying the cases. The specific findings for each individual case are submitted in this report.

1. General findings and recommendations adopted by the IPU Governing Council at the 134th IPU Assembly (March 2016)

1.1 General findings

58. The IPU Governing Council endorsed the delegation's general findings:

- 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.
 - 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:
 - o 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);
 - o 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;
 - o 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
 - 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.

1.2 Position and recommendations of the IPU Governing Council

59. In its decision, the Governing Council considered that the conduct of the visit and the discussions that took place were a positive first step. It nevertheless regretted that that no subsequent information had been shared after the visit by the authorities. It noted with deep regret that not only had no progress yet been achieved to resolve the cases of the 12 opposition parliamentarians concerned, but that the situation of some of them had further deteriorated recently, as had the general political situation in Cambodia, given the interruption of the culture of dialogue since mid-2015.

60. The Governing Council expressed deep concern at the serious human rights issues underlying the cases and urged 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. It was further convinced that long-term solutions could only be sustainable and effective if they were in strict compliance with international human rights standards and best practices applicable in democratic parliaments.

61. It called 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;

62. The Governing Council considered that it was critical that the ruling party and the opposition would resume the political dialogue towards building a stable political environment in which there would be 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. It was confident that the resumption of a political dialogue would help the parties to find satisfactory solutions to the cases at hand.

63. The Governing Council highly valued the efforts undertaken by the Cambodian Parliament as part of the culture of dialogue. It affirmed its earnest belief that the parliamentary institution had a special duty in upholding the rights of all its members irrespective of their political affiliation and in ensuring that these rights were also duly upheld by the executive and judiciary at all times. It encouraged 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.

64. The Governing Council renewed its offer of technical assistance to assist the Cambodian Parliament and other relevant authorities in addressing the issues of concern so as to strengthen parliamentary democracy and the rule of law in Cambodia.

2. Specific findings on the individual cases

2.1 Case of Mr. Chan Cheng (CMB/27)

65. The delegation noted the persisting contradictory views on whether Mr. Cheng had committed a criminal offence in relation to the validity of the detention order of the prisoner that he allegedly helped escape. The delegation was deeply concerned about the lack of any information on the pending appeal. It had considered past and new information provided by the parties and reaffirmed the Committee's prior concerns about the lack of respect for standards of due process in the proceedings. It considered that the timing of their reactivation, the authorities' lack of satisfactory explanations about that timing, and the fact that the court had reached its verdict without examining the issue of the validity of the detention order, may well point to ulterior political motives underlying the case, particularly given the political context in which these negative developments were occurring. Having received confirmation that Mr. Cheng currently enjoys parliamentary immunity, the delegation failed to understand the constitutional and legal basis of the ongoing proceedings. It urged the National Assembly and the relevant court to review and properly address those concerns at the earliest opportunity, including through a prompt and fair appeal trial.

2.2 "Freedom Park" case (CMBD/48-54) - Ms. Mu Sochua, Mr. Keo Phirum, Mr. Ho Van, Mr. Long Ry, Mr. Nut Romdoul, Mr. Men Sothavarin and Mr. Real Khemarin

66. **Parliamentary immunity:** The delegation reaffirmed the position of the Committee, as stated in its admissibility decision and in line with its existing jurisprudence. The Committee had considered that, as the MPs had been elected in 2013, they were already parliamentarians at the time of their arrest and that their mandate came from the will of the people. The delegation observed that neither the Constitution, nor the relevant laws and regulations of Cambodia explicitly stated the moment at which elected representatives start to enjoy parliamentary immunity. It nevertheless stressed that article 80 of the Constitution (parliamentary immunity) comes before article 82 (validity of the mandate and parliamentary oath). The delegation agreed with the authorities that there is room for legal debate on this issue under the existing constitutional and legal framework. For this very reason, it considered that there was also plenty of room to interpret the relevant provisions in a way that would contribute to the resolution of the case. It is the delegation's view that, if the provisions were not interpreted in favour of resolving the case, this was a decision based on political rather than legal grounds.

67. MPs' enjoyment of parliamentary immunity is only disputed for the period of July 2014, as they were sworn into Parliament in August 2014. The delegation received confirmation from all parties that there was no dispute over whether the MPs concerned currently enjoyed such immunity, regardless of their situation at the time of their arrest. The Constitution of Cambodia and relevant laws and regulations on parliamentary immunity clearly establish that no member of Parliament can be prosecuted as long as they enjoy parliamentary immunity.³ Therefore, the delegation concluded that the constitutional privilege of the MPs concerned was being violated by the continued proceedings against them, and by the fact that the executive authorities and the CPP have blamed the MPs for refusing to appear in court.

³ See Annex II for relevant constitutional and legal provisions on parliamentary immunity.

68. The delegation wished to recall that the very purpose of parliamentary immunity is to protect the freedom of expression that parliamentarians require to exercise their parliamentary mandate. Parliamentarians require immunity to freely express themselves without obstruction and without fear of prosecution or harassment of any kind. Such freedom of expression includes the right to organize and participate in peaceful assemblies. Strict respect for parliamentary immunity is a prerequisite for a strong and independent parliamentary institution in any democratic system. It should therefore not be seen as hindering justice. The fundamental right to and privilege of immunity should be respected at all times. It should be protected first and foremost by the legislative branch, but also by the executive and the judiciary. Relevant constitutional and legal provisions should therefore be strictly and impartially implemented without any political bias. The delegation expresses deep concern about the statements that the authorities made during the visit. The delegation reiterates the long-standing concerns that the IPU has raised in the past about the Cambodian authorities' procedures and practices in relation to parliamentary immunity.

69. It urged the authorities, and in particular the competent court, to formally acknowledge that parliamentary immunity has been protected since August 2014 and that it must first be lifted before any judicial proceedings can be authorized.

