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For democracy. For everyone.

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## Decisions of the Committee on the Human Rights of Parliamentarians

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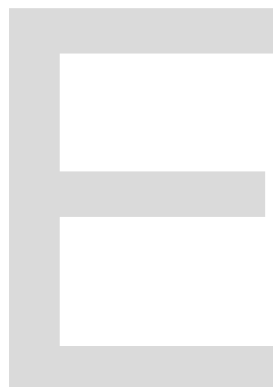
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## Cameroon

CM/01 - Dieudonné Ambassa Zang

***Decision adopted unanimously by the IPU Governing Council at its 201<sup>st</sup> session  
(St. Petersburg, 18 October 2017)***

The Governing Council of the Inter-Parliamentary Union,

*Referring* to the case of Mr. Dieudonné Ambassa Zang, a former member of the National Assembly of Cameroon, and to the decision it adopted at its 197<sup>th</sup> session (October 2015),

*Recalling* the following information on file with regard to the facts of the case:

- Mr. Ambassa Zang was Minister of Public Works from August 2002 to December 2004 and was elected in 2007 on the ticket of the Cameroon People's Democratic Rally (RDCP);
- Mr. Ambassa Zang left Cameroon before the National Assembly Bureau lifted his parliamentary immunity on 7 August 2009 to permit an investigation into allegations of misappropriation of the public funds he had managed as Minister of Public Works;
- According to the authorities, the charges laid against Mr. Ambassa Zang stem from audits prompted by a complaint from the French Development Agency (AFD), the funding source for renovation works on the Wouri Bridge, for which Mr. Ambassa Zang was responsible. According to the Prosecutor General, State companies, ministries and other State bodies managing public funds are subject to annual audits by the Minister Delegate to the Office of the President in charge of the Supreme State Audit Office (CONSUPE);
- On the basis of the audits, the Head of State first opted for criminal proceedings on a charge of misappropriation of public funds. On 11 June 2013, more than two years after the police had completed their investigation, the Prosecutor General of the Special Criminal Court filed charges before the examining judge of that court, directed against 15 persons including Mr. Ambassa Zang. By an order dated 9 June 2014, the Prosecutor General referred him and four other defendants to that court, which, in its decision of 18 June 2015, found him guilty and sentenced him in absentia to: (i) a penalty of life imprisonment; (ii) payment to the State of Cameroon of the sum of 5.8 billion CFA francs in damages; and (iii) lifelong forfeiture of his civil rights. Mr. Ambassa Zang sought the Supreme Court's annulment of the Special Criminal Court's decision, arguing that: (i) there was a material error in the amount of the financial penalty, the difference being not less than 91 million CFA francs; (ii) the arbitral award raised problems concerning the authority of res judicata; and (iii) Article 7 of the 2006 law organizing the judiciary stipulates that judges must state reasons for their decisions in law and in fact;
- While criminal proceedings were under way, on the orders of the Head of State a decision was signed on 12 October 2012 referring the accusations against Mr. Ambassa Zang to the Budget and Finance Disciplinary Council (CDBF), before which, unlike in a criminal procedure, defendants can be represented in their absence by legal counsel. It would seem that this decision was notified to Mr. Ambassa Zang's counsel only in May 2013, or nearly seven months after it was signed, without any explanation. On 20 August 2013, Mr. Ambassa Zang received a partial request for information from the CDBF rapporteur, to which he responded in two extensive defence memorandums. More than two months later, the CDBF rapporteur sent a second partial request for information, to which Mr. Ambassa Zang responded on 13 December 2013 with another defence memorandum,

*Recalling* the following observations made on the legal proceedings and the accusations against Mr. Ambassa Zang:

- According to the complainant, under the terms of Article 1, Decree No. 2013/287 of 4 September 2013, CONSUPE "is under the direct authority of the President of the Republic, from whom it receives instructions and to whom it is accountable"; the complainant affirms therefore that CONSUPE is an "instrument" in the service of the

President of the Republic and must “follow orders and submit to pressure”. The complainant points out that CONSUPE technical staff lack professional expertise and capacities, and their reports therefore lack credibility and tend to spark controversy. According to the complainant, Mr. Ambassa Zang was never informed about the original audits, invited to contribute to the audit process, informed of the conclusions or invited to comment on them; the complainant affirms that the CDBF rapporteur broke the rules of procedure, including by formulating a second partial request for information and formulating accusations in addition to those mentioned in the audits. In response, the President of the CDBF stated that CDBF’s rules of procedure strictly comply with the general principles of presumption of innocence and the right of defence and that “should one or several new incidents arising from the rapporteur’s investigations be closely connected to the presumed offences on the basis of which the respondent was brought before the CDBF, the rapporteur is authorized, in accordance with consistent case law, to take them into account in his examination of the case; this principle is at all times limited to the management period considered by the audit.” According to the complainant, invoking the concept of “connectivity” in a case before the CDBF is both an abuse of authority and a serious violation of the ethical principles governing the proceedings before this financial body and leaves the door wide open for arbitrary decisions;

- According to the complainant, Mr. Ambassa Zang had been known for having fought corruption within that ministry; the complainant affirms that there was no wrongdoing or misappropriation in Mr. Ambassa Zang’s favour of any sum whatsoever, the accusations relate to objective facts and the relevant documents are available at the Ministry of Public Works, the Office of the Prime Minister, the Tenders Regulation Agency and donors such as the AFD; moreover, on 13 July 2010, the International Chamber of Commerce handed down an arbitral award in *UDECTO v. State of Cameroon*, a dispute concerning the execution of the Wouri Bridge renovation works; the complainant affirms that, because Cameroon won that case, the company UDECTO having been sentenced to pay it substantial sums, and also on the strength of the legal principle of *non bis in idem*, the accusations brought against Mr. Ambassa Zang regarding a prejudice he allegedly caused Cameroon are no longer applicable; the AFD Director General specified in her letter of 7 January 2014 that the AFD had filed no complaint against Mr. Ambassa Zang relating to his activities in the context of the proceedings against him before the CDBF and that, owing to the blocking statute, it was not in a position to provide any observations that could be used as proof in administrative or judicial proceedings abroad, except pursuant to an official request made as part of international judicial assistance procedures;
- Mr. Simon Foreman (partner, Courrégé Foreman law office and lawyer at the Paris Bar) was mandated to attend and report on the hearing which took place in this case before the Special Criminal Court on 17 September 2014; in his report he states: “It is worth stressing that the examining judge’s order seizing the court and presenting the charges against the accused mentions no sign whatsoever of personal enrichment on behalf of Mr. Ambassa Zang. Many of the accusations against him relate to the fact that the auditors found no justifying documents for various budgetary expenses, for which he could not account. Given that ministers do not normally leave office taking accounting documents with them, much of Mr. Ambassa Zang’s defence arguments relies on the suggestion that such documents might be found, for instance, in the archives of the Ministry of Public Works or the Ministry of Finance. In any event, his inability to provide detailed justification for expenses that occurred 10 to 12 years ago (2002-2004) does not amount to evidence of criminal misappropriation. In the absence of criminal intent, it should at the most qualify as mismanagement, possibly resulting in disciplinary proceedings. In reading the examining judge’s order, I found no mention of any sign of criminal intent, let alone personal enrichment”;
- The IPU Committee and Governing Council have expressed long-standing doubts about the fairness of the proceedings against Mr. Ambassa Zang, leading it to conclude that the conditions have never been met to enable equitable and objective treatment of this case should Mr. Ambassa Zang, who enjoys official refugee status abroad, return to Cameroon. With regard to the verdict itself against Mr. Ambassa Zang, the IPU has expressed the following concerns: (i) the verdict does not show how the accusations

amount to criminal misappropriation and personal enrichment and constitute a criminal offence; (ii) Mr. Ambassa Zang has provided extensive and detailed rebuttals of each of the accusations made against him; (iii) the main accusation against Mr. Ambassa Zang relates to the Wouri Bridge renovation works, which matter the International Chamber of Commerce has already fully adjudicated by finding the company UDECTO at fault; (iv) the State of Cameroon does not seem to have formally requested any information that the AFD or other donors may have at their disposal to shed further light on the accusations against Mr. Ambassa Zang; (v) there is a discrepancy between the amount of money mentioned in the original accusations and the one mentioned in the verdict against Mr. Ambassa Zang;

- According to the complainant, Mr. Ambassa Zang's prosecution must be seen in the context of "*Opération Épervier*" (Operation Sparrow Hawk), which was widely criticized as a campaign originally intended to combat corruption and misappropriation of public funds, but instead was used to silence critically-minded public figures who, like Mr. Ambassa Zang, expressed views not always in line with those of their party,

*Considering* that the Supreme Court has not yet ruled on Mr. Ambassa Zang's request to annul the verdict of the Special Criminal Court,

*Considering* that, on 30 June 2017, the CDBF found Mr. Ambassa Zang guilty of several management irregularities which had resulted in a loss of 7.5 billion CFA francs to the State Treasury, the CDBF also sentenced Mr. Ambassa Zang to pay a special fine totalling 2 million CFA francs; according to the complainant, Mr. Ambassa Zang had not been notified of the CDBF's verdict, which prevented him from bringing annulment proceedings before the competent administrative court, a remedy provided for by Act No. 74/18 of 5 December 1974, as amended and supplemented by Act No. 76/4 of 8 July 1976 (art. 12),

1. *Is deeply concerned* about the decision adopted by the CDBF against Mr. Ambassa Zang in light of the serious allegations that the right to a fair trial was not followed, the severity of the penalty imposed on him and the firm replies he has provided to refute each of the accusations; *regrets* that, seemingly, the Cameroonian authorities again did not make use of the possibility to formally request the French Development Agency to offer assistance, given that the Agency seemed well placed to help shed full light on the matters at hand;
2. *Is concerned* that Mr. Ambassa Zang has still not received a copy of the CDBF decision and is thus prevented from legally challenging it; *calls on* the authorities to provide him with a copy of the decision as soon as possible;
3. *Is deeply concerned* that in the criminal proceedings the Supreme Court has still not pronounced on the request to annul the verdict; *reaffirms* the important principle that justice delayed is justice denied; *trusts* that the Supreme Court will consider this request as a matter of urgency; *wishes* to receive confirmation thereof;
4. *Reaffirms its views* in this regard that the proceedings leading to Mr. Ambassa Zang's conviction were fraught with irregularities, to the point that they can in no way justify his conviction; *considers*, in fact, that the various elements of concern in this case, when taken together, lend strong weight to the accusation that he was subjected to a criminal procedure motivated by other than legal concerns;
5. *Trusts* that the Supreme Court, in reaching its decision on the request for annulment of the sentence, will therefore take due account of these procedural irregularities;
6. *Requests* the Secretary General to convey this decision to the relevant authorities, the complainant and any third party likely to be in a position to supply relevant information;
7. *Requests* the Committee to continue examining this case and to report back to it in due course.

## Democratic Republic of the Congo

DRC/71 - Eugène Diomi Ndongala

***Decision adopted unanimously by the IPU Governing Council at its 201<sup>st</sup> session  
(St. Petersburg, 18 October 2017)***

The Governing Council of the Inter-Parliamentary Union,

*Referring* to the case of Mr. Eugène Diomi Ndongala, a former member of the National Assembly of the Democratic Republic of the Congo (DRC), and to the decision adopted at its 198<sup>th</sup> session (Lusaka, March 2016),

*Referring* to communications from the Speaker of the National Assembly dated 10 October, 21 August, 30 March and 20 January 2017 and the information provided by the complainants,

*Referring also* to the report on the mission conducted to the DRC from 10 to 14 June 2013 (CL/193/11b)-R.2),

*Recalling* the following allegations provided by the complainants: Mr. Ndongala, the leader of an opposition political party, was framed because he publicly denounced large-scale electoral fraud during the 2011 elections and questioned the legitimacy of the election results; he also staged a protest at the National Assembly, in which 40 opposition members took part; for those reasons, Mr. Ndongala has been the target since June 2012 of a campaign of political and legal harassment aimed at removing him from the political process and at weakening the opposition; that harassment has in particular been marked by the following alleged violations of his fundamental rights: (i) arbitrary arrest on 27 June 2012, the day before Mr. Ndongala was to establish an opposition party platform, followed by unlawful incommunicado detention by the intelligence services from 27 June to 11 October 2012, during which Mr. Ndongala was allegedly ill-treated; (ii) arbitrary lifting of Mr. Ndongala's parliamentary immunity on 8 January 2013, in violation of his rights of defence; (iii) arbitrary revocation of his parliamentary mandate on 15 June 2013; (iv) baseless and politically motivated judicial proceedings that disregarded the right to a fair trial; (v) illegal pre-trial detention from April 2013 until his conviction on March 2014; (vi) denial of medical care in prison since the end of July 2013,

*Recalling* the following information and allegations:

- That the National Assembly has repeatedly asserted that, since Mr. Ndongala has boycotted the parliamentary institution to which he belonged and questioned its legitimacy, he could not expect to benefit from its protection; at the hearing held during the 130<sup>th</sup> IPU Assembly (March 2014), the delegation of the DRC stated that if Mr. Ndongala had not contested the legitimacy of the last elections and had agreed to take part in the parliamentary proceedings, the National Assembly would not have agreed to lift his parliamentary immunity and would not have revoked his parliamentary mandate;
- According to the authorities, Mr. Ndongala was never held incommunicado, but instead fled in late June 2012 to avoid arrest *in flagrante delicto*; that, after his parliamentary immunity had been lifted, he was arrested and placed in pre-trial detention; he was tried on charges of rape of minors that were unrelated to his political activities;
- According to the complainants, the accusations that Mr. Ndongala had sexual relations with minors – qualified as rape by the prosecution – are unfounded and a pure fabrication;
- On 26 March 2014, at the end of a trial characterized by serious irregularities, Mr. Ndongala was sentenced to 10 years in prison for rape and for having both paid for and engaged in consensual sexual intercourse with underage females,



*Also recalling* that, in its previous decisions, it strongly criticized the fact that the trial had been tainted by serious violations of the guarantee of due process, as well as the fact that, in the DRC, judicial proceedings that involve parliamentarians do not include any appeal process; and that it has expressed its fear that a serious miscarriage of justice might have occurred, particularly in light of the highly political nature of the case,

*Considering* that the United Nations Human Rights Committee, to which Mr. Ndongala's case was also submitted, ruled in its conclusion of 3 November 2016 on the case that articles 2(3), 9(1), 10(1), 14(1) and 14(3)(b) of the International Covenant on Civil and Political Rights had been violated, and instructed the DRC to take appropriate steps to free Mr. Ndongala immediately, quash his conviction and, if necessary, launch fresh inquiries in accordance with the principles of equity and presumption of innocence, and to grant him suitable compensation; and that the DRC authorities have not implemented that decision,

*Considering* that the case was submitted to the national commission on human rights (CNDH-RDC), which on 29 May 2017 called on the Minister of Justice and the Prosecutor General of the Republic to implement the decision of the UN Human Rights Committee in accordance with the DRC's international obligations and to re-examine the case accordingly as soon as possible,

*Recalling* that the complainants, like the opposition parties in the DRC, consider Mr. Ndongala to be a political prisoner and have repeatedly demanded his release and that of other political prisoners, as a prerequisite to the resumption of political dialogue; and that the final report of the national consultations held between the majority and opposition political blocs in September 2013 recommended the release of political prisoners including Mr. Ndongala,

*Considering* that an inclusive overall political agreement signed on 31 December 2016 directs the National Assembly and Senate to give priority to the legislative agenda with respect to the elections and to the measures for easing political tensions in connection with the release of political prisoners; the parties to the agreement requested the National Episcopal Conference of Congo (CENCO) to "take the initiative in seeking an appropriate and satisfactory solution" in the case of Mr. Ndongala; they tasked CENCO with mediating to that effect and with facilitating agreement between the parties on modalities for implementing the agreement of 31 December through "particular arrangements", especially concerning the easing of political tensions; CENCO ended its mediation mission in the absence of agreement between the parties,

*Considering* that the particular arrangement for implementation of the measures to ease political tensions foreseen by the agreement of 31 December 2016 was signed on 27 April 2017 and that it provided for the release of seven symbolic political prisoners including Mr. Ndongala, on the fifth day following signature; and that Mr. Ndongala has not been released,

*Considering* that the Speaker of the National Assembly stated in his letters that the National Council for Follow-Up on the Agreement (CNSA) was put in place in July 2017, and that the CNSA, which is now responsible for measures to ease political tensions, had informed him on 2 October 2017 that initiatives were under way to obtain a presidential pardon for Mr. Ndongala;

*Also recalling* that, according to the complainants, Mr. Ndongala's health has deteriorated sharply since his detention began in late July 2013, but that the authorities have systematically refused to allow him to be taken to hospital and that he currently continues to be denied appropriate medical care; the UN Human Rights Committee, on 8 October 2014, requested the DRC to take all necessary measures to ensure that he receives appropriate medical care to prevent irreparable damage to his health; the authorities have stated that he has received appropriate medical care and that his situation does not require his evacuation for medical care abroad,

*Considering* that in April 2017 the authorities accepted his transfer from prison to a hospital in Kinshasa, where he currently remains; according to the complainants, further medical examination has revealed that Mr. Ndongala needs treatment not available in the DRC and which would require his transfer abroad; the application that his lawyer made to the authorities for that purpose remains unanswered,

1. *Thanks* the Speaker of the National Assembly for the information provided;
2. *Notes with interest* the steps being taken by the National Council for Follow-Up on the Agreement and Mr Ndongala's transfer to hospital; *wishes* to be informed of any new development as soon as possible;
3. *Deplores* the continuing detention of Mr. Ndongala although, over the past three years, the authorities have pledged many times to release him; again *urges* the authorities to proceed with his immediate release;
4. *Requests* the Secretary General to convey this decision to the parliamentary authorities, the Minister of Justice, the complainants and any third party likely to be in a position to supply relevant information;
5. *Requests* the Committee to continue examining this case and to report back to it in due course.

## Democratic Republic of the Congo

DRC86 - Franck Diongo

### *Decision adopted unanimously by the IPU Governing Council at its 201<sup>st</sup> session (St. Petersburg, 18 October 2017)*

The Governing Council of the Inter-Parliamentary Union,

*Referring* to the case of Mr. Diongo, a member of the National Assembly of the Democratic Republic of the Congo (DRC) and president of an opposition party, whose case has been under review by the Committee on the Human Rights of Parliamentarians since December 2016 under its "Procedure for the examination and treatment of complaints" (Annex I of the Rules and practices of the Committee),

*Referring* to the letters from the Speaker of the National Assembly dated 10 October, 21 August, 30 March and 20 January 2017,

*Referring* to the hearing of a delegation from the DRC at the Committee's 152<sup>nd</sup> session (January 2017),

*Considering* that the complainants and the authorities agree on the following facts: Mr. Franck Diongo, member of parliament and President of the *Mouvement Lumumbiste Progressiste* (MLP) opposition party, was arrested together with a dozen activists from his political party at his home on 19 December 2016 by Presidential Guard soldiers. He was summarily tried on 28 December 2016, under an accelerated procedure and sentenced, in both the first and the last instance, to five years in prison for arbitrary arrest and illegal detention aggravated by torture. He has been serving sentence at Kinshasa prison since that time,

*Taking into account* that the events took place in an atmosphere of tension following the postponement of the presidential and legislative elections initially scheduled for the end of 2016; that 19 December was the date when, under the Constitution, the mandate of the Head of State was due to end; the opposition had for months been calling for elections to be held and for the Head of State to step down,

*Considering* that, according to reports issued by the United Nations Mission in the DRC (MONUSCO), and in particular by the United Nations Joint Human Rights Office (UNJHRO), Mr. Diongo's arrest took place amidst violent clashes in Kinshasa and elsewhere in the country; the UN deplored the gross negligence on the part of police, defence and security forces during those incidents, the violent suppression of dissenting voices and the heavy-handed and irresponsible reaction to protests on the part of the authorities, which it said risked leading to an escalation of the violence; also according to the UN reports, on 13 December 2016 Mr. Diongo had announced his support for the candidature of Mr. Moïse Katumbi (declared opponent of President Kabila) in the presidential election; he had also been the only opposition figure to continue calling for protests and to openly oppose the President on 19 December after the arrests and crackdown of the previous days,

*Taking fully into account* the following allegations and information on which the positions of the two sides differ:

- **Circumstances underlying the arrest of Mr. Diongo and parliamentary immunity**
- According to the complainants, on 19 December three Presidential Guard soldiers – identified as such – who were dressed in civilian clothes and armed, tried to make their way to Mr. Diongo's house. Fearing for the politician's safety on a day of tension following his call for a demonstration despite the bans imposed by the authorities, young men from the neighbourhood "apprehended them" and took them to Mr. Diongo's house. Mr. Diongo told the young men not to harm the soldiers, and requested a team from MONUSCO to intervene and take their testimonies so as to prevent their being exposed

to vengeful acts by the public. Presidential Guard soldiers then arrived to arrest him and the 15 party members who were present. His house was looted and ransacked.

- The complainants allege that Mr. Diongo has committed no offence and is a political prisoner. His parliamentary immunity was ignored and the recourse to accelerated procedure was improper, according to the complainants, since he had committed no offence. They consider that this was a plot staged by the ruling regime to silence him and weaken members of the opposition by any means and to prevent protests against the extension of the Head of State's mandate. They state that Mr. Diongo had already suffered persecution, threats and assassination attempts during the previous months of his struggle for regime change. His protests to the authorities went unanswered, according to the complainants.
- The authorities have provided several versions of events. There are several points of discrepancy between them:
  - (i) The Supreme Court of Justice gave the following version in its verdict: Three Republican Guard soldiers in plain clothes took a shortcut to return home and "found themselves ambushed by a group of young men who subjected them to a beating". The young men took them to Mr. Diongo's residence, on his instructions. There, they were subjected to "a detailed interrogation focusing on their rank, role and their reasons for being in the district, and all three were subjected to a number of blows from clubs and threatened with machetes". They were detained for around four hours at Mr. Diongo's residence and freed through the intervention of MONUSCO.
  - (ii) The official correspondence dating from Mr. Diongo's arrest refers to "a subversive movement", to "inciting civil disobedience" and to the organization of an "insurgency" by Mr. Diongo and his "militia".
  - (iii) The version provided by the National Assembly refers to the fact that Mr. Diongo was arrested for his own safety to prevent any acts of vengeance by members of the Republican Guard.
- The Speaker of the National Assembly asserts that he informed the Assembly's plenary of the infringements that had triggered the recourse to accelerated procedure and had informed the Public Prosecutor to ensure that Mr. Diongo's rights of defence and his parliamentary immunity were upheld. The specific circumstances behind the accelerated procedure have not been communicated by the authorities.
- **Torture of Mr. Diongo**
  - According to the complainants, Mr. Diongo and his party supporters were held in the Tshatshi military camp and at the premises of the military intelligence services (ex-DEMIAP) after their arrest and before being transferred to the prosecution service. They were forced to swallow a drink and also hemp. They were injected with an unknown substance. They were struck with rifle butts, beaten with an iron bar enclosed in a PVC tube, burned with sulphuric acid and seriously wounded with metal wire and bars. On 27 February 2017 Mr. Diongo lodged a complaint with the military courts concerning these acts, which was ignored.
  - No information has been provided in response to the allegations of torture and detention. The Speaker of the National Assembly has simply stated that he requested Mr. Diongo's transfer to the National Public Prosecutor's Office because a military intelligence unit was not an appropriate place of detention for a member of parliament. The Supreme Court did not mention these allegations in its decision although, according to his lawyers and the photographs taken of the trial, Mr. Diongo was forcibly taken to the hearings in a hospital bed while attached to a drip.
- **Fairness of Mr. Diongo's trial**
  - According to the complainants, the minimum guarantees of the right to a fair trial were not observed: Mr. Diongo was not capable of preparing his defence or of appearing in court owing to his maltreatment in detention; he had no access to lawyers prior to the trial; no

defence witness was heard by the court; the defence could not question prosecution witnesses; many procedural irregularities were committed including the airing of the verdict on national television before it had been read out at a public hearing; no remedy existed to appeal against his conviction, the court refused, without any reasoned decision, to accept his constitutional challenge against that absence;

- The Speaker of the National Assembly emphasized that Mr. Diongo had indeed enjoyed the support of his lawyers during the trial proceedings;
  - The reasoned decision of the Supreme Court adduced no proof in support of its conclusions and did not present Mr. Diongo's version of events, despite the stark contradictions between the versions given by Mr. Diongo and his supporters, on one hand, and the public prosecutor and plaintiffs on the other; the court took no account of the political security context prevailing at the time, nor of the background of oppression and threats to which Mr. Diongo stated he had long been subjected, particularly from Republican Guard soldiers;
  - The 15 party members arrested with Mr. Diongo were tried separately by a regular court. Eight of them were acquitted on 3 June 2017 and the other seven were handed 7-month prison sentences for abduction and assault and battery, with extensive mitigating circumstances. Unlike the Supreme Court decision, the court ruling referred clearly to the grounds raised by the defence lawyers and to the evidence used by the court in reaching its verdict.
- **Conditions of detention**
    - The complainants allege that, despite repeated requests, Mr. Diongo was not given proper medical care while in detention following the maltreatment he suffered during his arrest and given his chronic health problems; his health therefore deteriorated in prison, according to the complainants; Mr. Diongo was transferred to hospital on 18 August 2017, but under the supervision of the Presidential Guard, not the police, an illegal procedure that raised concerns about Mr. Diongo's safety; following a brief stay in a private clinic he was forcibly returned to prison on 31 August without having received the necessary care;
    - The Speaker of the National Assembly stated in his letter dated 30 March 2017 that he had contacted the Minister of Justice to ensure that Mr. Diongo was assured appropriate medical treatment and visiting rights at all times while in prison; no information on the events of August has been provided;

*Considering* the above-mentioned contradictions and discrepancies concerning the facts underpinning the conviction of Mr. Diongo and the fact that the Speaker of the National Assembly, in his letter dated 20 January 2017, suggested contacting MONUSCO, "an organization whose independence is beyond doubt" in order to verify that the facts were genuine,

*Considering* the following conclusions published by MONUSCO, in particular in the UNJHRO report on human rights violations committed in the context of the events of 19 December 2016:

- "On 19 December, in Kinshasa, soldiers of the Republican Guard arrested at least 16 MLP members, including their president and member of the national parliament, Franck Diongo. Mr. Diongo was allegedly arrested for having neutralized, held and beaten three soldiers of the Republican Guard who had tried to enter into his residence. Following MONUSCO intervention, Franck Diongo and his sympathizers released the three soldiers. After MONUSCO had left, several soldiers of the Republican Guard attacked Mr. Diongo's residence and arrested him and 15 MLP members, before looting and damaging the residence.
- Following their arrest, Mr. Diongo and the members of his party were sent to the Tshatshi military camp, where they were tortured by soldiers of the Republican Guard. They were then transferred to the prison in Makala. Franck Diongo was detained at the premises of the military intelligence services, where he suffered cruel, inhuman and degrading treatment before being transferred the same night to the criminal police, then the Public Prosecutor's Office and finally to Makala prison."

- Before, during and after the events of 19 and 20 December, the Congolese authorities carried out mass arrests and detained individuals suspected of planning or taking part in protests, in an attempt to prevent any demonstration. The complete bans on protests decreed by the authorities were unjustified and disproportionate in terms of maintaining law and order, and contravened articles 25 and 26 of the Constitution as well as international law. The UNJHRO report also condemned the disproportionate use of force and repressive measures used against peaceful demonstrators and the impunity enjoyed by the security forces for their acts. The UNJHRO emphasizes that “despite several appeals made by national and international organizations, including United Nations Human Rights Council special procedures, the authorities took no steps to establish an environment more conducive to peaceful political activity.”

*Considering* lastly that the agreement of 31 December 2016 concluded by the majority and opposition political stakeholders to try to find a way out of the crisis provides for the implementation of measures to improve the political situation, namely by freeing all political prisoners; the DRC delegation, at its hearing in January 2017, considered that Mr. Diongo’s situation could be settled within that framework in such a way that he could receive a measure of leniency and regain his freedom; to date, Mr. Diongo’s name has not appeared on the list of political prisoners affected by these political tension-easing measures,

*Recalling* the seriousness of the shared concerns about the 34 cases involving other current and former members of parliament from the DRC that have long been before the Committee, especially those concerning violations of the freedom of expression of parliamentarians who spoke out against the position of the Head of State, the policy of the Government and the presidential majority, the manipulation of the justice system and the absence of fair process, and given the conditions in which the various trials involving these parliamentarians have taken place and the absence of remedy, as well as the repeated attacks made on parliamentary immunity, short-circuited on several occasions in the past by the public prosecutor using an unfair accelerated procedure,

1. *Thanks* the Speaker of the National Assembly for the information provided and the communications sent to the competent authorities;
2. *Considers* that the allegations of the complainants are credible in respect of the information received from both parties and of the context in which events have unfolded; *notes in particular* that there is nothing in the Supreme Court of Justice’s sentencing of Mr. Diongo to indicate that the Court attempted to establish what actually happened and that, rather, it seems to have focused solely on the version of events given by the public prosecutor and did not try to verify it by means of either incriminating or exculpatory evidence, *also notes with concern* that the Court’s decision cites no evidence demonstrating that Mr. Diongo was personally responsible for the incidents of 19 December, by contrast with the decision issued by the court which tried the party activists arrested with him and acquitted most of them;
3. *Fears* that Mr. Diongo was arrested and sentenced for attempting to continue expressing his opposition to the extension of the Head of State’s mandate, and so as to put an end to the protests organized by the opposition; *considers* that the basic rights of freedom of expression, peaceful assembly and a fair trial have been neither observed nor protected by the executive, judicial and legislative authorities of the DRC;
4. *Is alarmed* that an incumbent member of parliament was kept in military confinement and tortured *and shocked* that the authorities appear to have taken no appropriate action;
5. *Calls upon* the authorities to release Mr. Diongo as quickly as possible in the framework of implementing the measures for improving the political situation as provided for in the agreement of 31 December 2016, since Mr. Diongo meets all the conditions for inclusion in the list of political prisoners; *likewise urges them* to ensure that the complaint which Mr. Diongo submitted to the military courts concerning the abuse he suffered is processed without delay and in a transparent, impartial and independent manner;

6. *Reminds* the authorities, principally the parliamentary authorities, that they have a duty and obligation to guarantee respect and protection for the fundamental rights of all parliamentarians, whatever their political affiliation, and *urges* the National Assembly to perform that task to the full in the future; *emphasizes* that the integrity and independence of the entire institution of parliament is at stake when it permits such situations to occur and reoccur, especially when, in such a tense political context, only genuinely inclusive political dialogue that respects the opposition's role offers any hope of a way out from the crisis that will bring benefits to the Congolese population;
7. *Requests* the Secretary General to convey this decision to the parliamentary authorities, the complainants and any third party likely to be in a position to supply relevant information;
8. *Requests* the Committee to continue examining this case and to report back to it in due course.

## Venezuela

VEN13 - Richard Blanco	VEN48 - Yanet Fermin (Ms.)
VEN16 - Julio Borges	VEN49 - Dinorah Figuera (Ms.)
VEN19 - Nora Bracho (Ms.)	VEN50 - Winston Flores
VEN24 - Nirma Guarulla (Ms.)	VEN51 - Omar González
VEN25 - Julio Ygarza	VEN52 - Stalin González
VEN26 - Romel Guzamana	VEN53 - Juan Guaidó
VEN27 - Rosmit Mantilla	VEN54 - Tomás Guanipa
VEN28 - Enzo Prieto	VEN55 - José Guerra
VEN29 - Gilberto Sojo	VEN56 - Freddy Guevara
VEN30 - Gilber Caro	VEN57 - Rafael Guzmán
VEN31 - Luis Florido	VEN58 - María G. Hernández (Ms.)
VEN32 - Eudoro González	VEN59 - Piero Maroun
VEN33 - Jorge Millán	VEN60 - Juan A. Mejía
VEN34 - Armando Armas	VEN61 - Julio Montoya
VEN35 - Américo De Grazia	VEN62 - José M. Olivares
VEN36 - Luis Padilla	VEN63 - Carlos Paparoni
VEN37 - José Regnault	VEN64 - Miguel Pizarro
VEN38 - Dennis Fernández (Ms.)	VEN65 - Henry Ramos Allup
VEN39 - Olivia Lozano (Ms.)	VEN66 - Juan Requesens
VEN40 - Delsa Solórzano (Ms.)	VEN67 - Luis E. Rondón
VEN41 - Robert Alcalá	VEN68 - Bolivia Suárez (Ms.)
VEN42 - Gaby Arellano (Ms.)	VEN69 - Carlos Valero
VEN43 - Carlos Bastardo	VEN70 - Milagro Valero (Ms.)
VEN44 - Marialbert Barrios (Ms.)	VEN71 - German Ferrer
VEN45 - Amelia Belisario (Ms.)	VEN72 - Adriana d'Elia (Ms.)
VEN46 - Marco Bozo	VEN73 - Luis Lippa
VEN47 - José Brito	

***Decision adopted by consensus by the IPU Governing Council at its 201<sup>st</sup> session  
(St. Petersburg, 18 October 2017) <sup>1</sup>***

The Governing Council of the Inter-Parliamentary Union,

*Referring* to the existing cases under file names VEN13, 16, 19 and 24-32, which concern allegations of human rights violations affecting members from the coalition of the former opposition, the Democratic Unity Round Table (MUD), which obtained a majority of seats in the National Assembly following the parliamentary elections of 6 December 2015,

*Having before it* new cases under the file name VEN/33 to 73, which have been examined by the Committee on the Human Rights of Parliamentarians pursuant to the revised Procedure for the examination and treatment of complaints (Annex I of the Revised Rules and Practices),

*Considering* the information regularly provided by the complainant and by parliamentarians belonging to the MUD and during the hearing with the Committee on 14 October 2017,

<sup>1</sup>

A Venezuelan MP from the governing party expressed reservations regarding the decision.



*Considering* the following information on file regarding the concerns in this case:

- **Attacks on parliamentarians by law enforcement officers and pro-government supporters in the course of demonstrations**
- According to the complainant, against a backdrop of peaceful demonstrations organized in defence of democracy and the Constitution of the Republic, since 28 March 2017 the following opposition members of parliament have been attacked by pro-government supporters and/or law enforcement officers:
  - Robert Alcalá, Gaby Arellano, Marialbert Barrios, Carlos Bastardo, Amelia Belisario, Richard Blanco, Marcos Bozo, Julio Borges, José Brito, Yanet Fermín, Dinorah Figuera, Winston Flores, Luis Florido, Juan Guaidó, José Guerra, Olivia Lozano, Omar González, Stalin González, Américo De Grazia, Tomás Guanipa, Freddy Guevara, Rafael Guzmán, María G. Hernández, Piero Maroun, Juan A. Mejía, Jorge Millán, Julio Montoya, José M. Olivares, Carlos Paparoni, Miguel Pizarro, Henry Ramos Allup, Juan Requesens, Luis E. Rondón, Delsa Solórzano, Bolivia Suárez, Carlos Valero, Milagro Valero,
- In August 2017, the Office of the UN High Commissioner for Human Rights (OHCHR) issued a report, “Human rights violations and abuses in the context of protests in the Bolivarian Republic of Venezuela from 1 April to 31 July 2017”. The OHCHR’s findings point to an increasingly critical human rights situation since the protests began, with mounting levels of repression of political dissent by national security forces and increasing stigmatization and persecution of people perceived as opposing the government of President Maduro. The OHCHR report documented extensive violations of human rights committed by national authorities aimed at curbing any type of anti-government protest, against a background of country-wide demonstrations. The OHCHR found that security forces systematically used excessive force and arbitrarily detained protesters, and documented patterns of ill-treatment, in some cases amounting to torture, as well as serious violations of the due process rights of persons detained by the authorities in connection with the protests. Credible and consistent accounts from victims and witnesses indicate that security forces systematically used excessive force to deter demonstrations, crush dissent and instil fear. The Bolivarian National Police (PNB) and the Bolivarian National Guard (GNB), which is part of the armed forces, used tear gas and other less lethal weapons, such as water cannons and plastic pellets, during demonstrations without prior warning and in a non-progressive manner, in violation of the international legal principles of necessity and proportionality. Less lethal weapons were also used systematically in a manner intended to cause unnecessary harm. For example, security forces shot tear gas grenades directly at demonstrators at short range and altered ammunition to make it more harmful. The OHCHR also documented the use of lethal force against protesters by security forces. The authorities rarely condemned incidents of excessive use of force, in most cases denying that the security forces were responsible for such incidents, and repeatedly labelled demonstrators as “terrorists.”
- **Parliamentarians prevented from taking their seats in Parliament**
- On 30 December 2015, the Electoral Chamber of the Supreme Court ordered the suspension of a number of acts of proclamation issued by the Electoral Council for the State of Amazonas. The judgement related to allegations of fraud relating to the election of Ms. Guarulla, Mr. Ygarza and Mr. Guzamana (all from the coalition of the former opposition, the MUD) and of Mr. Miguel Tadeo (from the PSUV). On 5 January 2016, the National Assembly decided to disregard this judgement, considering that it was unjustified and that the deputies from Amazonas should take their seats, although Mr. Tadeo of the PSUV chose to respect the court order. On 11 January 2016, the Supreme Court ruled that any decision taken by the National Assembly would be invalid as long as the members of parliament whom the Court had suspended remained in their seats. The MUD coalition parties in parliament at first decided to continue legislating in defiance of the court ruling but, on 13 January 2016, the suspended members requested to leave the legislature “without losing their status of members of parliament and in expectation of

more favourable conditions on resuming their seats”; they subsequently returned to the National Assembly, but later decided to temporarily withdraw from its work; it appears that no progress has been made on the case before the Supreme Court regarding the allegations of fraud which are at the origin of the suspension of the MPs.

- **Arbitrary detention of parliamentarians and/or politically motivated proceedings**

- The complainant states that, on 11 January 2017, officers from the Bolivarian Intelligence Service (SEBIN) arbitrarily arrested and detained Mr. Gilber Caro. In June 2017, in contradiction of the Constitution, Mr. Caro was presented before a military tribunal which ordered his indefinite detention in Tocuyito prison in the state of Carabobo. The charges brought against Mr. Caro are treason and appropriation of goods belonging to the armed forces. According to the complainant, Mr. Caro is not receiving sufficient food and has lost considerable weight. His family members, lawyers and human rights organizations have raised this matter with the authorities. Moreover, Mr. Caro is reportedly being kept in isolation, without contact with his children or other detainees, and without even the possibility of real contact with penitentiary staff. His cell measures 2 by 3 metres and has no natural light. His lawyers have repeatedly asked the judge to have him transferred to a detention centre where his rights would be respected, but to no avail. Mr. Caro started a hunger strike on 11 September 2017 and has threatened to sew his lips together if his pleas are ignored.
- Mr. Mantilla, Mr. Prieto and Mr. Sojo, elected as alternate members of parliament in the elections of 6 December 2015, were deprived of their liberty in 2014 in connection with ongoing legal proceedings, for political reasons according to the complainant; Mr. Mantilla and Mr. Sojo were released in November and December 2016; the legal case against them continues; however, Mr. Prieto remains in detention.
- On 17 August 2017, the Supreme Court of Justice “declared appropriate” [“declaró procedente”] the detention of MP Mr. German Ferrer on the basis of accusations of involvement in a widespread extortion ring and after concluding that the case was one of “in flagrante delicto” that concerned the commission of a “permanent crime”. Mr. German Ferrer was originally a member of the PSUV and is the husband of former Prosecutor General Díaz, who was ousted by the Constituent Assembly in August 2017 after voicing serious criticism of the Government. On 18 August 2017, the Constituent Assembly lifted Mr. Ferrer’s immunity. Mr. Ferrer and his wife fled to Colombia the same day.