70. **Lack of due process; violation of the right to freedom of expression and to peaceful assembly of the parliamentarians concerned:** The delegation found no evidence that the seven MPs concerned had organized, committed or incited violence during the protest, nor that such violence could have constituted an insurrection. It further reached the conclusion that charging MPs with leading an insurrection in relation to their participation in a protest that turned violent was clearly excessive and disproportionate in the given circumstances.

71. In the "Freedom Park" case, the delegation has serious concerns about respect for standards of due process and for a fair trial, particularly in relation to the presumption of innocence, the rights of the defence and the right to be promptly tried. In the view of the delegation, those concerns lend significant weight to the complainants' allegations that judicial proceedings have been politically influenced. The delegation is concerned that, since the political agreement reached between the CPP and CNRP in 2014, the continuation of judicial proceedings appears to be used as a tool to intimidate the parliamentarians concerned, and their party. The fact that charges continue to dangle over the complainants is likely to affect their ability to exercise their parliamentary mandate fully and freely, and to play the important role that the Cambodian people expect them to play as opposition MPs in the period leading up to the elections.

72. The delegation calls on the relevant authorities to immediately bring to an end to the criminal proceedings. That will ensure compliance with the relevant constitutional and legal provisions on freedom of expression, due process and parliamentary immunity. The delegation also calls on the National Assembly and the Senate of Cambodia to make appropriate representations to the court to ensure full respect for the rights of parliamentarians or to vote on the termination of judicial proceedings on these grounds under article 80(5) of the Constitution of Cambodia.

2.3 Case of Mr. Sok Hour Hong (CMBD/55)

73. The delegation is well aware that border issues are a very sensitive issue in Cambodia for historic reasons. They are also a recurring point of tension between the ruling party and the opposition due to long-standing and strong differences of opinion.

74. The delegation notes that, under article 626 of the criminal code, the offence of forgery includes a requirement to act with the intention of causing harm⁴. As in any functioning criminal system, it is understood that the burden of proof rests with the prosecution and that incriminating and exculpatory evidence should be equally investigated during the preliminary investigation. However, the delegation did not find any evidence demonstrating that (1) the senator knew the version of the treaty

⁴ "Forgery consists of any fraudulent alteration of the truth, liable to cause harm and made by any means in a document or other medium of expression when all the following conditions are satisfied:
(1) where the forgery is intended or its effect is to provide evidence of a right or of an act carrying legal consequences;
(2) where the harm may cause damage."

he had used was altered; (2) he himself had altered the original version of the treaty; or (3) he had used the altered version knowingly and with the intention of creating violence or social disorder. The delegation was surprised to find out that the following indicators of good faith had not been taken into account by the competent authorities as exculpatory evidence: (1) the fact that the senator admitted his mistake and lack of diligence; (2) that he had been willing to present himself for questioning and to apologize publicly; and (3) that the video had been immediately removed from Facebook. The delegation also reviewed the words used by the senator in the video excerpt it received from the complainants. The delegation did not find that the senator's words directly incited violence or social disorder. Furthermore, the delegation found that no actual violence or social unrest had actually been caused by the posting of the video.

75. As it did not find clear and credible evidence to the contrary, the delegation reached the conclusion that the senator's intention had been to provoke a public discussion on border delineation. In the past, the CNRP had done that, much to the displeasure of the CPP. Given the sensitivity of the issue and the prevailing political context, the delegation considers that the senator's comments were not diligently chosen and not of a constructive nature. The value for the senator and his opposition party of raising such a sensitive issue at a time when a fragile culture of dialogue was slowly consolidating was highly questionable. In the delegation's opinion, it was counterproductive.

76. Nevertheless, the delegation found that it was the senator's right to express his opinion on a subject of national interest. He was fully entitled to do so as a citizen and even more so as a senator of Cambodia. Therefore, his right to freedom of expression should have been respected and protected by all competent authorities in line with the Constitution, the laws of Cambodia, and relevant international human rights standards. That protection should have come first and foremost from the Senate.

77. The delegation is also deeply concerned about the alleged violation of due process in the proceedings, including the reversal of the burden of proof and the presumption that the senator was guilty from the outset. As regards parliamentary immunity, the delegation cannot fail to question the use of *flagrante delicto* in this case. In particular, the delegation is deeply troubled that the Senate rushed to rubberstamp the detention order under the legal cover of *flagrante delicto*, as no evidence was provided to support that position. The senator was not invited to present his version of the facts and the Senate did not conduct any verification. That is not in line with standards and practices applicable to democratic parliaments. The delegation deeply regrets that, in this case, the parliament did not act appropriately to ensure respect for the protection of the fundamental rights of its member. The delegation further recalls long-standing recommendations made by the IPU to the Parliament of Cambodia, and past offers of technical assistance on strengthening the protection of parliamentary immunity in Cambodia and incorporating due process within parliamentary procedures.

78. The delegation also reminds the Cambodian authorities, including the court, that restrictions on freedom of expression are only permitted when they are absolutely necessary to protect the rights of others or in case of a serious threat to public security. However, such restrictions should be proportionate to their purpose, limited in scope and duration, and subject to independent judicial review.⁵ Should the court in Cambodia act with full independence, the delegation is confident that its strict and impartial application of the law would result in a prompt dismissal of the charges or in Mr. Hour's acquittal. Either result would set an important precedent for the future regarding the protection of the freedom of expression for parliamentarians in Cambodia.

79. The delegation therefore calls on the court to independently and thoroughly review the scope and strength of the evidence supporting the charges and the *flagrante delicto* decision. It considers that the court should order investigations into exculpatory evidence, which should include the appropriate use of Internet forensics expertise. The court should also diligently review the process that was followed to circumvent parliamentary immunity, as well as the circumstantial evidence used to prolong pretrial detention. The delegation expects the court to promptly correct the serious deficiencies that have characterized the proceedings and to bring matters back into line with the fundamental human rights set out in the Constitution of Cambodia and in international standards.