- **Arbitrary confiscation of passports and other intimidation in connection with international parliamentary work**

- The passports and/or identity cards of Mr. Florido (in January and February 2017), Mr. Dávila (February 2017), Mr. González (March 2017) and Mr. Américo de Grazia (July 2017) were cancelled by immigration officers as they either returned to or were about to leave Venezuela in connection with parliamentary work abroad; immigration officers told them that their passports had been cancelled owing to a reported official complaint of theft of the said documents.
- In all four cases, the complainant affirms that no official complaint about the theft of the passports was ever made. It considers that the measures taken against the parliamentarians are arbitrary and have no basis in law, being merely intended to harass and silence parliamentarians wishing to participate in international forums to voice their criticism of the political situation in Venezuela.
- On 6 April 2017, Ms. Delsa Solórzano, on returning home from Dhaka where she had been head of the Venezuelan Delegation to the 136<sup>th</sup> IPU Assembly, was detained in an abusive and intimidating manner by officers of the Armed Forces and the National Customs and Revenue Administration at the orders of SEBIN. The officers held Ms. Solórzano hostage for approximately 30 minutes, circling her and threatening to take away her cell phone, because, as they told her, she had resorted to the IPU. They said to her: “You should have stayed there. The next time I don’t let you enter, and take care of yourself, you don’t know what could happen to you...”.

- On 15 July 2017, deputies Jorge Millán and Richard Blanco arrived at Simón Bolívar International Airport. As Deputy Millán was registering his entry into the country, SAIME agents attempted to take away his passport. When he refused to hand it over, invoking his status as a parliamentarian, they took him to a room where five officers, directed by Major Henribson Herrera, beat him, seized and revoked his passport, and took his cell phone in order to review and erase information it contained. Deputy Blanco, for his part, while awaiting his luggage at the airport was surrounded by agents from SEBIN and the Bolivarian National Guard, who detained him more than 40 minutes without explanation.
- **Allegations of arbitrary disbarment from holding public office**
  - By decision of 3 August 2017, the *Contraloría General de la República* [Comptroller-General of the Republic] disbarred a member of the National Assembly, Ms. Adriana D'Elia, from holding public office for 15 years. On 16 August 2017, the Comptroller-General also disbarred MP Mr. Luis Lippa from holding public office, although no information is on file as to the length of the disbarment. According to the complainant, revoking parliamentary mandate can only be done through a final legal decision following proceedings that respect due process, neither of which applies to the situation of the aforementioned parliamentarians.
- **Illegal occupation of parliamentary premises, including by paramilitary groups who, incited by the government, attacked and seriously injured deputies and violated their human rights**

*The events of 5 July 2017*

- The signing of the Independence of Venezuela Act is commemorated on 5 July each year by a solemn public ceremony held in the Oval Room of the Legislative Palace and by a special session of parliament. On the morning of that day the Vice President of the Republic, Mr. Tareck El Aissami, and representatives of the various ministries conducted a surprise ceremony in the Oval Room of the Palace to celebrate Independence Day, without authorization from the parliamentary leadership. Members of the executive branch withdrew after the ceremony but their supporters remained outside the Palace.
- While the special session was being held, at approximately 12 noon a group of government supporters who had gathered outside the entrance to the legislative building invaded the parliament, brandishing clubs, tubes, knives and explosive devices and threatening National Assembly deputies and those who work for them:  
<https://www.youtube.com/watch?v=of00oAZf82s>.
- Those injured included the legislators Américo De Grazia, Nora Bracho, Armando Armas, Luis Padilla and José Regnault. Deputy de Grazia suffered convulsions after being beaten with an object about the head and had to be transported by ambulance to a medical facility, where he was diagnosed as having a cerebral contusion and several broken ribs. Three other legislators sustained head cuts.
- According to the complainant, after the initial attack, the group of government supporters continued laying siege to the Assembly area for more than seven hours, launching rockets at parliamentary headquarters and holding hostage 108 journalists, 120 workers and 94 deputies, as well as musicians and special guests including representatives of the diplomatic corps. The complainant also stresses that the GNB, which had custodial responsibility for the premises, did not contain the demonstrators nor act to prevent the attacks against parliamentarians.
- The above-mentioned OHCHR report referred to the events that unfolded on 5 July 2017 as follows: "On the morning of 5 July, the National Assembly held a solemn session on the occasion of Venezuela's Independence Day. At around noon, a group of over 100 persons, including alleged members of armed *colectivos*, burst into the Assembly's premises, and started throwing rockets and attacking parliamentarians, journalists and staffers with metal rods and sticks. Some of them reportedly carried guns. One of the injured recalled to the OHCHR how he lost consciousness after being hit but afterwards saw in the security footage how the individuals "were kicking and hitting me while I lay on

the floor.” A journalist interviewed by the OHCHR said “I took refuge in the main chamber, where I saw several parliamentarians covered in blood.” The attack lasted more than six hours. During that time, parliamentarians were prevented from leaving the premises. The incident left 12 persons injured, including five parliamentarians from the opposition. The GNB, responsible for securing the National Assembly’s premises, reportedly opened the gates to the armed *colectivos* and witnessed the assault while failing to protect the victims. “The GNB was absolutely indifferent,” reported a witness interviewed by the OHCHR. “The evidence is that there is not a single detainee [...] I believe everything was planned and orchestrated with the GNB.”

*The events of 27 June 2017*

- On 27 June 2017, at approximately 5 p.m. while an ordinary session of the National Assembly was being held, GNB agents took sealed boxes bearing the stamp and seal of the National Electoral Council (CNE) into the Federal Legislative Palace without the prior authorization of parliamentary authorities. According to the complainant, there is no reason whatsoever for such materials to be on parliamentary premises and they were brought in behind the backs of the parliamentary authorities.
- Three women deputies, Denis Fernández, Second Vice President of the National Assembly, Delsa Solórzano and Olivia Lozano, together with Deputy Winston Flores, approached to verify what was happening and what the boxes contained, but were forced away and beaten with helmets by GNB officers. These assailants were identified by Deputy Solórzano as Officers Betancourt and Leal. She went on to assign blame to Col. Vladimir Lugo, head of the GNB unit responsible for safeguarding National Assembly premises. The attack caused Deputy Solórzano to sustain a severe cervical injury.
- When questioned about events by Deputy Julio Borges, President of the National Assembly, Col. Lugo Armas answered that he managed conflicts “as he saw fit” and ordered the deputy to withdraw. Later, when Deputy Borges reminded Col. Lugo Armas that he was President of the National Assembly, he replied as follows: “I am commander of the unit. You may be President of the National Assembly, but I am commander of the unit”, while pushing the deputy out of his office.
- While these events were occurring, armed paramilitary groups began surrounding and then violently entering the Legislative Palace, shouting slogans and insults and throwing explosives and other dangerous objects at the building. Deputies were held hostage and the building was occupied for more than four hours, during which no action was taken by the GNB or any other state security force to eject the violent groups or protect the physical integrity of the deputies. According to the complainant, these events occurred a few hours after President Maduro, speaking at an event for the National Constituent Assembly, made the following threat: “If Venezuela were engulfed by chaos and violence, if the Bolivarian revolution were destroyed, we would join the combat, we would never give up and what we might not be able to do with votes we would do with guns - we would liberate our country with guns”.
- The complainant affirms that the actions taken by GNB officers in physically transporting CNE materials into the parliament without prior authorization from its authorities violated the parliament’s autonomy; in addition, in striking and pushing deputies, they violated their parliamentary immunity. According to the complainant, the occupation of the National Assembly and the prevention of legislators, journalists and parliamentary officials from leaving the building violated those persons’ right to free transit and placed their physical integrity at risk, in flagrant violation of the human rights of the parliamentarians and other citizens held in the Legislative Palace.

*Considering* that on 1 May 2017, President Maduro announced that he would convene an Assembly to rewrite the Constitution, which prompted a new wave of street protests; that on 30 July 2017, despite mounting national and international pressure, voting for the Constituent Assembly took place; and that on 4 August 2017, the Constituent Assembly members were sworn in,

*Considering* also the following information with regard to the general restrictions placed on the work of the National Assembly and its members:

- Since August 2016 the President of Venezuela has deprived the National Assembly of funds, including salaries for its members and staff and monies needed to cover its running costs;
- The Constituent Assembly has taken over many of the premises belonging to the National Assembly, whose room to operate is therefore greatly diminished;
- By decision of 18 August 2017, the Constituent Assembly invested itself with legislative powers.

*Recalling* the persistent concerns which the complainant and others have expressed about the lack of independence of the Supreme Court; in this regard they pointed out, among other concerns, that three judges and 21 substitute judges, some of whom had close affinity with, if not direct ties to, the governing party, were elected hastily to the Court by the outgoing National Assembly less than one month after the elections of 6 December 2015 had eliminated the governing party's majority in the newly elected National Assembly, which then took office on 5 January 2016,

*Recalling* the long-standing efforts since 2013 to send a delegation of the Committee on the Human Rights of Parliamentarians to Venezuela, which have failed in the absence of clear authorization from the Government to welcome and work with the delegation; *recalling* that the IPU President, on the last day of the 136<sup>th</sup> IPU Assembly in Dhaka (5 April 2017), called for the speedy dispatch of a human rights mission and a high-level political mission to Venezuela, proposals for which he obtained tacit support in the room from Mr. Darío Vivas Velazco, member of the Venezuelan National Assembly and coordinator of the Venezuelan parliamentary group *Bloque de la Patria* in the Latin American Parliament; *considering* that since the 136<sup>th</sup> IPU Assembly, the IPU President and Secretary General have made numerous attempts to obtain the agreement of the Venezuelan executive to conduct these missions, but to no avail,

*Recalling* the official visit to Venezuela by the Secretary General in late July 2016, during which he met, among others, with the President of Venezuela, the Speaker of the National Assembly, the Ombudsman and parliamentarians from majority and opposition parties, and that his visit laid the groundwork for the organization of the planned mission by the Committee,

*Recalling* that from May 2016 to February 2017 efforts were made, with mediation by the Secretary General of the Union of South American Nations (UNASUR), the former Prime Minister of Spain and the former presidents of the Dominican Republic and Panama, and later by the Vatican, to bring the two political sides together, which led to official plenary meetings on 30 October 2016 and 11 and 12 November 2016 to decide on the issues for the political dialogue; and that, however, the dialogue stalled subsequently in light of disagreements about what had been concluded to date and how to proceed; efforts made in August and September 2017 to revive these talks failed,

1. *Is deeply concerned* about the unprecedented scale of repression of opposition members and of efforts to undermine the integrity and autonomy of the Parliament of Venezuela;
2. *Is shocked* at the widespread and serious reports of attacks on members of parliament, the direct participation or complicity therein of state security agents and government supporters, and their apparent impunity for these incidents; *calls on* the authorities to put an end to this pattern of abuse by ensuring that law enforcement officers and government supporters respect the law and that those responsible for violations are held to account;
3. *Is deeply concerned* about the reprisals taken against several parliamentarians after they spoke out abroad on the situation in Venezuela; *considers* such intimidation to be unacceptable; *urges* the authorities to investigate these incidents and to prevent them from recurring; *calls on* the authorities to return forthwith the passports and identity documents to the parliamentarians concerned and to ensure that the members of the official Venezuelan delegation to the 137<sup>th</sup> IPU Assembly can return to Venezuela without reprisals;

4. *Is alarmed* at the invasion and aggression that occurred on 5 July 2017 in the National Assembly, which left several parliamentarians seriously wounded, and the serious reports that government supporters were responsible and were able to act freely as state security agents stood by; *is also concerned* about the intrusion onto parliamentary premises on 27 June and the ill-treatment of several parliamentarians; *calls on* the authorities to do everything possible to fully investigate these extremely serious incidents and punish those responsible;
5. *Is deeply concerned* about the general restrictions placed on the National Assembly, which not only prevent it from carrying out its work but also demonstrate complete contempt for the institution of parliament itself; *is shocked* that the Constituent Assembly, rather than focus on redrafting the Constitution, is steadily replacing the duly elected National Assembly and considers itself competent to lift the parliamentary immunity of a member of the National Assembly; *urges* the relevant authorities to ensure that the National Assembly and its members can fully carry out their work by respecting its powers and allocating the necessary funding for its proper functioning;
6. *Is deeply concerned* about Mr. Caro's situation; *urges* the authorities to ensure that he receives adequate treatment in detention; *wishes* to receive official information on this matter and on the exact accusations against him and the facts underpinning them; *wishes also* to know more about the full details of the legal grounds and facts that underpin the accusations against Mr. Prieto;
7. *Is concerned* about the disbarment from public office of two parliamentarians in the absence of a final legal decision; *wishes* to receive a copy of the disbarment decision and of the official views on this matter;
8. *Deeply regrets* that the human rights mission to Venezuela has still not taken place; *remains* all the more convinced, given the rapidly deteriorating situation, that such a mission could help address the concerns at hand; *requests* therefore the Secretary General to explore the possibility of sending a mission even in the continued absence of government endorsement;
9. *Reaffirms* its stance that the issues in these cases are part of a larger political crisis in Venezuela which can only be solved through political dialogue; *calls once again on* both sides to act in good faith and to commit fully to restarting the political dialogue with the assistance of external mediation; *reaffirms* that the IPU stands ready to assist with these efforts; and *wishes* to receive further official information about how this assistance can best be provided;
10. *Requests* the Secretary General to convey this decision to the competent authorities, the complainants and any third party likely to be in a position to supply relevant information;
11. *Requests* the Committee to continue examining this case and to report back to it in due course.

## Cambodia

CMBD/27- Chan Cheng  
CMBD/48 - Mu Sochua (Ms.)  
CMBD/49 - Keo Phirum  
CMBD/50 - Ho Van  
CMBD/51 - Long Ry  
CMBD/52 - Nut Romdoul  
CMBD/53 - Men Sothavarin  
CMBD/54 - Real Khemarin  
CMBD/55 - Sok Hour Hong  
CMBD/56 - Kong Sophea  
CMBD/57 - Nhay Chamroeun  
CMBD/58 - Sam Rainsy  
CMBD/59 - Um Sam An  
CMBD/60 - Kem Sokha  
CMBD/61 - Thak Lany (Ms.)

***Decision adopted by consensus by the IPU Governing Council at its 201<sup>st</sup> session  
(St. Petersburg, 18 October 2017)<sup>2</sup>***

The Governing Council of the Inter-Parliamentary Union,

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

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

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

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

*Recalling* the complainants' claim that the cases under examination demonstrate that the ruling party is attempting to weaken, silence and exclude the opposition in the lead-up to the 2017 and 2018 local and national elections by various means, including: (i) acts of intimidation and pressure; (ii) physical violence against members of parliament; (iii) political and judicial harassment characterized by multiple groundless criminal prosecutions, unfair trials and court convictions, as well as charges kept dangling to maintain a permanent threat of arrest; (iv) exclusion from political participation and from entry into Cambodia of the former leader of the opposition; and (v) threats of suspension and dissolution of the CNRP and of a future ban on the political activities of its newly designated leadership pursuant to the recently passed amendments to the 1997 political party law,

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

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<sup>2</sup> The delegation of Cambodia expressed its reservations regarding the decision.

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

- The July 2014 political agreement put an end to the 2013 post-election crisis and established a mechanism for dialogue between the two main political parties represented in parliament, known as the “culture of dialogue”. The culture of dialogue was seen by both parties as crucial to ending the prevailing culture of violence. It opened more space for political dialogue within the parliamentary institution and allowed the parties to achieve progress on some issues of national interest between July 2014 and mid-2015. It failed, however, to address and resolve the cases at hand;
- In February 2015, the Committee conducted a “visit of last resort” to Cambodia, after extensive time had repeatedly been given to both parties to find negotiated solutions. The final report of the visit concluded that the parliamentarians had been, and continued to be, victims of serious violations of their fundamental rights. They were being prevented from effectively playing their role as parliamentarians and members of the opposition freely without fear of persecution;
- The National Assembly of Cambodia shared its official views in a letter dated 11 July 2016. It denied that any violations of human rights had been committed in the cases at hand and claimed that all opposition parliamentarians concerned were criminals who must be punished in accordance with the law; accordingly, this was a purely judicial matter for the Cambodian courts to decide and not a political matter that could be resolved through the culture of dialogue, as political dialogue could not replace or violate the law,

*Considering* the following developments that have occurred in the individual cases before the Committee since the 136<sup>th</sup> IPU Assembly and the information and allegations shared by both parties in that respect:

- The Court of Appeal has upheld a series of first-instance prison sentences against the opposition parliamentarians concerned. It upheld Mr. Sok Hour’s seven-year sentence on 29 June 2017, after a half-day hearing; it upheld Mr. Sam Rainsy’s 20-month sentence – for defamation and incitement in allegedly accusing the Prime Minister of being behind the murder of political analyst Kem Ley – on 13 August 2017; and it also upheld, on 29 August, an 18-month sentence against Senator Thak Lany, also for defamation: he allegedly accused Prime Minister Hun Sen, in a video clip, of being behind Kem Ley’s assassination.
- Mr. Kem Sokha, the current President of the CNRP, was arrested on 3 September 2017 at his home after midnight, and was transferred 200 km out of the capital to the remote Correctional Centre 3, where he allegedly remains detained in solitary confinement and under 24-hour video surveillance in his cell. He faces a prison sentence of 15 to 30 years for committing the crime of “conspiracy with a foreign power”, defined as “having a secret agreement with a foreign state or its agents with a view to fomenting hostilities or aggression against the Kingdom of Cambodia” (article 443 of the Criminal Code). The core evidence supporting the charges is a video of a public speech he gave to the diaspora in Australia in late 2013. The video has been online since its 2013 initial broadcast. The authorities have shared the full video, as well as a three-minute edited clip containing what they consider to be the most incriminating words said by Mr. Kem Sokha. The transcript of this clip states the following:
  - “In 1993, when I first became member of parliament, the Americans, the US government invited me as the first Khmer politician to visit the US in order to understand the democratization process, which they helped. I have visited there every year since 1993. In my last visit, they decided that I must step outside the politics for a while in order to have a change in Cambodia. Then, in 2002 I quit the politics, the political party to which I was affiliated and created an organization called ‘Cambodian Human Rights Centre’. Why did they need to create this centre? They said if we want to change the leadership we cannot fight the top. Before changing the top level, we need to uproot the lower one. We need to change the lower level first. It is a political strategy in democratic country. And the USA that has assisted me, they asked me to take the model from Yugoslavia, Serbia, where



they can change the dictator Milosevic. You know Milosevic had huge number of tanks. But they can change by using this strategy and they take this experience for me to implement in Cambodia. But, no one knew about this. However, since we are now reaching at this stage, today I must tell you about this strategy. We will have more to continue and we will succeed. I do not do anything at my own will. I have experts, university professors in Washington D.C., Montreal, Canada, hired by the Americans in order to advise me on the strategy to change the leaders. And, if I follow such a tactic and strategy, and still if we could not win, I do not know what else to do?";

- In a letter dated 28 September 2017, the Secretary General of the National Assembly confirmed that the video "shows the connection with a foreign country in the support, assistance, planning and intent to carry out a regime change, modelled from Yugoslavia and Serbia, to overthrow the democratically elected government of Cambodia". The Cambodian delegation to the 137<sup>th</sup> Assembly has confirmed that the words spoken by Mr. Kem Sokha show clearly that he had a plan to topple the government by force; that this is clear because he referred to the manner in which the regime change took place in Serbia and in the former Yugoslavia and to the overthrow of President Milošević; and that the plan to topple the government by force has been in motion for some time, at least since 2013, and continues to the present day; this was demonstrated, according to the delegation, by the very fact that the video was still available online, hence the need to arrest him preventively rather than wait for a coup to take place to arrest him in flagrante delicto; the delegation stated that only Mr. Kem Sokha is currently affected by the charges. The CNRP is still operating and working in Cambodia to this day. Only a few CNRP members have left the country and the delegation stated that it did not understand why they claimed to have received threats.
- The complainants alleged that the charges are groundless and politically motivated. They further alleged that parliamentary immunity and standards of due process have once again been violated in this case. They pointed out that in the incriminated 2013 video speech, Mr. Kem Sokha had only explained the role of the opposition and his plans to strengthen the Cambodian political opposition through means including training and advice (including from US experts and professors), public communication and media work and the organization of public gatherings and protests, in order to eventually win the elections. They emphasized that Mr. Kem Sokha and the CNRP had always advocated regime change through peaceful and constitutional means and that this was the very essence of the role and existence of an opposition party in any democratic country. The CNRP insisted that it had only acted within the framework of the Constitution and laws of Cambodia. Mr. Sam Rainsy called the move a "gross attempt to decapitate the opposition" prior to the elections. This allegation has been strongly echoed by many local and international actors. On 4 September 2017, the United Nations High Commissioner for Human Rights expressed serious concern that Mr. Kem Sokha had apparently been arrested without respect for his due process guarantees or his parliamentary immunity and that "numerous public statements by the Prime Minister and high-ranking officials about Mr. Kem Sokha's supposed guilt breach the presumption of innocence and the right to a fair trial".
- According to the Secretary General's letter of 28 September 2017 referenced above, the Standing Committee of the National Assembly met on 7 September to review Mr. Kem Sokha's arrest, including the detention order and reports submitted by the prosecution, and found it to be in compliance with Article 80 of the Constitution. It convened an extraordinary plenary session on 11 September 2017 to adopt a proposal to authorize the continuation of judicial proceedings in view of the gravity of the crime and the strong evidence presented (the video clip). No members of the opposition were present at the time of the vote. The Cambodian authorities claim that parliamentary immunity was not applicable because the crime was committed in flagrante delicto. The Cambodian delegation to the 137<sup>th</sup> Assembly explained that even if the video and the words of Mr. Kem Sokha dated back to 2013, the fact that they have remained available on line was constitutive of an in flagrante delicto offence as the crime had continued since 2013 for this reason; no reasons were provided to explain why Mr. Kem Sokha was suddenly arrested on 3 September in the middle of the night.

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

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

*Recalling* that, on 9 March 2017, a fast-tracked amendment to the 1997 political party law gave unprecedented power to the executive and judicial branches to suspend and dissolve political parties. It prohibited people with criminal court convictions (including for minor offences), such as Mr. Sam Rainsy, from holding senior positions in political parties and also prohibited parties from receiving foreign funding. Under the amended law, if convicted of a criminal offence, a party leader will be banned from undertaking any political activity for a period of five years and his/her political party will be dissolved pursuant to a Supreme Court order. The provisions of the amendments have been couched in vague terms and are considered squarely at odds with accepted restrictions on the right to freedom of association under international law, particularly the requirements of necessity and proportionality,

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

*Considering* that, according to the complainants, on 6 October 2017 the Minister of the Interior reportedly submitted an official request to the Supreme Court to dissolve the CNRP on the basis of the above-mentioned amendments; the CNRP fears that the Supreme Court will order the dissolution of the party in the coming weeks and will deprive the party members of their elective mandates conferred by the people at the national and local levels, as well as exclude them from campaigning and running freely and fairly in the general elections scheduled for 29 July 2018; the CNRP has stated that the National Assembly had started discussing amendments to several pieces of legislation that would allow for the redistribution of all national and local CNRP seats to other parties should it be dissolved; that media reported that the amendments had been adopted on 16 October

2017; that this move calls into question the integrity and legitimacy of the institution of parliament in Cambodia as it no longer acts in compliance with the Constitution of Cambodia, according to the CNRP; it also calls into question the possibility for free and fair elections to be held in Cambodia next year, still according to the CNRP; the Cambodian delegation to the 137<sup>th</sup> IPU Assembly stated that it had not been informed that such amendments were being discussed in the National Assembly,

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

- As a party to the International Covenant on Civil and Political Rights, Cambodia is bound to respect international human rights standards, including the fundamental rights to freedom of expression, freedom of assembly, freedom of association, equality before the law and to a fair trial conducted by an independent and impartial court and to participate in public affairs;
- Following the second cycle of the universal periodic review (UPR) of Cambodia, conducted by the United Nations Human Rights Council in 2014, the Cambodian authorities accepted, inter alia, recommendations to "promote a safe and favourable environment that allows individuals and groups to exercise the freedoms of expression, association and peaceful assembly and put an end to harassment, intimidation, arbitrary arrests and physical attacks, particularly in the context of peaceful demonstrations" and "take all necessary measures to guarantee the independence of justice without control or political interference" (Report of the Working Group on the UPR of Cambodia (A/HRC/26/16)),

*Also bearing in mind* the fundamental principle of "liberal multi-party democracy" enshrined in article 1 and chapter 3 of the Constitution of Cambodia, concerning the rights and obligations of Khmer citizens, in particular article 31, which states that "The Kingdom of Cambodia recognizes and respects human rights as stipulated in the United Nations Charter, the Universal Declaration of Human Rights and the covenants and conventions related to human rights [...]" as well as articles 80 and 104, which provide: (1) members of the National Assembly and the Senate shall enjoy parliamentary immunity; (2) no member of parliament shall be prosecuted, detained or arrested because of opinions expressed in the exercise of his/her duties; (3) a member of parliament may only be prosecuted, arrested or detained with the permission of parliament; (4) in cases of flagrante delicto offences, the competent authority shall immediately report to parliament and request permission; (5) such permission requires the lifting of parliamentary immunity by a two-thirds majority vote; and (6) parliament can request the suspension of the detention or prosecution of any member of parliament following a three-quarters majority vote,

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

1. *Thanks* both parties for sharing their views, supporting information and video materials;
2. *Expresses deep concern* at the further escalation of the human rights situation of opposition parliamentarians in Cambodia and at the lack of clear and convincing responses provided by the Cambodian authorities and by the Cambodian delegation to the 137<sup>th</sup> Assembly on the extremely serious concerns at hand;
3. *Concludes* that the videos of the 2013 speech of Mr. Kem Sokha contain nothing whatsoever that could constitute a criminal offence; *points out* that Mr. Kem Sokha at no point incited hatred or violence or uttered defamatory words in the incriminated videos and that he has emphasized that he aimed at bringing political change by winning the elections; *considers* therefore that his freedom of expression has clearly been violated in the present case; *is deeply shocked* that this video has been used as evidence of treason, for which he faces up to 30 years in prison, and that it currently justifies his prolonged pre-trial detention in solitary confinement; *is also alarmed* at the clear violation of his parliamentary immunity in the absence of any criminal offence and of any flagrante delicto;

4. *Exhorts* all Cambodian authorities to immediately release and drop the charges against Mr. Kem Sokha, to allow him to resume his duties as a parliamentarian and as president of the opposition without further delay and restriction;
5. *Requests* the Secretary General to take all appropriate steps to organize a visit by a Committee delegation to Cambodia to meet with Mr. Kem Sokha in prison, and *appeals* to the Parliament of Cambodia to facilitate this visit at the earliest convenience while urging the authorities to release him and clear him of the charges in the meantime;
6. *Urges* the Cambodian authorities immediately to stop violating the fundamental rights of opposition members of parliament and to take urgent measures to end their ongoing harassment, as well as provide all appropriate guarantees to ensure that those who have gone into exile are able to return safely, without delay, to resume their political activities within the CNRP and to campaign freely in the run-up to the fast-approaching 2018 elections, without fears of further arrests and reprisals or of the dissolution of the only opposition party in parliament;
7. *Recalls* that, pursuant to the principles and values defended by the IPU, as enshrined in the Universal Declaration of Democracy adopted by the IPU in September 1997, “a state of democracy ensures that the processes by which power is acceded to, wielded and alternated allow for free political competition and are the product of open, free and non-discriminatory participation by the people, exercised in accordance with the rule of law, in both letter and spirit”; and *expresses the hope* for increased tolerance and acceptance of the role of the political opposition in Cambodia; and *considers* that it is crucial for the CNRP to be able to stand in the upcoming elections;
8. *Requests* the Secretary General to convey this decision to the competent authorities, the complainants and any third party likely to be in a position to supply relevant information;
9. *Requests* the Committee to continue examining this case and to report back to it in due course.

## Maldives

MLD/16 - Mariya Didi* (Ms.)	MLD/50 - Abdulla Shahid*
MLD/28 - Ahmed Easa	MLD/51 - Rozeyna Adam* (Ms.)
MLD/29 - Eva Abdulla* (Ms.)	MLD/52 - Ibrahim Mohamed Solih
MLD/30 - Moosa Manik*	MLD/53 - Mohamed Nashiz
MLD/31 - Ibrahim Rasheed	MLD/54 - Ibrahim Shareef*
MLD/32 - Mohamed Shifaz	MLD/55 - Ahmed Mahloof*
MLD/33 - Imthiyaz Fahmy*	MLD/56 - Fayyaz Ismail*
MLD/34 - Mohamed Gasam	MLD/57 - Mohamed Rasheed Hussain*
MLD/35 - Ahmed Rasheed	MLD/58 - Ali Nizar*
MLD/36 - Mohamed Rasheed	MLD/59 - Mohamed Falah*
MLD/37 - Ali Riza	MLD/60 - Abdulla Riyaz*
MLD/39 - Ilyas Labeeb	MLD/61 - Ali Hussain*
MLD/40 - Rugiyya Mohamed (Ms.)	MLD/62 - Faris Maumoon*
MLD/41 - Mohamed Thoriq	MLD/63 - Ibrahim Didi*
MLD/42 - Mohamed Aslam*	MLD/64 - Qasim Ibrahim*
MLD/43 - Mohammed Rasheed*	MLD/65 - Mohamed Waheed Ibrahim*
MLD/44 - Ali Waheed	MLD/66 - Saud Hussain*
MLD/45 - Ahmed Sameer	MLD/67 - Mohamed Ameeth*
MLD/46 - Afrasheem Ali	MLD/68 - Abdul Latheef Mohamed*
MLD/48 - Ali Azim*	MLD/69 - Ahmed Abdul Kareem*
MLD/49 - Alhan Fahmy	MLD/70 - Hussein Areef*

***Decision adopted unanimously by the IPU Governing Council at its 201<sup>st</sup> session  
(St. Petersburg, 18 October 2017)***

The Governing Council of the Inter-Parliamentary Union,

*Referring* to the existing cases under file name MLD/16-61 and to the decision adopted at its 200<sup>th</sup> session (October 2016),

*Having before* it new cases under the file name MLD/62-70, which have been examined by the Committee on the Human Rights of Parliamentarians pursuant to the Procedure for the examination and treatment of complaints (Annex I of the Revised Rules and Practices),

*Considering* the information provided by MP Ahmed Nihan, PPM Parliamentary Group Leader and Majority Leader of the Parliament, along with two other members of the Maldivian delegation to the 137<sup>th</sup> IPU Assembly (October 2017) at the hearing held on 14 October 2017 with the Committee on the Human Rights of Parliamentarians; *considering* also the information presented at the meeting which took place in Geneva on 5 October 2017 between the IPU President and the Secretary General on the one hand, and a Maldivian delegation led by Mr. Nihan and comprising other members of the governing party, on the other,

*Considering* also the information regularly provided by the complainant,

*Referring* to the report on the mission conducted to Maldives from 10 to 12 October 2016 by the Committee on the Human Rights of Parliamentarians (CL/200/11(b)-R.2), following earlier missions in 2012 and 2013,

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\* (Re-)elected to parliament in the elections of March 2014.

*Recalling* that most of the above current and former members of the People's Majlis belong to the opposition Maldivian Democratic Party (MDP) and that the case before the Committee on the Human Rights of Parliamentarians was initiated in 2012 and included instances of alleged arbitrary arrest and detention, frivolous legal proceedings and acts of threat and violence, including murder in the case of Mr. Afrasheem Ali, a former member of the ruling Progressive Party of Maldives (PPM),

*Considering* the following information on file regarding events which have taken place since the beginning of March 2017:

- **Attempts to bring no-confidence motions**
  - On 24 March 2017, the leaders of four Maldivian political parties, namely the MDP, the PPM, the Jumhooree Party (JP) and the Adhaalath Party (AP), signed a coalition agreement; the opposition alliance, headed by the MDP, won 53 per cent of the seats in the local council elections of May 2017 while President Yameen's party won 27 per cent of the seats;
  - According to the complainant, on three occasions the opposition attempted to bring, with the support of 45 parliamentarians, hence a majority, a motion of no-confidence against the Speaker of Parliament in the belief that he was not acting impartially; the first no-confidence motion was submitted on 24 March 2017; the vote did not take place as members of the military reportedly forcibly removed 13 opposition parliamentarians from the parliamentary premises; according to the complainant, the Speaker narrowly maintained his position and the ruling party stepped up its intimidation campaign against opposition members; the opposition affirms that the second attempt was scheduled to take place on 24 July 2017, but that security forces prevented the MPs from entering parliament, some of whom decided therefore to scale the walls around the parliamentary premises and were subsequently forcibly removed; according to the authorities there was no parliamentary sitting scheduled that day due to a visit from a foreign dignitary and the celebration of Maldives independence day, and there was heightened security in the area; the complainant affirms that on 22 August 2017 the Maldives military locked down the nation's parliament in an effort to thwart the third attempt to bring a no-confidence vote against the Speaker; the authorities affirm that the allegation of "military intervention" is both erroneous and unwarranted and there had been neither an intervention nor a lockdown; according to the authorities, a no-confidence motion was never duly submitted as some of those who originally signed the motion withdrew their support and others had been bribed to sign it,
- **Alleged abusive revocation of parliamentary mandate**
  - According to the complainant, the Attorney General, in a bid to thwart the no-confidence vote, submitted a case to the Supreme Court on 11 July 2017 seeking a ruling that would strip several members of the People's Majlis of their parliamentary mandate, for no longer belonging to the party on whose ticket they were elected. The request to the Supreme Court came in the context of increased political tension, as ten of the 15 government MPs who signed the impeachment motion against the parliamentary speaker had left the ruling PPM party in anticipation of the Supreme Court's ruling, while three of them had previously been expelled from the party.
  - On 13 July 2017, the Supreme Court issued a ruling stating that lawmakers who resign or are expelled from the political party they represented at the time of their election, or who switch to another party (floor-crossing), must lose their parliamentary mandate. The ruling further stated that MPs lose their mandate once the Elections Commission informs Parliament of their change of status, and ordered state institutions to enforce the new rule with effect from 13 July. According to the complainant, the above-mentioned ruling is unconstitutional as it defies a number of existing laws, namely:
    - (i) Article 73 of the Constitution, which stipulates that an MP will be disqualified only if he is sentenced to more than a year in prison, has a decreed debt or becomes a member of the judiciary. Furthermore, MPs are protected by their parliamentary immunity which is strictly regulated by the law;

- (ii) Article 16 of the Political Parties Act, which states that, while an elected official can be expelled from a party on disciplinary grounds, they will not have to forfeit their seat;
- (iii) A 2012 Supreme Court ruling which allows floor-crossing, stating that if local councillors switch parties, they cannot be forced to forfeit their seats,
- The complainant also underlined that the Supreme Court's ruling contained a number of false references to justify its decision, such as Islamic legal principles on peace and security which require judges to consider Islamic Sharia law "when deciding matters on which the Constitution or the law is silent." Furthermore, the Chief Justice said that lawmakers crossing the floor undermined multi-party democracy and posed a threat to sovereignty and rule of law, citing "anti-defection amendments in the Indian Constitution and the right to revoke seats in the United States of America."
- As a result of the Supreme Court's ruling, since 13 July 2017, seven parliamentarians have lost their seats as the Elections Commission removed their names from the membership of the Progressive Party of Maldives at the request of the party.
- According to the parliamentary authorities, floor-crossing had led to serious malpractice and disenfranchisement of the electorate; the current Government had made numerous attempts at enacting legislation to bring this practice to an end, but selected opposition MPs continued to obstruct such a move; the Government had submitted a request to the Supreme Court for clarification of this practice, which had resulted in a ruling barring floor-crossing, pending the enactment of legislation to support it.
- **Parliamentarians who remain detained or have been convicted recently on charges of bribery in connection with attempts to bring a no-confidence motion**

*The situation of MP Faris Maumoon*

- MP Faris Maumoon was arrested on 18 July 2017 under a warrant issued by the Criminal Court authorizing a search of his residence and accusing him of involvement in bribing MPs ahead of the no-confidence vote, an allegation he strongly denied. He was later taken to the Dhoonidhoo detention centre. On 19 July 2017, the Criminal Court issued an indefinite remand for Mr. Maumoon until the conclusion of his trial. On 20 July 2017, he was moved to the Maafushi detention centre, which is designated for convicts. On 16 September 2017, it was reported that the Prosecutor General's office had revised the charge from accepting bribes to offering to bribe fellow parliamentarians to back the attempts to remove the Speaker. He was transferred to house arrest in October 2017.

*The situation of Mr. Qasim Ibrahim*

- Mr. Qasim Ibrahim, the leader of the Jumhooree Party, was first charged on 13 April 2017 for offering a bribe, attempting to communicate with a public official for the purpose of influencing the exercise of that person's official authority, and attempting to influence a voter by offering a benefit not authorized by law. Mr. Qasim's first trial was scheduled for 16 July 2017, but the hearing was cancelled as Mr. Qasim was urgently admitted to hospital. Mr. Qasim's lawyer then sent several requests to try to lift the travel ban and allow Mr. Qasim to travel abroad for treatment, which were all to no avail. Mr. Qasim's first hearing was held on 25 July 2017 and, according to his lawyer, he only had eight hours to appoint lawyers, which is a breach of Section 114(c) of the Criminal Procedure Code. Mr. Qasim's first hearing was followed by multiple hearings, none of which respected due process.
- On 24 August 2017, the Criminal Court of Male' sentenced Mr. Qasim in absentia to a prison term of three years, two months and twelve days. Mr. Qasim was sentenced in absentia as he had collapsed on 24 August 2017 inside the premises of the Court and was admitted to the intensive care unit of the Indira Gandhi Memorial Hospital. The complainant stated that Mr. Qasim was served a summons by the Criminal Court on 24 August 2017 to attend a hearing scheduled on the same day at 11 p.m. The summons stated that the order of the day was to reach a verdict on the bribery charge held against Mr. Qasim and that if he failed to attend, the trial would continue in his absence. The complainant highlighted that Mr. Qasim's trial did not respect due process and contained

a number of procedural irregularities, including the fact that it was the first trial to be held in absentia since the entry into force of the 2008 Constitution. In addition, the complainant said that the Criminal Court refused to issue a timetable for the hearings despite Mr. Qasim's lawyers' multiple requests, and did not provide enough time for the defence to prepare its closing arguments. Upon receiving the summons, Mr. Qasim sent a letter to the Criminal Court explaining his condition together with a medical certificate indicating that he required treatment that was unavailable in Maldives and that his life would be in danger if he did not receive urgent medical care abroad. According to Mr. Qasim's lawyer, in its verdict convicting Mr. Qasim the Court also ordered the relevant State authorities to facilitate his travel abroad for treatment, thus lifting the travel ban. Mr. Qasim was finally allowed to seek medical assistance outside Maldives at the beginning of September 2017. He subsequently left for Singapore after the Maldives Correctional Service authorized 10 days of medical leave. The authorities claim that Mr. Qasim is not respecting the terms of his leave and is making excuses to avoid coming back to Maldives to serve his sentence, which the complainant denies; according to the authorities, the cases of Mr. Qasim and Mr. Maumoon also have to be seen in the context of efforts by selected opposition MPs to resort to bribery in their attempt to impeach the Speaker of Parliament.

- **Trial of Mr. Ibrahim Didi on terrorism charges**

- Mr. Ibrahim Didi, member of the MDP and a retired brigadier-general, is on trial for renewed terrorism charges. In 2015, the Prosecutor General withdrew the terrorism-related charges against Mr. Didi. However, following the no-confidence motion, Mr. Didi was charged for a second time on the same grounds. Mr. Didi's trial started on 20 July 2017 and is ongoing. He was granted 10 days to obtain legal assistance.