⁵ Resolution on freedom of expression and the right to information adopted by the 120th IPU Assembly (Addis Ababa, 10 April 2009) as well as existing international standards and jurisprudence on article 19 of the International Covenant on Civil and Political Rights, to which Cambodia is a party.

2.4 Mr. Kong Sophea and Mr. Nhay Chamroeun (CMBD/56 and 57)

80. The delegation has noted the allegations of the complainants, as well as the response of the authorities. It was surprised and disturbed at the lack of detailed information that the authorities provided during the visit, given the serious nature of the allegations and the substantive information and supporting material provided by the complainants and third parties.

81. The delegation expresses deep concern at the allegations. They point to a deliberate act of political violence and to a lack of political will both to establish the truth and to hold to account all those who were responsible, from the top-level instigators of the attack to those who carried out their orders. The delegation urges the authorities to exercise due diligence and to complete an in-depth independent investigation. The authorities should instigate judicial proceedings in line with fair trial standards. The delegation invites the authorities to share more information about current proceedings related to the three detained suspects and about the action taken to identify the organizers and instigators of the attacks against Mr. Sophea and Mr. Chamroeun.

2.5 Mr. Sam Rainsy (CMBD/58)

82. The delegation wishes to recall that Mr. Sam Rainsy's case was examined by the Committee and the IPU Governing Council from 1995 until October 2013. The case was closed when Mr. Rainsy was granted a royal pardon. It is clear from the IPU archives that Mr. Rainsy was deprived of his parliamentary mandate following politically motivated charges in 1995, 2005 and 2009.

83. The delegation notes with deep concern that the new facts and allegations bear a strong resemblance to past incidents. It is particularly troubled by the timing of the action taken against Mr. Rainsy, given the political context and the action being taken simultaneously against several other members of the opposition.

84. The delegation also observes that the revocation of a parliamentary mandate in case of a conviction is provided for under article 14 of the law on the status of members of the National Assembly. However, the Constitution does not provide for any parliamentary mandate revocation procedure. That raises the issue of the conformity of this legal provision to the Constitution of Cambodia. Furthermore, the delegation notes that article 15 of the same law provides that "Any National Assembly member, who has been convicted of a crime and is granted a pardon by the King shall have his/her eligibility, immunity and privileges restored". As Mr. Rainsy was granted a royal pardon in 2013, the delegation does not understand the legal basis for revoking his parliamentary mandate. It is also unclear why it has taken two years to "automatically implement the court decision". The delegation therefore wishes to receive the authorities' observations in that respect, as well as detailed information on all charges currently pending against Mr. Rainsy, and the status of the proceedings.

ANNEX I: PERSONS MET IN THE COURSE OF THE MISSION

Official Authorities

- Parliament of the Kingdom of Cambodia
 - Mr. Samdech Vibol Sena Pheakdei Say Chhum, President of the Senate of the Kingdom of Cambodia
 - Hon Dr. Gnoun Nhel, Second Vice-President of the National Assembly and high representative of Samdech Akka Moha Ponhea Chakrei, President of National Assembly
 - Cambodian Working Group established by the Parliament of Cambodia for the purpose of the visit
 - Mr. Chheang Vun, MP, Chairman of the Working Group, Commission on Foreign Affairs, International Cooperation, Information and Media of the National Assembly
 - Mr. Chhit Kim Yeat, MP (CPP)
 - Mrs. Lork Kheng, MP (CPP)
 - Mr. Hun Many, MP (CPP)
 - Mr. Ban Sreymom, MP (CPP)
 - Mr. Long Bunny, MP (CNRP)
 - Mr. Kong Kimhak, MP (CNRP)
 - Mr. Sar Sokha, MP (CPP)
 - Mr. Heng Danaro, MP (CNRP)
 - Mr. Ou Chanrath, MP (CNRP)
 - Mr. Sary Kosal, MP (CPP)
 - Chairpersons of the parliamentary committees on human rights of the National Assembly and Senate
 - Mr. Eng Chhai Eang, Chairman of the Commission on Human Rights, Complaints Reception, Investigation and National Assembly–Senate Relations, National Assembly (CNRP)
 - Mr. Kong Korm, Chairman of the Commission on Human Rights, Complaints Reception, Investigation, Senate (CNRP)
 - Mr. Yang Sem, Vice-Chairman of the Commission on Human Rights, Complaints Reception, Investigation, Senate (CPP)
 - Mr. Sok Eysan, Vice-Chairman of the Commission on Human Rights, Complaints Reception, Investigation and National Assembly–Senate Relations, National Assembly (CPP)
- Executive and Judicial authorities
 - Mr. Samdech Krolahom Sar Kheng, Deputy Prime Minister and Minister of the Interior
 - Mr. Ang Vong Vathana, Minister of Justice
 - Mr. Ouk Savuth, Prosecutor General
 - Mr. Hy Sophea, Secretary of State, Ministry of Justice
 - Mr. Koeut Rith, Secretary of State, Ministry of Justice
 - Mr. Chin Malin, Under Secretary of State, Ministry of Justice
 - Mr. Pen Pichsaly, Director General, Ministry of Justice

Individual MPs

- Those whose situation is being examined by the IPU Committee on the Human Rights of Parliamentarians. That includes Senator Sok Hour Hong at Prey Sar detention center; excluding Mr. Kong Sophea, Mr. Nhay Chamroeun and Mr. Sam Rainsy, who were not present in Cambodia at the time of the visit.
- Family members and lawyers of some of the MPs concerned.
- Other CNRP members of the National Assembly and the Senate.
- Mr. Hun Many, MP (CPP). Board Member of the Forum of Young Parliamentarians of the IPU

Representatives of the main political parties

- Cambodian People's Party (CPP)
 - Mr. Keat Chhon, MP, Vice-Chairman of CPP parliamentary group
 - Dr. Pen Panha, MP, Chairman of the Commission on Legislation and Justice
 - Ms. Krouch Sam An, MP, Secretary of the Commission on Legislation and Justice
- Cambodian National Rescue Party (CNRP)
 - Mr. Kem Sokha, MP, Vice President of CNRP and former First Deputy Speaker of the National Assembly
 - Other CNRP parliamentarians and officials
 - Senator Sok Hour Hong (at Prey Sar detention center)

International Community

The delegation made extensive efforts to meet a large sample of representatives of the international community with a diplomatic presence in Cambodia, in particular representatives of ASEAN countries. However, time did not allow most meetings to take place, particularly due to the last minute change of schedule imposed by the Cambodian authorities to accommodate the visit to Prey Sar detention center.