*Considering* that, according to the opposition, the entire judiciary, including the Supreme Court, and all the independent institutions created by the Constitution, such as the Elections Commission, Anti-Corruption Commission and Judicial Services Commission, have lost their freedom to act according to the law and have become tools in the hands of the President to stifle and suppress all opposition; according to the authorities, however, there is full respect for the rule of law and the separation of powers in Maldives,

*Considering* that, as of 7 October 2017, 33 different legal cases are pending against 21 opposition parliamentarians, on charges including "criminal trespass", "divulging confidential information", "terrorism" and "assault of an officer",

*Recalling* that Committee missions have highlighted, among other issues:

- Heightened political polarisation in and outside parliament and the absence of meaningful dialogue between majority and opposition;
- The long-standing phenomenon of death threats and other forms of intimidation of parliamentarians;
- The use of excessive force by law enforcement officers against parliamentarians;
- Concerns about undue restrictions of the rights to freedom of expression and freedom of assembly on the basis of the Protection of Reputation and Good Name and Freedom of Expression Act and the amended Peaceful Assembly Act;
- Concerns about amendments to the Standing Orders of Parliament which have the effect of limiting the opposition's work in parliament, and about allegations of strong bias against the opposition on the part of the Speaker, which he fully denies;
- The need to promote parliamentary ethics and the proper use of parliamentary procedure,

*Considering* that the parliamentary authorities believe that there is significant misinformation about the situation in Maldives and the allegations which the opposition have provided to the Committee; *considering* also that the PPM Parliamentary Group Leader and Majority Leader of the Parliament stated to the Committee that the authorities would be glad to receive an IPU delegation



to discuss and clarify outstanding concerns and questions in the cases at hand; *considering* also that the Speaker of Parliament, IPU President and IPU Secretary General met in St. Petersburg on 15 October 2017 and agreed that such a mission should also include a political dimension,

*Considering* that the representatives of the main opposition parties on the IPU Committee of the Maldives Parliament wrote letters to the IPU on 7 and 8 October 2017 stating that the Committee had not held a single meeting since 2014 and that the composition of the Maldivian delegations was now decided solely by the Speaker, without consulting the parties, thereby preventing them from deciding on their own delegates to the IPU; according to Mr. Nihan, the Leader of the MDP Parliamentary Group, Mr. Ibrahim Solih, had been included in the delegation but was prevented from coming owing to an urgent personal commitment; by letter of 7 October 2017, Mr. Solih nevertheless informed the IPU that he could not be party to a delegation handpicked by the Speaker in breach of the standard norms of the parliament and the national IPU committee,

*Considering* that presidential and parliamentary elections are due to take place in Maldives in 2018 and 2019 respectively,

1. *Thanks* the parliamentary authorities for their cooperation and the information they provided; *regrets* however that it was not possible to meet with a member of the opposition to hear their views; *is concerned* in this regard that the opposition representatives on the national IPU committee affirm that they have no say in its decisions; *wishes* to receive the official views on this matter;
2. *Is deeply concerned* that a sizeable part of the opposition in parliament has been subject to legal action; *fears* that this state of affairs, together with ongoing reports about reduced space for freedom of expression and assembly and reduced opportunities for the opposition to meaningfully contribute to the work of parliament lend weight to the allegation that all this is part of a deliberate attempt to silence the opposition;
3. *Is deeply concerned* about the increased militarization of the parliamentary premises; *is upset* that parliamentarians were forcibly prevented from entering the parliament on 24 July 2017 and were reportedly manhandled; *considers* that they should at all times be able to access the parliament and thus that the charge of "obstruction of police duty" against the 12 MPs has no place; *calls* on the authorities to drop these charges forthwith;
4. *Is deeply concerned* also that the mandate of seven parliamentarians was revoked in the absence of a sound legal basis under Maldivian law; *is concerned* that the Election Commission went ahead with revoking parliamentary mandates even though the challenge to the Supreme Court ruling at the heart of the decision on revocation was still under consideration; *fears* therefore that the revocation was politically inspired as it had the immediate effect of limiting the likelihood of the successful passage of the no-confidence motion;
5. *Is concerned* about the specific allegations that the trial against Mr. Qasim did not respect due process and about the alleged circumstances in which the verdict was delivered; *wishes* to receive the official views on these matters; *also wishes* to receive a copy of the verdict so as to understand how the court concluded that he was guilty of attempted bribery; *wishes* to receive information from the complainant about when Mr. Qasim intends to return to Maldives in compliance with the travel authorization;
6. *Wishes* to receive information about the precise facts underpinning the charges against Mr. Faris Maumoon; *wishes* also to receive such details on the other parliamentarians who are facing other types of charges, including Mr. Ibrahim Didi;
7. *Welcomes* the invitation by the parliamentary authorities for the IPU to conduct a mission to Maldives to discuss its current concerns and outstanding questions on all the cases, including those not highlighted specifically in this decision, with all parties concerned; *requests* the Secretary General to arrange for this mission to take place in the very near future;

8. *Reaffirms* its stance that the issues in these cases are part of a larger political crisis in Maldives which can only be solved through political dialogue; *calls once again* on all sides to act in good faith and to commit fully to restarting the political dialogue; *reaffirms* that the IPU stands ready to assist with these efforts, including by offering its good offices and technical assistance to help ensure that the legal framework is in place to provide a level playing-field allowing all political parties to fully participate in the next elections;
9. *Requests* the Secretary General to convey this decision to the competent authorities, the complainants and any third party likely to be in a position to supply relevant information;
10. *Requests* the Committee to continue examining this case and to report back to it in due course.

## Mongolia

MON/01 - Zorig Sanjasuuren

***Decision adopted unanimously by the IPU Governing Council at its 201<sup>st</sup> session  
(St. Petersburg, 18 October 2017)***

The Governing Council of the Inter-Parliamentary Union,

*Referring* to the case of Mr. Zorig Sanjasuuren, a member of the State Great Hural of Mongolia, and acting Minister of Infrastructure Development – regarded as the father of the democracy movement in Mongolia in the 1990s – who was assassinated on 2 October 1998, and to the decision it adopted at its 200<sup>th</sup> session (Dhaka, April 2017),

*Referring* to the letter of 17 May 2017 of the Vice-Chairman of the State Great Hural and to the information shared by the complainants and by third parties,

*Taking into account* that a delegation of the Committee on the Human Rights of Parliamentarians, led by Ms. Fawzia Koofi, President of the Committee, and by Mr. Ali Alaradi, Committee member, conducted a mission to Mongolia from 11 to 13 September 2017,

*Taking into account* that over the 19 years since the initial submission of the case, three Committee missions have taken place and the IPU has adopted over 50 decisions on it,

*Recalling* that, following the 2015 Committee visit to Mongolia, the IPU Governing Council called on the Mongolian authorities to do their utmost to ensure that justice was done and seen to be done in resolving the case of Mr. Zorig's assassination, and to give urgent consideration to the following recommendations:

- Urgently declassify the case and increase transparency in the investigation, including by engaging in regular communication with the IPU and Mr. Zorig's relatives, but also by sharing public information with the Mongolian people on the results and challenges of the investigation, in order to restore confidence in the investigative efforts and demonstrate that the case has been handled in an impartial, independent and effective manner;
- Limit the role of the central intelligence agency to a minimum and ensure strict compliance with standards of due process, as well as accountability and redress for abuses committed in the course of the investigation; place the investigation under the full and effective control of the General Prosecutor's office; seek specialized assistance in the investigation of contract killings and include experienced foreign criminal experts in the investigation (as part of the existing working group or of a new independent investigative mechanism); focus on the examination of witness statements, public records and open-source materials, rather than exclusively investing in forensic analysis;
- Grant access to the investigative files to Mr. Zorig's relatives, who are party to the legal procedure, and inform them regularly of new developments in the investigation;
- Use existing institutional checks and balances to ensure that all authorities concerned from the legislative, executive and judicial branches of power deliver appropriate results and are held accountable if and when failing to fulfil their constitutional and legal duties;
- Keep the IPU regularly apprised of: (i) recent investigative activities, including their outcome and outstanding challenges; (ii) the assessment and recommendations made by the special oversight subcommittee of the State Great Hural; and (iii) progress made in implementing the recommendations arising out of the mission report,

*Recalling* that the following developments have taken place following the 2015 visit:

- Ms. Banzragch Bulgan, Mr. Zorig's widow, was arrested on 13 November 2015 and kept in detention for months by the central intelligence agency, in conditions amounting to torture under international human rights standards, as confirmed by a parliamentary delegation which visited her in detention; Ms. Bulgan was eventually released and the parliamentary

authorities indicated at that time that she had been considered a suspect in the case but that, "her involvement in the crime has not been established and thus the case has been terminated". Ms. Bulgan has, however, remained prohibited from travelling abroad since her release and has been subjected to constant surveillance;

- Three other suspects were arrested and allegedly confessed to committing the murder of Mr. Zorig. They were sentenced to 24 to 25 years' imprisonment on 27 December 2016. On 14 March 2017, the Appeal Court upheld the first-instance verdict;
- The first-instance and appeal trials were held behind closed doors on the grounds that the case was classified as top secret. Repeated requests made by the defendants' lawyers and by Mr. Zorig's family for declassification of the case and for a public trial were systematically rejected by the court. The lawyers for the accused and for the Zorig family were allowed to attend the proceedings, but were barred from sharing any information relating thereto. For the same reason, no copy of the verdict or details of the proceedings were made available. Mr. Zorig's family issued a public statement questioning the legitimacy of the proceedings and court decisions and concluding that, in its view, justice has not been done and the case should continue. The trials were also considered by reliable third parties and the Mongolian media to be a smokescreen designed to conceal the real culprit(s)/mastermind(s) of the assassination,

*Recalling* that the parliamentary authorities have repeatedly expressed concern about the manner in which the case was handled and have stated that they were not able to obtain information on the proceedings and could not intervene due to the separation of powers and the classification of the case, but have welcomed a new mission by the Committee to raise the concerns directly with the relevant judicial and executive authorities,

*Considering* the following preliminary observations and recommendations by the delegation that conducted the recent mission to Mongolia, to which the Committee fully subscribed while awaiting the full mission report:

- **Preliminary observations**

- The delegation regretted that it was not allowed to meet the convicts in prison or the members of the Supreme Court; it was nonetheless pleased that it was able to hold constructive discussions with all other relevant parliamentary, executive and judicial authorities, including the Chairman and Vice Chairman of the State Great Hural, the newly elected President of Mongolia, Mr. Zorig's family members and those of the three convicted persons, human rights organizations and diplomats;
- The delegation confirmed prior allegations and concerns that the trial and conviction of the three individuals for the assassination of Mr. Zorig violated international fair-trial standards and undermined the legitimacy and integrity of the investigative and judicial process; the delegation based this preliminary conclusion on the findings below:
  - (i) None of the Governing Council's or Committee's prior recommendations have been implemented by the Mongolian authorities since the Committee's 2015 mission;
  - (ii) The trial again took place behind closed doors. Requests for public hearings made by the defendants and the civil party's lawyers were denied on the grounds that the case was classified. After a very brief hearing, the Supreme Court issued a final verdict on 4 August 2017. The lengthy sentences against the three suspects were confirmed and only reduced by a couple of years. The IPU was not informed of this development in advance of the mission;
  - (iii) Most of the evidence has remained classified, having been collected by intelligence officers during undercover operations. Such secret evidence has never been made accessible to the prosecutor's office or to defence counsel at any stage of the proceedings. It is not subject to cross-examination or questioning of any kind. The delegation was told that such evidence was provided exclusively to the Supreme Court judges, an affirmation that it was not able to verify, since the Supreme Court refused to meet with the delegation and its decision of 4 August 2017 has been kept secret;

- (iv) The final verdict has not been made available to anyone. The delegation has not been able to obtain a copy of it or any information on the grounds underpinning it (or on those underpinning the lower courts' prior decisions). At the time of the mission, none of the parties had received the court decision, despite over one month having passed since the verdict;
  - (v) Although the sentences have now become final under Mongolian law, it appears that the three convicted persons may be able to lodge one final appeal with the President of the Supreme Court within 30 days of receiving the final court decision. The delegation was unable, however, to find out when the Court would make its verdict available. It also observed with deep concern that the judges who ruled on the case included the President of the Supreme Court, a very unusual situation which, in the delegation's view, will create a conflict of interest when he is now called upon to decide on the convicted persons' last avenue of appeal;
  - (vi) Before and during the mission, the delegation received recurrent and credible reports about the use of torture and corruption to divert the course of justice in this case. Such reports were not seriously addressed by the judicial authorities through independent, credible and transparent procedures. The delegation was simply told, and asked to believe, that there was no truth to those reports;
  - (vii) The delegation came to the preliminary conclusion that the three convicted persons were most likely pressured by the intelligence services to make false confessions about their involvement, and the involvement of others, in the commission and organization of the crime. Given that this concern has been raised repeatedly about investigations of suspects and witnesses over the past 19 years, the delegation cannot rule out the possibility that others have suffered the same fate and that innocent people have been framed for Mr. Zorig's murder;
  - (viii) Given the above concerns, there is a high probability that much of what is constantly referred to as secret evidence was actually fabricated over the years by the intelligence services. Unless the case file is fully declassified, intelligence and law enforcement officers who may have committed serious abuses of power will be able to continue doing so with full impunity, in violation of the fundamental human rights of Mongolian citizens. This will prevent the truth about Mr. Zorig's assassination from ever being known;
  - (ix) The delegation was shocked by the level of intimidation and pressure exercised against all persons taking an interest in the case, whether directly (parties to the proceedings and their legal counsels, and possibly judicial staff and investigators) or indirectly (parliamentarians, politicians, civil society actors or ordinary citizens publicly voicing concerns about how the case has been handled or simply sharing IPU decisions with the Mongolian people). The delegation noted that some of its interlocutors withheld information out of fear of reprisals. Lawyers were not even allowed to share information with their own clients on the proceedings or their defence strategy. Parties to the proceedings stated clearly to the delegation that, owing to the classified status of the case, they had been forced to sign a non-disclosure agreement and thus could not share any information on the criminal file, the trial proceedings or the grounds for court decisions. They would be subject, should they do so, to being charged, arrested and convicted for disclosing State secrets to foreign nationals,
- The delegation is extremely worried that the persistent secrecy and the political resistance to declassifying the case are signs that the investigations and recent proceedings are not actually aimed at uncovering the truth, but at covering for the real mastermind(s) and organizer(s) of the assassination. In that context, it is of particular concern that the 25-year statute of limitations (2023) is approaching;
  - This raises still more serious concerns about the investigation that has now been allegedly opened to identify the organizer(s) and mastermind(s). The judicial investigative working group under the authority of the Prosecutor General's Office has been discharged from the case and the intelligence agency given exclusive responsibility for

the investigation. The delegation could not fail to notice that none of the persons it met appeared to consider it likely that the process would lead to anything or achieve true justice. There were fears that it would likely be used to exert pressure and frame people to other ends;

- Justice must be provided to the family of Mr. Zorig, as well as to the three persons convicted. A fair, open and just trial before an independent and impartial court is now the only means to achieve true justice. It must take place without further delay to avoid a serious miscarriage of justice being perpetrated for political purposes. Given the profound distrust that has developed over the past few years, the delegation is further convinced that this is a crucial test of the ability of the Mongolian judiciary to demonstrate that it operates under to the rule of law and has not become hostage to political and commercial interests.
- **Preliminary recommendations**
- The President of Mongolia, the Chairman of the State Great Hural and the Prime Minister should put an end to the persistent secrecy and order the immediate and full declassification of the case pursuant to the State Secret Law, which grants them this power as members of the National Security Council. If the relevant authorities have nothing to hide, as they claim, the case should at last be opened up for the sake of justice and fairness, and to honour Mr. Zorig's memory and the dignity of his family;
- The judiciary should demonstrate its independence, impartiality and respect for the rights of the defence by ordering without further delay a public retrial of the three convicted persons in the presence of domestic and international observers, to remedy all existing serious flaws;
- To avoid a serious miscarriage of justice, the three convicted persons should be released and presumed innocent until a retrial has been completed in a fair, just and transparent manner; until their release, the three convicted persons should benefit from ordinary conditions of detention with appropriate medical care and unrestricted access to their families and lawyers in prison;
- Urgent measures should be taken to end all ongoing pressures and intimidation against the parties to the case, and all issues related to the coercion, torture and pressuring of witnesses and suspects should be urgently addressed through independent and impartial investigation procedures;
- Ms. Bulgan and all other persons who were detained as suspects and subsequently discharged due to lack of evidence should be presumed innocent and their fundamental rights fully respected. They should be allowed to move freely around Mongolia and to travel abroad without restrictions, unless formally charged by a court of law on the basis of solid evidence;
- The separate investigation opened to identify the organizer(s) and mastermind(s) of the assassination should be immediately transferred from the National Intelligence Agency to the Prosecutor's Office; it should be closely supervised to ensure that all incriminatory and exculpatory evidence is taken into account and that the investigative methods used by law enforcement officials are in strict compliance with human rights standards and the rule of law;
- The State Great Hural should exercise strong parliamentary oversight, while respecting the separation of powers, to ensure that justice is done, and seen to be done, in the present case. It should consider urgently re-establishing an ad hoc parliamentary committee with a clear mandate to that end, granting it full access to all court documents and classified evidence so that a comprehensive assessment can be conducted. The IPU remains available, upon request, to facilitate technical assistance on ways to strengthen parliamentary oversight,

1. *Thanks* the Mongolian parliamentary authorities for their cooperation during the recent mission by the Committee to Mongolia while *deeply regretting* that the delegation was not allowed to meet with the detainees or with the members of the Supreme Court;
2. *Thanks* the mission delegation for the work undertaken; *takes note* of the preliminary observations and recommendations on the mission and *eagerly awaits* the final mission report at the next IPU Assembly (March 2018);
3. *Deplores* that the authorities responsible for the investigation and judicial proceedings appear to continue to favour methods involving torture, intimidation, secret evidence and trials over transparent proceedings that respect the right to a fair trial; *also deplores* that the case continues to be used as a political bargaining chip by all political parties;
4. *Renews its previous call for* immediate declassification of the case *and urges* the Chairman of the State Great Hural, the President and the Prime Minister to take action to that end without further delay so as to ensure respect for the right to a fair trial in compliance with the Constitution of Mongolia and international human rights standards;
5. *Exhorts* the Supreme Court to order a public retrial in the presence of domestic and international observers, including an IPU observer, to avoid a serious miscarriage of justice; *calls* for the urgent release of the three convicted persons until a retrial has been completed in a fair, just and transparent manner; *further calls* for the immediate lifting of all restrictions on the freedom of movement of persons who are not formally charged by a court as suspects in the case;
6. *Appeals* to the State Great Hural to resume its oversight work on the case by urgently re-establishing an ad hoc parliamentary committee to that end and giving it a clear mandate to adequately review all issues of concern and to recommend effective remedies; *recalls* that parliamentary oversight is a primary safeguard against abuse of power and corruption, and that it helps to ensure that government policies and actions deliver on commitments made to the people they serve; *further reaffirms* the availability of the IPU to provide technical assistance to the Parliament of Mongolia;
7. *Wishes* to be kept apprised of new developments related to the case by the parliamentary and other relevant authorities;
8. *Requests* the Secretary General to convey this decision to the relevant authorities, the complainant and any third party likely to be in a position to supply relevant information;
9. *Requests* the Committee to continue examining this case and to report back in due course.