- Office of the United Nations High Commissioner for Human Rights, Cambodia
- Ambassadors of the European Union and the United Kingdom to Cambodia and representatives of the embassies of France, Indonesia, Japan and USA to Cambodia

Civil society representatives

The delegation met representatives of several civil society organizations. Other NGOs provided written documentation as they were unable to participate due to the security situation at the time of the delegation's visit.

ANNEX II: RELEVANT CONSTITUTIONAL AND LEGAL PROVISIONS

1. Constitution

- Fundamental rights

Article 31: 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 (....)

Khmer citizens shall be equal before the law, enjoying the same rights and freedoms and obligations regardless of (...) political tendency (....). The exercise of personal rights and freedom by any individual shall not adversely affect the rights and freedom of others. The exercise of such rights and freedom shall be in accordance with the law.

Article 32: Everybody shall have the rights to life, freedom and personal security.

Article 35: Khmer citizens of either sex shall have the rights to participate actively in the political, economic, social and cultural life of the nation.

All requests from citizens shall be thoroughly considered and resolved by institutions of the State.

Article 37: The rights to strike and to organize peaceful demonstrations shall be implemented and exercised within the framework of the law.

Article 38: The law prohibits all physical abuse of any individual. The law protects the life, honor and dignity of citizens.

No person shall be accused, arrested or detained except in accordance with the law.

(...)The accused shall have the benefit of any reasonable doubt

Any accused shall be presumed innocent until they are finally convicted by the court.

Everybody shall have the rights to defend him/herself through the judicial system

Article 41: Khmer citizens shall have freedom of expression of their ideas, freedom of information, freedom of publication and freedom of assembly. No one shall exercise these rights to infringe upon the honor of others, or to affect the good customs of society, public order and national security. (...)

Article 49: Every Khmer citizen shall respect the Constitution and the laws (...)

Article 50: Khmer citizens of either sex shall respect the principles of national sovereignty and liberal multi-party democracy.

- Parliamentary immunity

Article 80: (for members of the National Assembly - Article 104 provides for parliamentary immunity for senators in a similar way)

Members of the National Assembly shall enjoy parliamentary immunity.

No Member of the National Assembly shall be prosecuted, detained or arrested because of opinions expressed in the exercise of his/her duties.

A member of the National Assembly may only be prosecuted, arrested or detained with the permission of the National Assembly or by the Standing Committee of the National Assembly between sessions, except in case of flagrant delicto offences. In that case, the competent authority shall immediately report to the National Assembly or to the Standing Committee and request permission.

The decision of the Standing Committee of the National Assembly shall be submitted to the National Assembly at its next session, for approval by a two third majority vote of all members of the National Assembly.

In any case, the detention or prosecution of a member of the National Assembly shall be suspended if the National Assembly requires the detention or prosecution be suspended by a three quarter majority vote of all members of the National Assembly.

2. Law on the status of the members of the National Assembly⁶

Article 4: Members of the National Assembly shall have parliamentary immunity. The immunity is divided into two parts:

- To ensure the expression of opinions or ideas during the adoption of laws by the National Assembly in the framework of exercising their duties: absolute immunity.
- To ensure that the National Assembly members are free from being prosecuted, detained or arrested: relative immunity.

Article 5: Members of the National Assembly shall not abuse their parliamentary immunity to harm the dignity of others, the good traditions of society, public order and national security.

Article 7: The accusation, arrest or detention of any National Assembly member who commits a crime shall be made only in accordance with the law and procedures and only once his/her parliamentary immunity has first been removed.

Article 8: The request for removing the parliamentary immunity of any National Assembly member shall be submitted by the Minister of Justice to the National Assembly President and shall enclose a statement of reasons.

Article 9: The removal of the parliamentary immunity during the National Assembly sessions shall comply with the following procedures:

- The National Assembly may convene a meeting in camera at the request of the National Assembly President or at least one tenth of the members of the National Assembly or the Prime Minister
- The quorum of the meeting is over one third of all members of the National Assembly
- The adoption of the motion to remove immunity shall be made by a two-thirds majority vote of all members of the National Assembly

Article 12: In the event that any member of the National Assembly commits a crime in flagrante delicto, the competent authority may prosecute, detain or arrest him/her and shall immediately notify the National Assembly (or its Permanent Standing Committee between sessions) for a decision [regarding the correctness of the detention, arrest and prosecution].

Article 13: In all cases above, detention or prosecution of any member of the National Assembly shall be suspended, if the National Assembly approves the suspension by a majority vote of three-quarters of all National Assembly members.

Article 14: The National Assembly member whose immunity has been removed and is being prosecuted in the courts shall have rights and privileges like those of the National Assembly members in general. (...)

The National Assembly member, upon final judgement or verdict rendered by the court as a convicted person with jail term, shall completely lose his/her rights, privileges and membership as a National Assembly member.

Article 15: Any National Assembly member, who has been convicted of a crime and is granted a pardon by the King shall have his/her eligibility, immunity and privileges restored.

⁶ As amended in 2015 – unofficial translation as the delegation was not able to obtain an official translation from the authorities of this law or of the Internal Rules of the National Assembly. The delegation was however able to obtain an official version of the Law on the Statute of Senators and of the Internal Rules of the Senate in English and French.