## Philippines

PHI/08 - Leila de Lima

***Decision adopted unanimously by the IPU Governing Council at its 201<sup>st</sup> session  
(St. Petersburg, 18 October 2017)***

The Governing Council of the Inter-Parliamentary Union,

*Referring* to the case of Senator de Lima and to the decision it adopted at its 197<sup>th</sup> session (April 2017),

*Taking into account* the report (CL/201/11(b)-R.1) of the Committee delegation which, at the invitation of the Philippines parliamentary authorities, went to the Philippines (22 – 24 May 2017) to gather first-hand information on Senator de Lima's situation from the parliamentary, government and judicial authorities, Senator de Lima herself, her lawyers and staff as well as third parties,

*Taking into account* the information regularly provided by the complainants since then,

*Recalling* the following information on file:

- Senator Leila de Lima served as Chairperson of the Commission on Human Rights of the Philippines from May 2008 until June 2010. In that capacity she led a series of investigations into a number of alleged extrajudicial killings linked to the so-called Davao Death Squad (DDS) in Davao City, where Mr. Duterte had long been mayor, and concluded that Mr. Duterte, now President of the Philippines, was behind the DDS;
- In 2010, Ms. de Lima was appointed Secretary of Justice. She resigned from this position in October 2015 to focus on her campaign to gain a seat in the Senate in the elections of May 2016, in which she was successful. In August 2016, as Chair of the Senate Committee on Justice and Human Rights, Senator de Lima initiated an inquiry into the killings of thousands of alleged drug users and drug dealers alleged to have taken place since President Duterte took office in June 2016;
- Senator de Lima was arrested and detained on 24 February 2017 in a case before Regional Criminal Court (RTC) Branch 204, in which she faces, as in two other cases before RTC Branches 205 and 206, criminal proceedings on the basis of accusations that she had received drug money to finance her senatorial campaign. The accusations against her were brought in the wake of an inquiry by the House of Representatives into drug trading in New Bilibid Prison and Senator de Lima's responsibility in that regard when she was Secretary of Justice. The House inquiry was launched one week after she initiated her inquiry in the Senate into the extrajudicial killings;
- Senator de Lima has been subject to a public campaign of vilification by the highest State authorities portraying her as an "immoral woman" and as guilty, even though a trial has yet to commence. On 7 November 2016, Senator de Lima filed a petition for writ of habeas data against President Duterte in the Supreme Court, with the request that the Court order President Duterte and any of his representatives to stop seeking details about her personal life outside the realm of legitimate public concern and making public statements that malign her as a woman and degrade her dignity as a human being, sexually discriminate against her, describe or publicize her alleged sexual conduct, constitute psychological violence against her and otherwise violate her rights or are contrary to law, good morals, good customs, public policy and/or the public interest,

*Considering* the following developments which have taken place since the mission:

- On 10 October 2017, the Supreme Court, by 9 votes in favour and 6 against, dismissed Senator de Lima's petition to nullify her arrest in the case before RTC Branch 204; Senator de Lima has filed a motion for reconsideration of this decision;



- RTC Branch 205 issued a non-bailable arrest warrant on 19 July 2017. Senator de Lima filed a motion for reconsideration which was denied; subsequent motions to quash submitted to RTC Branch 205 have likewise been dismissed; the arraignment is set for 24 November 2017; unless a temporary restraining order or preliminary injunction is issued, the proceedings, including trial, are expected to take place after the arraignment. The case before RTC Branch 206 is still on hold;
- On 29 May 2017, members of the minority bloc in the Senate filed a resolution expressing support for the granting of occasional furlough as requested by Senator de Lima. Another attempt, which also failed for lack of a majority, was made at the beginning of September 2017;
- The complainants reported that on 12 July 2017, Senate President Aquilino Pimentel III visited Senator de Lima. He committed to support any request for furlough, subject to court approval, provided that the Senator specifies which pre-scheduled sessions of the Senate and select committees she wishes to attend;
- The Supreme Court has not yet pronounced on the request for occasional furlough; Senator de Lima's lawyers intend to bring up this matter in the motion for reconsideration;
- The complainants affirm that the chief legal officer of the Bureau of Corrections, Mr. Alvin Herra Lim, as well as a memorandum from the Bureau of Corrections, clearly state that those from among the so-called "Bilibid 19" convicts who testified against Senator de Lima have benefited from privileged treatment since giving their testimonies;
- Although Senator de Lima remains very politically active from detention and receives newspapers, journals and books; she has no access to internet, TV or radio nor to an air-conditioning unit, despite a doctor's order - Senator de Lima has written a letter to the chief of the Philippine National Police in this regard;

*Considering* that, at the conclusion of their country visit, on 20 July 2017 the four members of the European Parliament (and of its Subcommittee on Human Rights) "called on the authorities of the Philippines to guarantee a fair trial for the senator and allow her to fulfil her duties as senator, including voting in the Senate."

*Considering* that in their joint statement of 18 August 2016, the UN Special Rapporteur on summary executions and the UN Special Rapporteur on the right to health called for drug trafficking offences to be "judged in a court of law, not by gunmen on the streets" and called on the Philippines authorities to adopt with immediate effect the necessary measures to protect all persons from targeted killings and extrajudicial executions; the UN Special Rapporteur on the right to health said that drug dependency should be "treated as a public health issue" and advocated "justice systems that decriminalize drug consumption and possession for personal use as a means to improve health outcomes."

*Considering* that the European Parliament, in its resolution of 16 March 2017 on "The Philippines – the case of Senator Leila M. De Lima", strongly condemns the high number of extrajudicial killings by the armed forces and vigilante groups related to the anti-drug campaign; expresses its condolences to the families of the victims; expresses grave concern over credible reports to the effect that the Philippines Police Force is falsifying evidence to justify extrajudicial killings, and that overwhelmingly the urban poor are those being targeted; calls on the authorities of the Philippines to immediately carry out impartial and meaningful investigations into these extrajudicial killings and to prosecute and bring to justice all perpetrators; and calls on the EU to support such investigations and on the authorities of the Philippines to adopt all necessary measures to prevent further killings,

*Considering* that the Philippines Government has rejected several recommendations by the UN Human Rights Council to investigate alleged extrajudicial killings resulting from the war on drugs, stating that it has sufficiently explained that deaths which occurred in the course of the implementation of the anti-illegal drugs campaign are not extrajudicial killings; that the government accepted only 103 out of the 257 recommendations made during the 36<sup>th</sup> session of the Council's Universal Periodic Review (UPR) of the Philippine human rights situation in May 2017, while taking note of the remaining 154 proposals. Aside from those calling for an independent investigation of alleged extrajudicial killings, the

Government also denied a request to allow the UN Special Rapporteur on extrajudicial, summary or arbitrary executions to conduct an official visit to the country,

*Considering* that the UN High Commissioner for Human Rights, in his opening speech on 11 September 2017 to the 36<sup>th</sup> session of the UN Human Rights Council stated: "I continue to be gravely concerned by the President's open support for a shoot-to-kill policy regarding suspects, as well as by the apparent absence of credible investigations into reports of thousands of extrajudicial killings, and the failure to prosecute any perpetrator,"

*Considering* also that on 25 September 2017, 16 of the country's 23 senators introduced draft Senate resolution 516 urging the administration of President Rodrigo Duterte to "undertake the necessary steps to stop the spate of killings, especially of our children." The resolution also called for a Senate investigation into the "institutional reasons, if any, that give rise to such killings" and affirmed: "Due to the alarming spike in the number of children recently killed in blatant violation of their rights guaranteed by the Constitution, Philippine laws and international treaties, there is an urgent need to conduct an investigation of these senseless killings,"

*Considering* also that, amid the escalation of conflict in Mindanao and clashes in Marawi City, involving the Maute Group, President Duterte placed Mindanao and its nearby islands under martial law on 23 May 2017; that the 1987 Constitution provides for martial law for a maximum of 60 days without congressional approval; that on 22 July 2017, the two houses of Congress granted President Duterte's request to extend martial law in the southern Philippines until the end of 2017; and that President Duterte has said that he might extend martial law to the entire country if necessary, to "protect the people,"

*Considering finally* that, after threats by the House of Representatives to reduce the budget for the Commission on Human Rights for 2018 to a mere P1,000 (equivalent to 20 USD) in connection with its extensive investigation of reports of extrajudicial killings, it was finally decided to restore the Commission's previous budget, although the allocated sum did not match the increased amount that the Commission had asked for to be able to fully investigate the multiple reports of extrajudicial killings,

1. *Thanks* the Philippines authorities, in particular the parliamentary authorities, for receiving the on-site mission and for facilitating the fulfilment of its mandate, including the visit to Senator de Lima in detention;
2. *Fully endorses* the mission's findings and recommendations;
3. *Calls on* the relevant authorities to release Senator de Lima immediately and to seriously consider abandoning the legal proceedings should serious evidence not rapidly be forthcoming; *underscores* in this regard that the mission report amply shows that the steps taken against Senator de Lima came in response to her vocal opposition to President Duterte's war on drugs, including her denunciation of his alleged responsibility for the extrajudicial killings, and that there is no evidence to justify the criminal cases against her;
4. *Regrets* therefore that the Supreme Court did not see fit to nullify her arrest in the case pending before RTC Branch 204; *trusts* that the Court will give full consideration to the arguments presented by Senator de Lima and her lawyers in her motion for reconsideration; *wishes* to be kept informed in this regard;
5. *Decides* to send a trial observer to monitor and report on respect for fair trial standards in the case before RTC Branch 205, should the trial proceed;
6. *Is shocked* at the public campaign of vilification by the highest state authorities against Senator de Lima portraying her as an "immoral woman" and as guilty, even though a trial has yet to commence; *regrets* that the Supreme Court has still to rule on this matter, thereby missing an important opportunity to end and condemn the public degrading treatment to which she has been subjected as a woman parliamentarian; *calls on* the Supreme Court to rule on this matter as quickly as possible;

7. *Considers* that the Senate has a special responsibility to help ensure that its colleagues participate in its deliberations and to speak out when they face reprisals for their work; *regrets* therefore that the Senate has not been able to take a firm stance in favour of Senator de Lima's direct participation in the most important work of the Senate; *sincerely hopes* that the Senate, under the leadership of its President, will finally be able to act in solidarity with its colleague;
8. *Sincerely hopes* that, failing her immediate release, the Supreme Court will soon grant her occasional furlough; *also hopes* that the relevant authorities will swiftly enable her to access internet, TV and radio, as it would greatly facilitate her parliamentary work; *trusts* that the authorities will also provide her with an air-conditioning unit, as per her doctor's order; *wishes* to be kept informed in this regard;
9. *Requests* the Secretary General to convey this decision to the competent authorities, the complainant and any third party likely to be in a position to supply relevant information;
10. *Requests* the Committee to continue examining this case and to report back to it in due course.

## Sri Lanka

SRI/49 - Joseph Pararajasingham  
SRI/53 - Nadarajah Raviraj  
SRI/61 - Thiyagarajah Maheswaran  
SRI/63 - D.M. Dassanayake

### *Decision adopted unanimously by the IPU Governing Council at its 201<sup>st</sup> session (St. Petersburg, 18 October 2017)*

The Governing Council of the Inter-Parliamentary Union,

*Referring* to the cases of the four above-mentioned parliamentarians, who were all assassinated between December 2005 and January 2008, and the decision adopted by the Committee on the Human Rights of Parliamentarians at its 152<sup>nd</sup> session (January 2017) and its own decision adopted at its 197<sup>th</sup> session (October 2015),

*Taking into account* the information provided by the Sri Lankan delegation to the 137<sup>th</sup> IPU Assembly, led by the Speaker of the Parliament and including the Minister of Justice, at the hearing held with the Committee on 14 October 2017,

*Recalling* the following information provided by the complainants and the authorities regarding the cases of:

- **Mr. Pararajasingham**
  - Mr. Pararajasingham, a member of the Tamil National Alliance (TNA), was shot dead on 24 December 2005 during the Christmas Eve mass at St. Mary's Cathedral in Batticaloa, located in a high-security zone between two military checkpoints;
  - The complainants have always affirmed that Mr. Pararajasingham was killed by the Sri Lankan Government with the help of the Tamil Makkal Viduthalai Pulikal (TMVP, also known as the "Karuna group"), a faction led by Mr. V. Muralitharan (alias "Karuna"), which split from the Liberation Tigers of Tamil Eelam (LTTE) in 2004 over grievances that the LTTE gave priority to the situation of the Tamils in the north and disregarded the Tamils in the east; at that time, the Karuna group reportedly asked Mr. Pararajasingham to support the split; his refusal to do so became a problem, given that the Government had wanted the Tamils to divide over the north and east;
  - On 4 October 2015, four suspects, including the former Chief Minister of the Eastern Provincial Council, the Tamil leader Makkal Viduthalai Pulikal (TMVP), were arrested; the involvement of four others, all members of the TMVP, had also been established, two of whom were said to be in Dubai and India respectively; one of the other two of this group of four had been identified as the person who had fired the shots but had in turn been shot dead in the Kaththankudi police area in 2008; the Attorney General filed indictments, under Batticaloa High Court case No. 3057/17, against the four in detention and the three others at large;
- **Mr. Raviraj**
  - Mr. Raviraj, a member of the TNA, was shot dead on 10 November 2006, along with his security officer, while travelling along a main road in Colombo, the gunman escaping on a motorcycle; the complainants refer to information showing that the circumstances of the murder point to State responsibility and that the immediate purpose of Mr. Raviraj's killing was to silence the Civil Monitoring Committee, which he had set up and whose reports on abductions, killings and extortions had created significant unrest;
  - Eight persons had been arrested, five of them in March and October 2015, including two lieutenant-commanders of the Sri Lankan Navy and two other navy and police officers; four of the suspects, namely the three arrested in 2006 and one of the lieutenant-

commanders arrested in March 2015, were subsequently discharged by the court on the advice of the Attorney General, whereas the others were released on bail; the investigation has also pointed to the complicity in the crime of Mr. Sivakanthan Vivekanandan (alias "Charan"), Mr. Fabian Roiston Christopher (alias "Thusain") and Mr. Palanisamy Suresh (alias "Saamy"); "Charan" is reported to have been a TMVP member and to have migrated to Switzerland, and is yet to be arrested; "Thusain" was formerly an intelligence officer attached to the state intelligence service and is believed to be currently living in an unknown foreign country; he is also yet to be arrested; the whereabouts of "Saamy" are yet to be established; the court has issued arrest warrants against three of them and the process to have "Charan" extradited from Switzerland has been initiated; Interpol red notices have been secured against "Charan" and "Thusain";

- The Sri Lankan authorities also made a mutual legal assistance request to the United Kingdom authorities to enlist the support of the Metropolitan Police Service (MPS) at New Scotland Yard, in the United Kingdom, which developed DNA profiles and fingerprints from evidence that they had found at the murder scene and took back to the United Kingdom for examination; the results of the DNA comparisons were considered very crucial and investigators were very hopeful that the proposed DNA comparisons would yield much needed proof of complicity by suspect(s) in the murder; nevertheless, the Attorney General initiated non-summary proceedings against three of the suspects arrested and released on bail in 2015 and against "Charan", "Thusain" and "Saamy", while using the remaining fourth suspect arrested and released in 2015 as a "state witness", having cited 32 witnesses; the accused were served with indictments on 21 July 2016 and remanded in custody until such time as the trial was concluded by the High Court, which, on 24 December 2016, decided to discharge all suspects; an appeal has been filed by the Attorney General against the judgment;

- **Mr. Maheswaran**

- The complainant in this case has from the outset emphasized that Mr. Maheswaran voted against the budget on 14 December 2007 and that, soon after the vote, the number of security guards assigned to him was cut from 18 to two; Mr. Maheswaran had openly made statements to the effect that the reduction of his security detail put his life seriously at risk and repeatedly requested the Government to enhance his security, but to no avail; on 1 January 2008, he was shot and died soon after; according to the complainant, the attack came after Mr. Maheswaran had said in a television interview that, when parliamentary sittings resumed on 8 January 2008, he would describe in detail the terror campaign that the Government was pursuing in Jaffna, particularly how abductions and killings were managed;
- In the months following the murder, the authorities arrested Mr. Johnson Collin Valentino, from Jaffna, who was identified as the gunman on the basis of a DNA analysis; the investigators concluded that he was an LTTE activist who had been trained and sent to Colombo to kill Mr. Maheswaran; Mr. Valentino confessed to the crime and was found guilty on 27 August 2012 and sentenced to death; an appeal regarding the sentence against Mr. Johnson Collin Valentino is pending;

- **Mr. D.M. Dassanayake**

- Mr. Dassanayake was killed on 8 January 2008; the arrest of a key LTTE suspect operating in Colombo led to the arrest of other suspects; one of these, Mr. Hayazinth Fernando, pleaded guilty and was sentenced on 1 August 2011 to two years' rigorous imprisonment, a 10-year suspended sentence and the payment of a fine of Rs. 30,000 for refusing to provide information to the investigators; the legal proceedings against Mr. Fernando have been completed; two other accused, namely Mr. Sunderam Sathisha Kumaran and Mr. Kulathunga Hettiarachchige Malcom Tyron, stood indicted in the High Court of Negombo on nine counts, including conspiracy to commit murder and abetment to commit murder; however, Mr. Sunderam Sathisha Kumaran fell sick in remand prison and died in hospital on 14 May 2015, whereas the case against the other accused is still ongoing,

*Recalling* that, on 16 September 2015, the United Nations High Commissioner for Human Rights released the report (A/HRC/30/CRP.2) on his office's (OHCHR) comprehensive investigation into alleged serious violations and abuses of human rights and related crimes committed by both parties (that is, the Government and related institutions, on the one hand, and the LTTE on the other) in Sri Lanka between 2002 and 2011; the report mentions, with regard to the murders of Mr. Pararajasingham and Mr. Raviraj, that:

- Concerning the motive in the case of Mr. Pararajasingham, based on the information obtained, "there are reasonable grounds to believe that the Karuna group killed Joseph Pararajasingham, and that it was aided and abetted by security and army personnel";
- Mr. Raviraj was widely known for his moderate views and his critical statements of both the LTTE and the Government, particularly in the weeks leading up to his murder; along with other parliamentarians, he had set up the Civilian Monitoring Committee, which alleged the Government was responsible for abductions, enforced disappearances and unlawful killings; the UN report also points to the fact that, the day before he was killed, Mr. Raviraj and other TNA parliamentarians had taken part in a demonstration in front of the United Nations offices in Colombo to protest against the killing of Tamil civilians by the military in the east and the increasing abductions and extrajudicial killings,

*Recalling also* that the aforesaid UN report concluded more generally that:

- There are reasonable grounds to believe that gross violations of international human rights law and serious violations of international humanitarian law were committed by all parties during the period under review;
- There are reasonable grounds to believe that the Sri Lankan security forces and paramilitary groups associated with them were implicated in widespread and unlawful killings of civilians and other protected persons; that Tamil politicians, humanitarian workers and journalists were particularly targeted; and that the LTTE also unlawfully killed civilians perceived to hold sympathies contrary to the LTTE, or suspected of being informers, as well as rival Tamil political figures, public officials and academics;
- The sheer number of allegations, their gravity and recurrence and the similarities in their modus operandi, as well as the consistent pattern of conduct this shows, all point to systematic crimes which cannot be treated as ordinary crimes;
- Sri Lanka's criminal justice system is not currently equipped to conduct an independent and credible investigation into allegations of this breadth and magnitude, or to hold accountable those responsible for such violations;
- It is therefore necessary to establish an ad hoc hybrid special court, which would include international judges, prosecutors, lawyers and investigators mandated to try in particular war crimes and crimes against humanity, with its own independent investigative and prosecuting organ, defence office and witness and victim protection programme,

*Recalling* that, on 1 October 2015, the United Nations Human Rights Council adopted a resolution, supported by Sri Lanka, in which the Council: (i) welcomed the recognition by the Government of Sri Lanka that accountability is essential to uphold the rule of law and to build the confidence of the people of all communities of Sri Lanka in the justice system; (ii) notes with appreciation the proposal of the Government of Sri Lanka to establish a judicial mechanism with a special counsel to investigate allegations of violations and abuses of human rights and of violations of international humanitarian law, as applicable; (iii) affirms that a credible justice process should include independent judicial and prosecutorial institutions led by individuals known for their integrity and impartiality; and (iv) affirms in this regard the importance of Commonwealth and other foreign judges, defence lawyers and authorized prosecutors and investigators participating in Sri Lankan judicial mechanisms, including working with the special counsel's office,

*Recalling* that the current President of Sri Lanka, along with other high-ranking government officials, has repeatedly emphasized the need for reconciliation and accountability in Sri Lanka,