ANNEX II: RELEVANT CONSTITUTIONAL AND LEGAL PROVISIONS

- **Letter dated 11 October 2016 addressed to the Secretary General of the Inter-Parliamentary Union by Mr. Leng Peng Long, Secretary General of the National Assembly of Cambodia**

Dear Mr. Secretary General,

I wish to express my most sincere appreciation to your letter dated 06 October 2016, relating to Cambodian Parliament's Letter of 11 July 2016.

On behalf of the Secretariat General of the National Assembly of the Kingdom of Cambodia, I would like to inform that the letter dated 11 July not only responds to the decision adopted by the Governing Council at the 134th IPU Assembly but also to the mission report of IPU delegation in Cambodia.

Regarding to your letter dated 28 September 2016, proposing Cambodian Delegation meeting with you on 23 October 2016 at 4 p.m. and invited to hearing with the Committee on the Human Rights of Parliamentarians at 5 p.m. (Salle Lausanne, CCV Annexe). I would like to inform you that the Cambodian Delegation accept proposed meeting and hearing with a pleasure.

[...]

Please accept, Mr. Secretary General, the expression of my highest consideration and my personal esteem.

Yours sincerely,

[signed]
Leng Peng Long
Secretary General

- **Letter dated 11 July 2016 addressed to the Secretary General of the Inter-Parliamentary Union by Mr. Leng Peng Long, Secretary General of the National Assembly of Cambodia**

Your Excellency,

I am writing to you in connection with the decision adopted by the Inter-Parliamentary Union Governing Council at its 198th session during the 134th JPU Assembly held in Lusaka, Zambia, on 23 March 2016.

In this regard, I wish to inform Your Excellency Secretary-General that the National Assembly of the Kingdom of Cambodia would like to send a response to the Inter-Parliamentary Union concerning the said decision adopted by the IPU Governing Council.

The National Assembly of the Kingdom of Cambodia would be most grateful if you could forward this attached communication to IPU Committee on the Human Rights of Parliamentarians, and circulate it as official document to the IPU members and the general public.

Please accept, Your Excellency, the assurances of my highest consideration.

Phnom Penh, 11 July 2016

[signed]

Leng Peng Long

Secretary-General of the National Assembly of the Kingdom of Cambodia

(Unofficial Translation)

• **Letter addressed to Mr. Saber Chowdhury, President of the Inter-Parliamentary Union**

H.E. Mr. Saber CHOWDHURY
President of Inter-Parliamentary Union (IPU)

Your Excellency President:

First and foremost, the parliament of the Kingdom of Cambodia wishes to take this great opportunity to express its warm welcome to the positive results the Inter-Parliamentary Union (IPU) has achieved so far. In the meantime, the parliament of Cambodia would like to seek permission to clarify and respond to the observations of two points and some recommendations made by the IPU Committee on the Human Rights of Parliamentarians as follows:

I-1 The suggestions in a report that there is no progress made concerning the settlement of the five cases are unjustified and unacceptable because during the visit of the IPU delegation representing the IPU Committee on the Human Rights of Parliamentarians, Cambodia at the time has made a clear response to the delegation about the proceedings of each case, and already stressed those cases are now in the hands of the court. The progress in court case in Cambodia is referred to the progress of investigations and appeals lodged with the lower to upper courts and the announcement of the independent judicial ruling. In this sense, Cambodia expresses disappointment that the IPU committee has not proved the progress of actions taken on each case as apprised by the Cambodian side, and has also not helped consolidate the rule of law through the proper implementation of the law of Cambodia in resolving the cases, but urged that a political solution should be tabled to end the problems.

The serious allegation that the court's action was taken to target at the opposition party is unacceptable. All measures have been carried out within the framework of the rule of law and the implementation of the law on an equal footing regardless of political tendencies. The legal action is taken not only against the members of the opposition, but also those of the members of the Cambodian People's Party and other political parties who shall face arrests, charges and prosecution in case they commit offences. In actual fact, the opposition party is composed of many members, but only a very few ones who have committed wrongdoings, so they are subject to arrests and conviction in accordance with the law in place.

- As regard to the alleged systematic violation of freedom of expression and peaceful assembly, Cambodia, meanwhile, found it unacceptable since it has adhered strictly to national and international instruments concerning the protection of freedom of expression, rights to peaceful demonstration and assembly as stipulated in article 31 and article 37 of the constitution as well as article 2 of the Law on Peaceful Demonstration. The freedom of expression in Cambodia has been upheld and expressed freely through all means without restrictions unlike in some other countries. As a matter of fact, in Cambodia, there are numerous mass media outlets which include 322 newspapers, 108 magazines and 17 television channels, together with other social media networks, namely Facebook, Line, Tweeter and Telegram, and so on. According to the Reporters Without Borders' evaluation in 2016, Cambodia was ranked first for freedom of expression among ASEAN countries. Yet, the exercise of freedom of expression shall be practiced under the legal framework - it must not adversely violate the honor and dignity of the others or harm security and social orders. In the meantime, the rights to demonstration as well as peaceful assembly of the people are legitimately guaranteed and safeguarded. For instance, more than one year after the general elections, in Phnom Penh alone, there are tens of thousands of people staged a series of demonstrations which were held under the protection of authorities. Therefore, the allegation of violations of freedom of expression and peaceful assembly starkly contradict the truth and are unacceptable for Cambodia. Cambodia is now concerned that the IPU Committee on the Human Rights of

Parliamentarians may have not had enough time to better study and understand the real situation in Cambodia.

- The alleged desperate lack of international standard and fair legal proceedings, rights to self-defense and the concerns over the court independence aired by the committee is a clear demonstration of a total dearth of knowledge and understanding about the Cambodian law. In the system of the rule of law, the court must execute its proceedings according to the law in order to ensure a proper and fair court case process. The Cambodian laws, especially the penal code and the criminal procedure are recognized as the international standard instruments, and are not different from the law commonly applied in those of European countries. Meanwhile, the Cambodian court has the obligation to implement the law by recognizing the rights to self-defense and other fundamental rights, including the rights to a lawyer, which shall not be prohibited or forfeited in any court action. Obviously, all cases studied by the committee in the past have been processed under the defense lawyers; no case has been proceeded without the defense. According to the Constitution and the principles of liberal democracy and the rule of law, the judiciary is an independent institution, which no one could interfere in its work.
- With regard to the allegation leveled by the committee that the fundamental rights of lawmakers are not safeguarded, especially concerning the stripping of the parliamentary privileges and the forfeiture of the parliamentary membership of the opposition, there is no strong case supporting this statement. The arrests, detentions and charges against lawmakers and senators who commit in flagrante delicto, are only implemented according to the spirit of the constitution and the Law on the Statute of Members of the National Assembly and Senator. All cases are executed with the aim of implementing the country's law within the framework of the rule of law and the principles of liberal democracy and pluralism.

I-2 After the 23rd October 1991 Paris Peace Agreement, Cambodia opened a new chapter in history following the 1993 UN-organized general elections. A new Constitution was established, and the Kingdom of Cambodia adopts multi-party liberal democracy (article 51 new, Chapter 4 on Political Regime).

Cambodia has strictly adhered to the content of this new Constitution. Since 1993, people have enjoyed the rights to choose their leaders according to the principle of democracy through the parliamentary elections, the commune/sangkat council elections, non-universal elections to select senators and capital/provincial, municipality/district/khan council elections.

Meanwhile, based on the growing trends of modern technology, every citizen can express their own opinions freely without any monitoring and restrictions except for those who commit a crime. The dissemination and the edition of newspaper articles via electronic system is also not gone through any checks in advance except the cases that violate of the honor of the others, and harm social orders and national security, and such a practice is not happening in some major countries in the world.

Today, all Khmer citizens enjoy their full rights of freedom of expression without restrictions, discrimination and social classes which are freely expressed in public places, meetings and political forums.

The Cambodian parliament is deeply disappointed at the IPU delegation's wrong assessment during a visit to Cambodia concerning the escalation of political and security tensions in Phnom Penh. The Cambodian parliament thinks the said statement is unacceptable, and would like to dismiss it which does not reflect the truth. It can be said before 1998, the security and political situation in Cambodia had been tense because full peace had not been achieved in the country.

II. As for the recommendations made by the IPU Committee on Human Rights of Parliamentarians, the Cambodian parliament would like to make the following clarification:

- The parliament of the Kingdom of Cambodia would like to recall that at the IPU delegation's request for organizing a meeting of the leadership of the parliamentarians of the political parties holding seats in the National Assembly in order to solve the 19th February 2016 case, the Cambodia National Rescue Party during that meeting did not put the 5 cases on the table; we only discussed the organization and functioning of the meeting of the leadership of lawmakers of the main political parties holding seats in the National Assembly. The National Assembly of Cambodia is of the opinion that the meeting was the internal one; therefore, it is not necessary to share this information with the IPU.
- The Cambodian parliament finds that the IPU is forcing Cambodia to break its own laws that are in effect. The 5 cases the IPU has been studying are the common criminal offenses which are practiced by every country in the world, exactly the same as Cambodia. The offenders shall be responsible before the law. Everything we have done so far is to maintain peace, national security, political stability and social orders. Hence, the 5 cases are not politically motivated; if we choose the political solution to the cases, it will violate the constitution and laws of the Kingdom of Cambodia. The cases can only be settled by the court because we could not infringe the principle of the separation of powers and the independence of the judiciary.

The Cambodian parliament would also like to emphasize that to date, the above mentioned cases have not hampered the culture of dialogue. The two parties have used the culture of dialogue to solve national issues, but not to replace or violate the law.

- According article 31 in Chapter 3 of the constitution of the Kingdom of Cambodia on the rights and obligation of Cambodia people stipulating that *"every Khmer citizen shall be equal before the law, enjoying the same rights and freedom and fulfilling the same obligations regardless of race, color, sex, language, religious belief, political tendency, birth origin, social status, wealth or other status"*.
- *The exercise of personal rights and freedom by any individual shall not adversely affect the rights and freedom of others. The exercise of such rights and freedom shall be in accordance with the law.*

Standing on path of democratic process and the implementation of the law makes the Kingdom of Cambodia preserve sustainable peace, political stability, public orders and harmonious society. The recent incidents have stemmed from the infringement of law and the code of political ethics by some extremist politicians from only the opposition without suppression or harassment from outside. Therefore, the offenders must be held accountable for their crimes.

- Cambodia observes that such meanings were once raised by the opposition, some mass media and non-governmental organizations leaning towards the opposition since they have not read or ignored the content of the constitution of the Kingdom of Cambodia and other related laws in force; worse still, they lack an in-depth understanding about the real situation in Cambodia.
- As for the respect of the parliamentary immunity, Cambodia has strictly implemented the Cambodian Constitution and related laws in effect since the first general elections in a multi-party liberal democracy manner. Since 1993 to date, Cambodia would like to assert that no member of parliament has been threatened or arrested as result of the exercise of the freedom of expression in legally fulfilling their duties. In addition, there is no brawl happening in the Cambodian parliament like some other countries despite lawmakers airing differences of opinion. Furthermore, the culture of dialogue and the norms of the freedom of expression in the parliament are carried out very equitably. Besides continuing the implementation of their duties, the members of the National Assembly enjoy the same full rights to the freedom of expression and assembly as ordinary citizens which have been democratically expressed according to the law in force. However, if any deputies or senators commit criminal offenses, they must face prosecution in conformity with the constitution and the laws in effect based on the principle of law: "no one is above the law". The competent authorities have firmly

respected the parliamentary immunity of lawmakers and senators as stipulated in the constitution of the Kingdom of Cambodia and related laws in force.