*Recalling* that, on 18 December 2015, the Cabinet of Ministers formed the Secretariat for Coordinating Reconciliation Mechanisms tasked, under the Prime Minister's Office, with the design and implementation of the following reconciliation mechanisms: the Office of Missing Persons; the Truth, Justice, Reconciliation and Non-Recurrence Commission; the Judicial Mechanism; and the Office of Reparations; on 3 January 2017, the Sri Lankan Consultations Task Force on Reconciliation Mechanisms released its final report recommending the appointment of a hybrid court composed of local and international judges to oversee the adjudication of allegations of war crimes committed during the country's civil war; the international presence in the court would be phased out once trust between the court and the public was re-established,

*Considering* that the Minister of Justice, in the hearing with the Committee on the Human Rights of Parliamentarians, stated that the creation of a hybrid court would be envisaged once the constitutional amendment process, which included a review on 30 and 31 October and 1 November 2017 of the proposals made thus far, has been confirmed; according to the Speaker at the same hearing, the current government remained deeply committed to promoting reconciliation, human rights and good governance; as part of the Government's commitment to human rights, the United Nations Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence was currently engaged in his third official visit to Sri Lanka to examine the progress made in redressing the legacies of large-scale previous violations and abuses,

*Considering* the new information provided by the Speaker at the hearing concerning the four murder cases:

- **Mr. Pararajasingham**  
The case has been fixed for 6 and 7 December 2017 for the purpose of serving indictments against seven accused; the case is being handled by a special prosecutor;
- **Mr. Raviraj**  
The case has been fixed to call on 12 December 2017 in the Supreme Court;
- **Mr. Maheshwaran**  
The appeal filed by the accused who was convicted was fixed for Argument in December 2017;
- **Mr. Dassanayake**  
The case will next be heard on 13 December 2017;

*Recalling also* that the Sri Lankan Prime Minister intended to create a parliamentary select committee to monitor the investigations into the assassinations of parliamentarians, but that no such action has been taken,

1. *Thanks* the Speaker of the Parliament and the Minister of Justice for their cooperation and the information they provided;
2. *Notes with satisfaction* that the case against the suspects in the case of Mr. Pararajasingham is now fixed for trial; *wishes* to be kept informed of trial developments and to receive a copy of the indictments and information on the motives for the crime; *also wishes* to be informed of progress in the efforts made to locate and extradite the suspects who are abroad;
3. *Sincerely hopes* that, despite the original setback in court, similar progress will also be achieved in the case of Mr. Raviraj; *wishes* to be kept informed of progress made in locating the two suspects who are the subject of an Interpol red notice; *wishes* also to be kept informed of developments in the appeal and to receive a copy of the first-instance court ruling discharging the suspects;
4. *Is pleased* that the Sri Lankan authorities are committed to setting up a hybrid court to shed full light on past human rights violations; *trusts* that this court will indeed soon be created; *wishes* to be kept informed in this regard and to know how the authorities aim to

strengthen the Victim and Witness Protection Act to offer the best possible protection for witnesses in and outside of Sri Lanka;

5. *Reiterates* its wish to receive a copy of the verdict against the culprit in the case of Mr. Maheswaran, in particular to know if it sheds light on whether the timing of his killing and the reduction of his security detail was taken into account; *wishes* to be kept informed of the appeal;
6. *Trusts* that the legal proceedings against the single suspect in the case of Mr. Dassanayake will soon be completed; *wishes* to be kept informed in this regard;
7. *Is convinced* that the previously mentioned parliamentary select committee to monitor the investigations into the assassinations of former members of parliament could ensure sustained parliamentary oversight in these matters; *sincerely hopes*, therefore, that the Parliament will put this committee in place as a matter of urgency;
8. *Requests* the Secretary General to convey this decision and the request for information to the relevant authorities, the complainants and any third party likely to be in a position to supply relevant information;
9. *Requests* the Committee to continue examining these cases and to report back to it in due course.



## Russian Federation

RUS/01 - Galina Starovoitova

### *Decision adopted unanimously by the IPU Governing Council at its 201<sup>st</sup> session (St. Petersburg, 18 October 2017)*

The Governing Council of the Inter-Parliamentary Union,

*Referring* to the case of Ms. Galina Starovoitova, a member of the State Duma of the Russian Federation, who was assassinated on 20 November 1998, and to the decision adopted at its 197<sup>th</sup> session (Geneva, October 2015),

*Considering* the letter from the authorities dated 3 October 2017 and the information provided by the complainant,

*Considering* the hearings held by the Committee on the Human Rights of Parliamentarians with representatives of the State Duma, of the Prosecutor General's Office and with Ms. Olga Starovoitova, the sister of Ms. Galina Starovoitova, and her lawyer, during the 137<sup>th</sup> IPU Assembly (St. Petersburg, October 2017),

*Recalling* the following information on file provided over several years:

- In June 2005, two men, Mr. Akishin and Mr. Kolchin, were found guilty of Ms. Starovoitova's murder, with Mr. Akishin sentenced to 23 and a half years in prison and Mr. Kolchin to 20 years, both by the St. Petersburg City Court, which, in its judgment, concluded that the murder had been politically motivated; in September 2007, two others were found guilty of complicity in the murder and sentenced to 11 and 2 years' imprisonment respectively; four other suspects were acquitted and released; national and international arrest warrants have been issued for three other individuals; in its report of April 2008, the Prosecutor General's Office stated that the investigation and search operations to identify the other individuals involved in Ms. Starovoitova's murder were ongoing;
- Ms. Starovoitova was a prominent Russian human rights advocate and had denounced instances of high-profile corruption shortly before her assassination; in November 2009, the United Nations Human Rights Committee expressed its "concern at the alarming incidence of threats, violent assaults and murders of journalists and human rights defenders in the Russian Federation, which has created a climate of fear and a chilling effect on the media ...", and urged the Russian Federation "to take immediate action to provide effective protection and ensure the prompt, effective, thorough, independent and impartial investigation of threats, violent assaults and murders and, where appropriate, prosecute and initiate proceedings against the perpetrators of such acts"; many States made similar recommendations during the first and second universal periodic reviews of the Russian Federation's compliance with its human rights obligations before the United Nations Human Rights Council (February 2009 and April 2013),

*Recalling* the following information that Mr. Sergey A. Gavrillov, a member of the State Duma, provided to the Committee at the hearing held during the 126<sup>th</sup> IPU Assembly (Kampala, March-April 2012):

- It was very difficult to identify all the individuals involved in Ms. Starovoitova's murder, which had to be seen in the context of her political activism; after it became possible, in 2006, for convicts to obtain reduced sentences in exchange for cooperation in providing essential information about unresolved crimes, Mr. Kolchin had cooperated to help advance the recently resumed investigation into Ms. Starovoitova's murder; as a result, the authorities had been able to identify an additional suspect: Mr. Mikhael Glushchenko, a former member of parliament and a businessman involved in large-scale criminal activities, who was already serving a long prison term having previously been found guilty of extortion;

- The State Duma was fully committed to shedding light on and establishing accountability for Ms. Starovoitova's murder and had set up an anti-corruption and security committee, which was monitoring the case and coordinating with the Prosecutor General's Office about further developments; it would communicate further information on the investigation and proceedings to the IPU in the coming months,

*Recalling* that Mr. Glushchenko was formally charged and convicted, on 27 August 2015, to 17 years in prison as one of the organizers of the assassination,

*Considering* that the court, in its verdict, stated clearly that M. Glushchenko "was complicit as an organizer of the assassination "and that he "received instructions from an unidentified person to organize and commit the killing of Ms. Starovoitova",

*Recalling* that Mr. Glushchenko, during his trial proceedings, entered a plea bargain by agreeing to provide the name of the person who had ordered him to organize the killing in exchange for a reduced sentence; Mr. Glushchenko allegedly stated that he had acted under orders from Mr. Vladimir Barsukov (aka Kumarin), a former leader of the "Tambov criminal syndicate", who was already serving a prison term on a prior conviction,

*Recalling* that the complainant found it credible that Mr. Barsukov may have been involved in the assassination in some way, but believed that he most likely acted on orders from one or more other persons because he had no personal motive to instigate the murder; hence the necessity of pursuing the investigation to expose the real mastermind(s) who had ordered him to organize Ms. Starovoitova's assassination,

*Considering* that, according to the complainant, since the 2015 conviction of Mr. Glushchenko there has been no further progress in the investigation, and that no charges have been brought against Mr. Barsukov to date,

*Considering* that following the 2012 hearing, a total of 10 official letters were sent by the IPU Secretary General to the parliamentary authorities of Russia, primarily to the Chairperson of the State Duma, in order to seek updated information on the investigation of the mastermind(s) and further discussions with members of the Russian delegations to the IPU Assemblies; and that no response was forthcoming for five years until 3 October 2017,

*Further considering* that, on 3 October 2017, the Chairpersons of the State Duma and of the Council of the Federation responded to the IPU Secretary General's letter and asked him to "inform the members of the Committee about the completion of the investigation in this criminal case, in order to consider closing the case in accordance with the Rules of Procedure of the Committee"; the two Speakers recalled that the Russian authorities have pursued investigations and judicial proceedings against a number of suspects for years; they emphasized that "the legitimate and justified punishment that the murderers and the organizers of this crime received cannot mitigate the pain of the loss of one of the brightest politicians of the new Russia", who "is remembered as a prominent lawyer, a human rights activist and a public figure who did much to shape modern Russian society"; the Government of St. Petersburg has established a scholarship named after Galina Starovoitova for students of humanitarian studies institutes,

*Recalling* that the Committee's guiding principle is to never give up and that article 25 of its revised Procedure for the examination and treatment of complaints (Annex I to the Rules and Practices of the Committee on the Human Rights of Parliamentarians) provides that "The Committee shall continue in principle to examine a case at future sessions as long as a satisfactory settlement has not been reached",

*Considering* the following information that Mr. Anatoly Vybornov, Deputy Chairman of the State Duma Committee on Security and Corruption Prevention, provided at the hearing held during the 137<sup>th</sup> IPU Assembly:

- The Russian authorities have pursued the investigation of Ms. Starovoitova's assassination for many years; it has been a difficult task in light of the complexity of the case and the involvement of a multitude of persons; the length of the investigation can be attributed to the circumstances in which the crime occurred, namely the collapse of the Soviet Union and high levels of criminality at that time; the authorities have done their

utmost to shed light on the circumstances of the assassination and have always expressed the wish to clarify them, no matter how long it may take; the investigation successfully led to the identification and conviction of several suspects, including Mr. Glushchenko; it is credible that Mr. Glushchenko was the true mastermind of the crime as he was not happy at the time with the public views that Ms. Starovoitova had expressed; Mr. Glushchenko is the only mastermind that has been identified by the courts to date and it is unlikely that other suspects will be identified, even if the investigation continues looking at various scenarios; the parliamentary authorities therefore recommend to the Committee to close the case because, in their view, the real culprit has been identified,

- With regard to suspicions about Mr. Barsukov's involvement in Ms. Starovoitova's assassination, the State Duma is committed to the principle of the presumption of innocence enshrined in the Constitution of the Russian Federation and cannot comment on this until the completion of the investigation and a final court ruling on this matter,
- The lack of cooperation by the parliamentary authorities should be regarded as an issue of the past; the State Duma is committed to cooperating with the Committee and pursuing a dialogue in the future,

*Considering* the following information that Lieutenant-General Nelly Evgenievna Solnyshkina, Head of the Department of the Office of the Prosecutor General of the Russian Federation for the Northwestern Federal District, provided at the hearing held during the 137<sup>th</sup> IPU Assembly:

- The investigation of Ms. Starovoitova's murder is still ongoing as it still has not identified all persons involved in the crime, including the ultimate mastermind(s) behind the assassination; the investigation is pursuing all possible scenarios but contract killings are hard to investigate as they are based on secret arrangements; the case is complex and sensitive; investigations are confidential until formal charges are brought and confirmed by a court against specific suspects; no formal charges have been confirmed against new suspects in recent years; the name of Mr. Barsukov was mentioned in the media and the investigation is looking at any possible connection with the case but he has not been formally charged to date;
- The Prosecutor General's Office, and the court, are the only authorities competent to decide whether to pursue or put an end to the investigation, which is still open and will continue; the investigation is being conducted by a group comprising experienced investigators from the Federal Security Service (FSB), the Prosecutor General's office and the police who have been on the case for many years; however there are no guarantees that it will be able to gather sufficient evidence to bring charges against other suspects;
- The State Duma is a different institution with a different mandate and is not involved in the investigation nor competent to make decisions on its continuation or closure pursuant to the domestic legal framework; the Office of the Prosecutor General is the only authority legally authorized to pursue the case and to supervise the investigation; it shares occasional summary updates on the investigation with the State Duma given that Ms. Starovoitova was a parliamentarian; should new verdicts be issued or the case be closed, the State Duma will be duly informed by the Prosecutor General's Office, as was done in the past,

*Considering* the following observations provided by Ms. Olga Starovoitova and her lawyer at the hearing held during the 137<sup>th</sup> IPU Assembly:

- The investigation has made progress over time and the investigators have always acted in a professional manner; the family has been kept informed of updates on a regular basis; there is no investigative team as such at this stage but only one investigator, who is actively working on the case; the investigation has been endless and the more time passes, the less likely it becomes that an end result can be reached; investigators have been replaced over time due to the length of the investigation and the fact that they had reached the maximum retirement age, thus affecting the continuity and efficiency of the investigation; public interest and support for the investigation has diminished over time as well;

- Suspicions exist about different scenarios with regard to the mastermind(s), and the investigation is still ongoing and looking into these. Mr. Glushchenko cannot be trusted as a witness and his admission is not sufficient evidence to establish the exact role of Mr. Barsukov unless corroborated by additional evidence. Until suspicions can be proved in court, the presumption of innocence must be respected. While it is possible and credible that Mr. Barsukov may have played a role in co-organizing the assassination, it does not make sense that he alone would have instigated and ordered the assassination, and, that being the case, he must have received instructions from someone else; it is feared that he might be a convenient scapegoat used to facilitate the closure of the case without achieving a satisfactory settlement;
  - For the family of Ms. Galina Starovoitova, justice requires the identification and punishment of the ultimate mastermind(s); the family and their lawyers will continue doing everything possible to ensure that the investigation continues until justice has been achieved,
1. *Thanks* the parliamentary authorities, the Prosecutor General's Office, the sister of Ms. Galina Starovoitova and her lawyer for their cooperation and for the valuable information provided;
  2. *Acknowledges* the relentless efforts and renewed commitment of the Russian authorities to ensure full accountability for the assassination of Ms. Galina Starovoitova and *notes with satisfaction* that the investigation is still ongoing and that the representative of the Prosecutor General's Office has confirmed that it will remain open until light is fully shed on all the masterminds of the crime;
  3. *Expresses the hope* that evidence will soon be found to support further progress in the investigation, in particular towards the identification of the mastermind(s);
  4. *Notes with interest* that the State Duma is kept informed of new developments in the investigation by the Prosecutor General's Office; *regrets* that cooperation with the parliamentary authorities was not forthcoming for the past five years and *welcomes* the State Duma's offer to start a new dialogue with the Committee; *wishes* to know if the anti-corruption and security committee of the State Duma currently continues to monitor the case and to be kept regularly apprised, by the parliamentary authorities and by the Prosecutor General's Office, of the status of the investigation in the future, in particular if and when new suspects are charged, tried and convicted;
  5. *Requests* the Secretary General to convey this decision to the parliamentary authorities, the Prosecutor General's Office, the complainant and any third party likely to be in a position to supply relevant information;
  6. *Requests* the Committee to continue examining this case and to report back to it in due course.

## Turkey

TK69 - Gülser Yıldırım (Ms.)	TK98 - Alican Önlü
TK70 - Selma Irmak (Ms.)	TK99 - Altan Tan
TK71 - Faysal Sariyildiz	TK100 - Ayhan Bilgen
TK72 - Ibrahim Ayhan	TK101 - Behçet Yıldırım
TK73 - Kemal Aktas	TK102 - Berdan Öztürk
TK75 - Bedia Özgökçe Ertan (Ms.)	TK103 - Dengir Mir Mehmet Firat
TK76 - Besime Konca (Ms.)	TK104 - Erdal Ataş
TK77 - Burcu Çelik Özkan (Ms.)	TK105 - Erol Dora
TK78 - Çağlar Demirel (Ms.)	TK106 - Ertuğrul Kürkcü
TK79 - Dilek Öcalan (Ms.)	TK107 - Ferhat Encü
TK80 - Dilan Dirayet Taşdemir (Ms.)	TK108 - Hişyar Özsoy
TK81 - Feleknas Uca (Ms.)	TK109 - Idris Baluken
TK82 - Figen Yüksekdağ (Ms.)	TK110 - Imam Taşçier
TK83 - Filiz Kerestecioğlu (Ms.)	TK111 - Kadri Yıldırım
TK84 - Hüda Kaya (Ms.)	TK112 - Lezgin Botan
TK85 - Leyla Birlik (Ms.)	TK113 - Mehmet Ali Aslan
TK86 - Leyla Zana (Ms.)	TK114 - Mehmet Emin Adiyaman
TK87 - Meral Daniş Beştaş (Ms.)	TK115 - Nadir Yıldırım
TK88 - Mizgin Irgat (Ms.)	TK116 - Nihat Akdoğan
TK89 - Nursel Aydoğan (Ms.)	TK117 - Nimetullah Erdoğan
TK90 - Pervin Buldan (Ms.)	TK118 - Osman Baydemir
TK91 - Saadet Becerikli (Ms.)	TK119 - Selahattin Demirtaş
TK92 - Sibel Yiğitalp (Ms.)	TK120 - Sirri Süreyya Önder
TK93 - Tuğba Hezer Öztürk (Ms.)	TK121 - Ziya Pir
TK94 - Abdullah Zeydan	TK122 - Mithat Sancar
TK95 - Adem Geveri	TK123 - Mahmut Toğrul
TK96 - Ahmet Yıldırım	TK124 - Aycan Irmez (Ms.)
TK97 - Ali Atalan	TK125 - Ayşe Acar Başaran (Ms.)