- Where the immunity and the freedom of expression and peaceful assembly is concerned, it is emphasized that everyone has the rights and obligation as enshrined in the constitution, the supreme law, including other laws in effect of Cambodia.

Despite enjoying parliamentary immunity, according to Article 80 and 104 (new) of the constitution and Article 12 of the Law on Statute of the Members of the National Assembly, parliamentarians still face prosecution if they are caught in flagrante delicto.

The Cambodian competent authorities have so far taken legal action against the following offenders:

- Senator Hong Sok Hour, who was arrested on 15 August 2015 in the act of committing a crime, was charged with forging public documents, using of phoney public documents and inciting chaos to social security by the prosecution office according to the provisions of article 630 and 495 of the criminal code of the Kingdom of Cambodia.
- Another lawmaker, Mr. Oum Sam An, was also arrested on 11 April 2016 for committing a flagrant felony, and he was charged with incitement to commit an offence (primarily, causing chaos to society) and incitement to cause discrimination by the prosecution office according to article 630 and 495 of the criminal code of the Kingdom of Cambodia. All legal actions were taken properly according to the constitution and legal procedure in force of Cambodia.
- In spite of the fact that the opposition members became the elected members of parliament whose duties are to serve the nation and avert war with neighboring country, they still exploit the opportunities to mount propagandist offensive for political gains and popularity that could inflame rows with neighboring country as a result of their misuse of freedom of expression; and the incitement to racial hatred with neighboring country by falsifying border documents will unquestionably cause chaos in the Cambodian society as well as that of neighboring country whereas the royal government has made every effort to solve the issue through peaceful means in consistent with the ASEAN context and international norms. The two nations, Cambodia and Viet Nam, could feel racial animosity towards each other, and racial violence could be erupted once the opposition, along with the media outlets and some NGOs leaning to the opposition, successfully achieve their goals of inciting and fanning racial hatred.

The Inter-Parliamentary Union should stand by Cambodia in preventing such an incitement not to happen because it is a despicable crime for the whole world that has the duty and responsibility to fight through greater participation in the International Convention on the Elimination of All Forms of Racial Discrimination.

The preservation of security, safety and public orders in Cambodian society is the main objective of the royal government in providing the warmer atmosphere for people from all walks of life, especially building trust for investment and tourism. To this end, the royal government of Cambodia always pays much attention to the prevention and suppression of all forms of criminal acts, namely violence and incitements that absolutely harm security, political instability and cause social unrest. In the meantime, the royal government is trying its level best to beef up the rule of law, democracy, the freedom of expression, human rights and a harmonious society. The competent ministries and institutions have always allowed people to enjoy their freedom of assembly so that they can express their wills in accordance with the law and legal instruments in force in an equal footing irrespective of political tendencies. For instance, on 26 October 2015, more than 5000 people staged a peaceful protest in front of the National Assembly palace and presented a petition to the legislature demanding the resignation of H.E. Mr. Kem Sokha from the post of the first vice-president of the National Assembly. The peaceful protest dispersed before 11:00am, and the protesters had left the front premises of the National Assembly. Unfortunately, at about 12:15 noon, there was an incident instigated by a small group of people who brutally assaulted two opposition lawmakers, H.E. Mr. Ngay Chamreun and H.E. Mr. Kong Sophea, at the southern gate area outside the National Assembly palace.

As regard to the case, the National Assembly as well as the Royal Government of Cambodia has issued an immediate statement condemning this act of violence and demanding the competent authorities to bring the perpetrators to justice. Afterwards, the competent ministries have apprehended 03 criminals, who are now on trials.

- The Cambodian parliament wish to clarify that Cambodia is a country that adapts the principles of liberal democracy and pluralism and the rule of law with the clear separation of powers, while the judiciary is an independent institution, along with other state institution, which were established to strengthen democratic process and respect for human rights.

According to the constitution of the Kingdom of Cambodia, only judge has the right to sentence. Judge shall perform this duty properly in accordance with the law and legal proceedings in force. No organization or body or individual of the legislative and the executive powers shall interfere in the work of the judiciary. In addition, to ensure the independence of this power, article 132 of the constitution stipulates that "The King shall be the guarantor of the independence of the judiciary. The Supreme Council of the Magistracy shall assist the King in this matter.

Independent court is the one which properly implements its work according to principles defined in the law in force. Judge and prosecutor shall not prosecute anyone without legal bases. Article 128 (new) of the constitution of the Kingdom of Cambodia clearly stipulates that the judicial power shall be free from the legislative and the executive. Article 128 (new) stipulates that the judiciary has the power to cover all cases. The Cambodian parliament has adopted the penal code, criminal procedure, civil procedure, chiefly, the three legislation, first, the Law on the Organization of the Judicial Organs, second, the Law on the Statue of Judges and Prosecutors, third, the Law on the Organization and Functioning of the Supreme Council of the Magistracy.

- In the past, the two main political parties, the Cambodian People's Party and the Cambodia National Rescue Party, which holds seats in the National Assembly, have been working together to strengthen the legislative branch, including the examination and adoption of the law and the amendment of the constitution and other related pieces of legislation, the amendment of the Internal Regulation of the National Assembly, Law on the Organization and Functioning of the National Election Committee, Law on the Elections of Members of the National Assembly, Law on the Elections of Commune/Sangkat Councils and Law on the Statue of the Members of the National Assembly. Furthermore, the two parties have jointly organized their own leadership in the National Assembly and established ad hoc working groups and other special commission despite some disputed discussion and views, the two parties have agreed on a good deal of points.

How can such a climate be considered a political discrimination in the National Assembly?

Cambodia has been aggressively practicing educational, administrative and legal measures and paying much greater attention to strengthening the rule of law and law enforcement aimed at ensuring and safeguarding the safety and legitimate rights of the people and those of lawmakers.

Based on the legal basis, procedure and related electoral regulations, we have organized numerous elections, which were just, free and fair. Most people who are the owners of the votes have expressed their congratulations to the election results, while national and international observers, including countries around the world have highly evaluated over the success of the elections. We have sufficient and empowering experience in organizing the free and fair elections in our country.

We have defined the electoral organ as a constitutional body as stipulated in the constitution.

- Cambodia has plunged into a series of political crises after the general elections. In 2013, the Cambodia National Rescue Party, who won 55 seats, boycotted the elections result and refused to take oath of office and attend the first session of the National Assembly. The worsening climate stemmed from political differences, prompting demonstrations that have led to violence and attempted murder, which erupted on 15 July 2014. As regard to this violence, the competent authorities apprehended perpetrators who found guilty of

murder involving some elected members of parliament from the Cambodia National Rescue Party. The opposition at the time ended its boycott of the National Assembly. The two parties finally have reached a compromise through the establishment of the so-called "Culture of Dialogue", which both sides pledged to put an end to the political confrontation. How does the IPU think about the congratulations expressed by the Cambodian People's Party, who welcomed the Culture of Dialogue?; there is only a dictatorship that never respects human rights, freedom and the fundamental interests of the people, whereas democrats normally understand that the compromise and cohesion is very conducive to relieved political atmosphere that will definitely bring about great benefits to the nation.

The parliament as well as the royal government of Cambodia always pay greater attention to promoting human rights in Cambodia, together with favorably settling all problems through peaceful means so as to finally arrive at an agreement between the Cambodian People's Party and the Cambodia National Rescue Party on 22 July 2014, breaking up the political deadlock and bolstering democracy, which is very beneficial to the nation. On 28 May 2015, the two main political parties, which hold seats in the National Assembly, issued a 7-points joint statement, which clearly determines the conditions of the Culture of Dialogue process. Even if there are two written agreements signed by the two parties, the process of compromise still encounter hindrances. The obstacles usually stem from the opposition, who continues using tricks to incite, attack and violate those agreements. The consolidation of the rule of law is that of the implementation of the law by every institution and individual. Any person, regardless of his/her position, status or parliamentary immunity, who commits illegal acts, they must be subject to prosecution, and we can't use the Culture of Dialogue as a solution to allow the wrongdoers to escape from the net of law.

On the other hand, the framework of the Culture of Dialogue is aimed solving colossal political issues, meaning that the Culture of Dialogue would not carry any resolutions that contravene the law.

The National Assembly of Cambodia has the power to defend its own members within the framework of the law. It unable to defend those, including its members, who commit a felony against the common law, mainly the criminal law; if any members of parliament is caught in flagrante delicto, the Cambodian law allows the competent authorities to make an arrest and bring the offenders to trial.

Should members of parliament be allowed to exercise their parliamentary immunity to commit criminal acts against the law of the country?

III. The Cambodian parliament wishes to categorically deny and brush aside the resolution No. CL/198/12(b)-R1 dated 23 March 2016 adopted by the IPU Governing Council during its 134th Assembly in Lusaka. This resolution was adopted without the accurate reflection of truth, a lack of justice and transparency by taking sides and characterizing as political leanings, and proved no sincere and fair judgment. In addition, the adoption of the resolution is the interference in the principles of national sovereignty and the internal affairs of the Kingdom of Cambodia, who is also a member of the IPU. The resolution adopted during the 132nd Assembly of the IPU in Hanoi on 01 April 2015, the UN charter, the Vienna Declaration and the Action Plan all clearly state the territorial integrity with provisions forbidding any parties to intervene in the internal affairs and human rights issue of any states.

The Kingdom of Cambodia had gone through protracted war for decades, and has emerged from hunger until full peace was achieved. Had the United Nations and how many international organizations provided considerate help to Cambodia in the past?; rather, Cambodia has overcome many difficulties by its own to become what it is today that is a very hard-fought precious asset. Cambodia is strongly committed to cementing peace, safety, stability and development by which any forces shall not be allowed to destroy. The IPU Governing Council should at least draw a conclusion that encourages Cambodia for its tremendous efforts in standing firmly on the path of democracy and the rule of law.

Why the IPU Governing Council turned a blind eye to the fact and reached a destructive and prejudiced decision leaning towards the opposition without consideration of the common principles and the law in force of Cambodia in connection with those who have committed criminal offences?

Pursuant to the ASEAN charter, the assurance of harmony, public security, peace-keeping, political stability and sustainable development are considered to be the major task to be fulfilled by Cambodia.

It is further emphasized that lawmakers are the same as the ordinary Cambodian citizens who are legally protected by and not above the law. The five cases raised by the IPU Governing Council are common criminal ones, which were implemented according the law in force against offenders, and are not politically motivated.

The parliament of Cambodia is delighted to forge good cooperation and deepen the ties of friendship with the IPU. The parliament of Cambodia wishes to express its satisfaction over and welcome to the goodwill of the IPU, which has offered technical assistance to us and other relevant authorities working to uphold democracy and the rule of law in compatible with the law of Cambodia. The parliament of Cambodia always call for support and technical assistance from the parliaments and organizations around the world, and wishes to take this opportunity to extend its profound thanks in advance for all-round support from the IPU.

However, political stability remains in Cambodia. Cambodia is now travelling on the right path towards sustainable development and the defense of human rights, and our all efforts have been recognized throughout the world since the past.

We wish to ask the IPU to reconsider the resolution No. CL/198/12(b)-R1 dated 23 March 2016 of the IPU Governing Council on the case of Cambodia so as to demonstrate the responsibility of the IPU in preserving its prestige and provide great care to safeguarding the rights and the legitimate interests of peoples in general who always wish to live in peace, harmony and development.

Lastly, I wish to request Your Excellency President for the inclusion of this report in the official document of the IPU Assembly, and to disseminate it to all IPU members.

The parliament of Cambodia look forward to further clarifying some points to Your Excellency President in its capacity as the member of this world parliamentary body.

Please accept, Your Excellency President, the assurances of my highest consideration.

Phnom Penh, July2016