***Decision adopted unanimously by the IPU Governing Council at its 201<sup>st</sup> session  
(St. Petersburg, 18 October 2017)***

The Governing Council of the Inter-Parliamentary Union,

*Referring* to the cases of the above-mentioned parliamentarians and to the decision it adopted at its 199<sup>th</sup> session (October 2016), as well as the decision adopted by the Committee on the Human Rights of Parliamentarians at its 152<sup>nd</sup> session (January 2017),

*Referring* to the letters of 28 September, 29 March and 25 January 2017 from the President of the Turkish IPU Group, and to the information and new allegations submitted by the complainant,

*Referring* to the report on the mission conducted to Turkey by the Committee in February 2014 (CL/195/11(b)-R.1),

*Recalling* that the case concerns 56 parliamentarians and former parliamentarians of the total of 58 parliamentarians in the People's Democratic Party (HDP); that they face over 500 terrorism and criminal charges after the Constitution was amended to authorize a wholesale lifting of parliamentary immunity in May 2016,

*Considering* that the following information is not disputed by the parties:

- On 20 May 2016, the Grand National Assembly of Turkey (GNAT) amended the Turkish Constitution by voting an immunity bill to strip over a quarter of the country's members of

parliament of their immunity; pursuant to the constitutional amendment adopted, the requests for the lifting of parliamentary immunity that were pending at that time were not processed under the ordinary constitutional procedure; instead, they were sent back to the executive for immediate implementation, without prior review and approval by parliament or hearings of the members of parliament concerned; the Constitutional Court rejected, on procedural grounds, the petitions of 70 members of parliament seeking annulment of the amendment; fifty HDP parliamentarians subsequently lodged applications to the European Court of Human Rights;

- Dozens of trial proceedings are ongoing against HDP members of parliament in various courts scattered all over Turkey,

*Considering* that, according to the complainant, the current overall situation of the 56 members is as follows:

- Turkish courts have delivered at least 17 convictions against 12 HDP MPs in recent months;
- Nine members of parliament continued to be held in detention by early October 2017;
- The other MPs are free but face restrictions of their freedom of movement, as they have been placed under judicial control and banned from travelling abroad (three MPs have sought refuge abroad and will be detained if they return to Turkey). This, together with the multitude of trials ongoing against them throughout Turkey, has restricted their ability to devote themselves meaningfully to the exercise of their parliamentary mandate;
- Five MPs have had their mandates revoked (including four women MPs): two for their prolonged absence from parliament and three following final convictions. These convictions are at least partly related to older charges not covered by the blanket immunity constitutional amendment and for which the concerned MPs' parliamentary immunity was therefore not lifted, according to the complainant. The complainant fears that two additional MPs will have their mandate revoked soon given new recent convictions and the continuing trial proceedings. Two of the MPs have allegedly been further deprived of their citizenship;
- The Vice Chair of the HDP, Ms. Figen Yüksekdağ, has also been deprived of her party membership and executive position and banned by court decision from exercising any political activities, according to the complainant;
- Some members of parliament have been physically and verbally abused, including three female members of parliament, Ms. Feleknas Uca - whose son was also reportedly tortured - Ms. Besime Konca, Women's Assembly spokesperson, and Ms. Sibel Yiğitalp; they were physically assaulted by the police during a protest in Diyarbakir in October 2016; Ms. Uca's arm was allegedly badly injured by the police and she had to be hospitalized, according to the complainant; Ms. Konca was also physically harassed during her detention on 12 December 2016; physical attacks (punches in the face) also allegedly took place in parliament during the budget debate in early December 2016; Mr. Mehmet Adiyaman and Mr. Behçet Yildirim were subsequently hospitalized; further, female HDP members of parliament were exposed to sexist swear words from AKP members of parliament during the same debate, according to the complainant,

*Considering* that there are divergences in the information and views provided by the authorities and by the complainant on the following issues of concern:

- **Parliamentary immunity**
  - The complainant alleges that the Constitution has been violated by the procedure used, as relevant constitutional provisions on parliamentary immunity were suspended and disregarded; it observes that the normal procedure pursuant to Article 83 of the Turkish Constitution should have been a case-by-case review of the charges and evidence brought against each member of parliament, including the conduct of a hearing with each incriminated member of parliament to hear his or her version of the facts and defence

- arguments before the relevant GNAT commission and before the plenary; the complainant alleges that the GNAT has failed to protect the fundamental rights of its members;
- The complainant alleges that the wholesale lifting of the immunity of most HDP parliamentarians was “*an administrative coup to exclude the Kurds and other marginalized peoples represented by the HDP from the Parliament of Turkey*”; it claims that the overwhelming majority of members of parliament affected belonged to the two main opposition parties (CHP and HDP) and that this measure was part of a broader effort to silence and sideline the most vocal critics of President Erdoğan’s agenda and to ensure full executive control over a subservient parliament;
  - The parliamentary authorities have consistently maintained that the Constitution was strictly adhered to when adopting the amendment; they point out that amending the Constitution is a right explicitly granted to the GNAT by the Turkish Constitution and that “*the latest amendment purely reflect[ed] the discretion of the legislative authority*”; they note that the critical importance and sanctity of the principle of parliamentary immunity have been fully acknowledged; again according to the authorities, the opposition parties were not specifically targeted; at the time of adoption of the amendment, many judicial files against members of parliament from all political parties, including the AKP, were waiting to be processed; the authorities indicate that the lifting of immunity involved 518 files relating to 55 members of parliament from the HDP, 215 files relating to 59 members of parliament from the Republican’s People’s Party (CHP), 23 files relating to 10 members of parliament from the Nationalist Movement Party and 50 files relating to 29 members of parliament from the Justice and Development Party (AKP) – a total of 733 files for 114 opposition members of parliament and 73 files for 39 members of parliament from the majority; different numbers have been provided in the various communications received both from the authorities and the complainant,
  - **Arrests, pre-trial detention and other restrictions imposed on HDP parliamentarians; allegations of arbitrary detention, solitary confinement and obstruction of prison visits**
    - According to the authorities, the courts are required to ensure compulsory attendance at interrogations and to prevent obstruction of justice, particularly in terrorism cases; arrest warrants were issued only for those members of parliament who had repeatedly refused to respond to calls for questioning (an affirmation contested by the complainant); pre-trial detention was ordered on the grounds that “*calling for violence and creating propaganda in favour of terrorist organizations are not considered within the scope of freedom of expression*”, that “*detention orders are appropriate, necessary and proportionate to the aim pursued with a view to protection of national security, territorial integrity and public safety*”, and in view of the nature of the offences and the evidence available;
    - According to the complainant, the courts’ practices decisions to arrest parliamentarians and maintain them in pre-trial decision have been arbitrary and inconsistent. The complainant further claims that there are no factual and legal grounds to justify the detention of some MPs and the release of others. Many MPs were allegedly not summoned to provide their testimony but arrested directly without being given a chance to appear voluntarily. They never refused to appear for questioning according to the complainant. On the other hand, other MPs were summoned, refused to appear for questioning and were arrested and forcefully brought before court. According to the complainant, some of them were nevertheless granted release, such as Mr. Ziya Pir. The complainant further alleges that the Turkish Criminal Code provides that, if a person does not answer a prosecutor’s summons, the police may take them to the prosecutor’s office by force, for the sole purpose of ensuring that they give testimony. Pre-trial detention orders are based on specific criteria, of which failure to respond to a summons is not one, according to the complainant. The complainant has pointed out that none of the pre-trial detention orders issued referred to the fact that the MPs had not answered a court summons, or to legal provisions that might justify pre-trial detention on such grounds. Summary translations of the detention orders provided by the complainant have corroborated this allegation;

- The complainant alleges that most of the detained members of parliament have been held in solitary confinement in remote high-security prisons throughout Turkey, far away from their homes and from the courts where they are being tried; they have allegedly been denied prison visits; no foreign delegation has been granted access to them to date, according to the complainant; three of them, including Mr. Demirtaş and Mr. Zeydan were transferred to cells with co-detainees in January 2017; in response to these allegations, the authorities have indicated that the primary criterion when placing prisoners in penitentiary institutions is “*existing physical conditions*”; they state that prison visits can only be authorized by the Ministry of Justice pursuant to the legislation in force and that no one has the right to “directly” undertake visits; no information has been provided on the detention conditions of the other parliamentarians,
- **Judicial proceedings - alleged violations of the right to a fair trial and to freedom of expression, assembly and association**
- The complainant has claimed that the arrests of the members of parliament were arbitrary and that the proceedings were politically motivated to prevent them from continuing their work in parliament and politics, including in the lead-up to the April 2017 constitutional referendum;
- The complainant alleges that fair-trial and due process guarantees, starting with the presumption of innocence, have been disregarded; the judicial process is not being administered in a fair, independent and impartial manner according to the complainant; the detained members of parliament have faced restrictions on their rights to legal counsel which have seriously undermined their ability to prepare a defence, including surveillance of their legal counsels’ visits and communications, seizure and censorship of documents and intimidation against their counsels; the Government has allegedly banned the associations of lawyers representing most of the HDP parliamentarians and has intimidated, detained and pressed charges against many HDP lawyers, accusing them of complicity and membership of a terrorism organization for the mere fact that they have agreed to defend the parliamentarians; the Turkish authorities have cited the need to respond to security/terrorism threats and invoked legislation adopted under the state of emergency such as Decree 675 No. of 29 October 2016 and Decree No. 667 of 23 July 2016 to justify the legality of the measures taken;
- The complainant further alleges that the charges against the 56 HDP members of parliament are baseless and infringe their rights to freedom of expression, assembly and association; no serious and credible evidence has been adduced to support the hundreds of criminal and terrorism charges brought against them, according to the complainant; the complainant claims that the evidence relates to public statements, rallies and other peaceful political activities that they carried out in furtherance of their parliamentary duties and their political party programme, such as mediating between the PKK and the Turkish Government as part of the peace process between 2013 and 2015, publicly advocating political autonomy, and criticizing the policies of President Erdoğan in relation to the current conflict in south-eastern Turkey (including denouncing the crimes committed by the Turkish security forces in that context); the complainant claims that such statements, rallies and activities are not constitutive of any offence and fall under the clear scope and protection of the fundamental rights of the members of parliament; it therefore alleges that proper standards of due process have been disregarded at the investigation stage; it also does not believe that the judicial process is being administered in a fair, independent and impartial manner at the trial stage, given the political dimension of the cases and the politicization of the Turkish judiciary; in the trials that have already started or been completed, the complainants have alleged restrictions and violations of the right of defence;
- The parliamentary authorities have consistently reaffirmed that the HDP parliamentarians were accused of siding with the PKK terrorist organization because of their remarks and action; they have observed that freedom of expression has its limits, as set out in relevant international conventions; they point out that article 7 of the anti-terrorism law provides that “*expressions which justify, praise or promote the use of methods by terrorist organizations involving coercion, violence or threats*” are punishable; the authorities affirm that the parliamentarians have justified and promoted the violent acts of the PKK



terrorist organization; they acknowledge that the judicial authorities have yet to deliver final decisions on most of the charges levelled against the members of parliament and emphasize that all appropriate judicial remedies exist under domestic law; a series of court convictions have been delivered in 2017 but no detailed information has been provided by the authorities on the evidence relied upon by the courts to reach their verdicts or the manner in which respect for freedom of expression was taken into account by the courts,

*Considering* that, in its opinion of 14 October 2016, the European Commission for Democracy through Law (Venice Commission) called for the restoration of the parliamentary inviolability of all 139 members of parliament, as an essential guarantee of the functioning of parliament in Turkey, on the basis of the following conclusions:

- The procedure followed was a misuse of the constitutional amendment procedure because it concerned 139 identified individuals and, in substance, constituted a sum of decisions on the lifting of immunity, whereas the decisions should have been taken individually and subject to the specific guarantees of the suspended Article 83 of the Constitution; the National Assembly, instead of seeking a milder solution, pursued the most radical measure of complete removal of immunity for the 139 members of parliament and deprived them of an appeal to the Constitutional Court, in violation of the principle of proportionality;
- The situation in the Turkish judiciary made it the worst possible moment to abolish inviolability, and most of the files concerned related to freedom of expression; there were serious doubts about the independence and impartiality of the Turkish judiciary; the Commission was informed (but was unable to confirm) that a considerable number of the files against the 139 members of parliament were prepared by prosecutors who had been imprisoned and/or dismissed after the failed coup of 2016;
- Moreover, “[F]reedom of expression of members of parliament is an essential part of democracy. Their freedom of speech has to be a wide one and should be protected also when they speak outside parliament. The non-violent pursuit of non-violent political goals such as regional autonomy cannot be the subject of criminal prosecution. Expression that annoys (speech directed against the President, public officials, the Nation and the Republic, etc.) must be tolerated in general but especially when it is uttered by members of parliament. Restrictions of the freedom of expression have to be narrowly construed. Only speech that calls for violence or directly supports the perpetrators of violence can lead to criminal prosecution. The case law of the European Court of Human Rights shows that Turkey has a problem with safeguarding freedom of expression, not least with respect to cases considered as propaganda for terrorism. This is partly due to the fact that [...] the scope of the Criminal Code is too wide”,

*Recalling* the following conclusions and recommendations reached by the IPU Governing Council after the mission conducted to Turkey in 2014 in relation to cases raising similar concerns of freedom of expression:

- Peaceful and legal political activities of parliamentarians have been construed as evidence of criminal and terrorist acts by the prosecution and the courts on repeated occasions in the past, particularly in relation to the situation in south-eastern Turkey; the protection of freedom of expression in Turkey has been a long-standing issue of concern in prior cases brought before the Committee, which has repeatedly called on the Turkish authorities since 1992 to take action to enhance respect for this fundamental right;
- Legislative reforms undertaken have not addressed the long-standing concerns – and calls for reform – of international and regional human rights bodies regarding the use of broad anti-terrorism and criminal legislative provisions (particularly the offence of “membership of a criminal organization”) to criminalize conduct that is protected under international human rights law;
- The Turkish legal framework and judicial practice have continued largely to fail to distinguish between peaceful protests and dissenting opinions, on the one hand, and violent activities pursuant to the same goals on the other,

*Considering* that, on 29 March 2017, the Turkish authorities rejected the Committee's request to conduct a mission to Turkey and to visit the detained parliamentarians on the grounds that it "could negatively affect the judicial process"; in a letter of 28 September 2017, the President of the Turkish IPU Group shared some information on the status of ongoing proceedings against the two co-chairs of the HDP, Mr. Demirtaş and Ms. Yüksedag, and stated that he had no additional comments to share; detailed information on the specific facts and evidence adduced to support the charges against the HDP parliamentarians has not been provided despite repeated requests to that end; the Turkish IPU Group declined the Committee's invitation to a hearing to discuss the concerns at hand during the 137<sup>th</sup> IPU Assembly,

*Further considering* that the Committee on the Human Rights of Parliamentarians mandated an independent trial observer to attend the hearing of Ms. Figen Yüksekdağ on 18 September 2017, and that:

- In these latest proceedings against her, which started on 4 July 2017, Ms. Yüksekdağ faces 83 years of jail on accusations of "managing a terrorist organisation", "making terrorist propaganda", "inciting violence" and "violating the law on demonstrations and gatherings";
- The facts and evidence supporting the accusations have not yet been examined by the court; they relate to (i) speeches Ms. Yüksedag gave on different occasions, (ii) a tweet from the HDP's Executive Board (of which Ms. Yüksedag was a member) calling on people to protest against the 2014 siege of Kobane by ISIS and the inaction of the Turkish Government, and denouncing excessive use of force by the police against protesters that led to many deaths, (iii) Ms. Yüksedag's participation and activities in the Democratic Society Congress - a legally recognized umbrella organisation of about 700 NGOs and political parties, including the HDP – which played a major role during the peace process but is now considered a criminal organization, being part of the PKK since the 2015 suspension of the peace process;
- Ms Yüksedag was not present at the hearing, in protest at the fact that a small court room in the precincts of Sincan prison complex had been chosen as the venue rather than an ordinary courtroom open to the public; she further objected to the fact that international and domestic observers were barred from entering the courtroom, with the sole exception of the IPU observer. She considered this a violation of her right to a public hearing; her defence lawyers also raised concerns about the lack of equality of arms and of a fair trial; the presiding judge systematically followed the prosecutor's opinion and rejected all petitions lodged by defence lawyers during the 18 September hearing; the court decided to continue hearing the case in the same premises and to maintain Ms. Yüksedag in detention; it further decided to bring her by force to the next hearing, which was set for 6 December 2017;
- A full trial observation report will be submitted to the Committee at a later stage and shared with the Turkish authorities for their comments and observations,

*Considering* that, on 25 September 2017, the IPU lodged a further submission with the European Court of Human Rights as a third-party intervener in relation to the case; the aim of the submission was to inform the Court of the work and decisions of the IPU Committee on the Human Rights of Parliamentarians,

*Bearing in mind* Turkey's international obligations to respect, protect and promote fundamental human rights, particularly as a Party to the International Covenant on Civil and Political Rights (ICCPR) and to the European Convention on Human Rights (ECHR),

*Considering* that, since the failed coup of 15 July 2016, the Turkish Government has officially invoked derogations related to the state of emergency to its obligations under articles 2/3, 9, 10, 12, 13, 14, 17, 19, 21, 22, 25, 26 and 27 of the ICCPR and similar derogations from the ECHR,

*Further considering* that a group of United Nations human rights special rapporteurs issued a public statement on 19 August 2016 noting that "*the invocation of Article 4 [of the ICCPR] is lawful only if there is a threat to the life of the nation, a condition that arguably is not met in this case*".

The experts underscored that “*one cannot avoid, even in times of emergency, obligations to protect the right to life, prohibit torture, adhere to fundamental elements of due process and non-discrimination, and protect everyone’s right to belief and opinion*” and that “*even where derogation is permitted, the Government has a legal obligation to limit such measures to those that are strictly required by the needs of the situation*”; they have urged the Turkish Government to uphold the rule of law in times of crisis, voicing their concern about the use of emergency measures to target dissent and criticism and warning that derogation measures should not be used in a way that would push the country deeper into crisis,

*Taking into account* the letter of 22 September 2017 from the national delegations of the parliaments of Denmark, Finland, Iceland, Norway and Sweden, expressing their deepest concern at the violations of the human rights of the Turkish parliamentarians and encouraging the Committee on the Human Rights of Parliamentarians to continue its efforts to support and defend them,

1. *Thanks* the Turkish IPU Group for the information provided and *notes with interest* that the trial observer mandated by the IPU was the only foreign observer allowed to attend the hearing of Ms. Yüksekdağ on 18 September 2017; *expresses the wish* that the trial observation continue at the next hearing on 6 December 2017 and *awaits* the completion of the observer’s mandate to receive a final report on the hearings;
2. *Notes with consternation*, however, that the authorities have not authorized the Committee to conduct its mission to Turkey and *is appalled* at the persisting allegations of solitary confinement of the detained MPs and the fact that no foreign delegation appears to have been allowed to visit them in detention;
3. *Remains convinced* that it is essential for the Committee mission to take place and *urges* the parliamentary authorities to grant it access; *requests* therefore the Secretary General to continue exploring with the Turkish authorities the possibility of sending a mission to Turkey; also *renews its call on* the authorities to share information on the current conditions of detention of the detained MPs and to grant immediate access to them to the Committee mission;
4. *Remains deeply concerned*, in light of the verdicts delivered in recent months, that the peaceful public statements and legal political activities of members of parliament that fall within the scope of their rights to freedom of expression, assembly and association may have been regarded as evidence of criminal and terrorist acts committed in violation of Turkey’s international human rights obligations;
5. *Recalls* its long-standing concerns over freedom of expression and association related to anti-terrorist legislation and the offence of membership of a criminal organization and *reiterates* its prior recommendations to the Turkish authorities to urgently address these concerns in an appropriate manner; *urges* the Turkish authorities to share the information requested on the specific facts and evidence adduced to support the charges and convictions against the concerned parliamentarians, including relevant excerpts of all court decisions, *also wishes* to be kept informed of new developments in the proceedings, particularly when verdicts are delivered;
6. *Cautions* that recent developments and the lack of progress towards resolution of the case seem to lend significant weight to fears that the ongoing proceedings may be aimed at depriving the People’s Democratic Party (HDP) of effective representation in parliament, at weakening the opposition parties in parliament and in the broader political arena, and therefore at silencing the populations they represent; *reaffirms its concerns* that the limited possibility of parliamentary representation for the populations affected may contribute to further deterioration of the political and security situation prevailing in south-eastern Turkey, as well as weaken the independence of the institution of parliament as a whole;

7. *Notes with particular concern* that a large number of women parliamentarians are affected by the current situation, as they represent 50 per cent of the concerned HDP parliamentarians, that half of the HDP parliamentarians who have been detained, and four out of the five MPs whose parliamentary mandates have been revoked, are women; *laments* that this may result in disproportionately affecting women's representation in the Grand National Assembly of Turkey and *further notes with concern* that the authorities have provided no information on the alleged incidents of physical and verbal assaults committed against at least three women parliamentarians;
8. *Sincerely thanks* the Nordic parliaments for their joint action calling for respect of the fundamental rights of the Turkish parliamentarians concerned and renews its call to all IPU members to translate the principle of parliamentary solidarity into concrete actions in support of the urgent resolution of this case;
9. *Requests* the Secretary General to convey this decision to the parliamentary authorities, the complainant and any third party likely to be in a position to supply relevant information and to proceed with all necessary arrangements to organize the requested mission by a Committee delegation and any future trial observation missions;
10. *Requests* the Committee to continue examining this case and to report back to it in due course.

## Palestine

PAL/02 - Marwan Barghouti

***Decision adopted unanimously by the IPU Governing Council at its 201<sup>st</sup> session  
(St. Petersburg, 18 October 2017) <sup>3</sup>***

The Governing Council of the Inter-Parliamentary Union,

*Referring* to the case of Mr. Marwan Barghouti, an incumbent member of the Palestinian Legislative Council (PLC), and to the decision it adopted at its 197<sup>th</sup> session (October 2015),

*Referring* to Mr. Simon Foreman's expert report on Mr. Barghouti's trial (CL/177/11(a)-R.2) and to the study published in September 2006 by B'Tselem (the Israeli Information Center for Human Rights in the Occupied Territories), entitled "*Barred from Contact: Violation of the Right to Visit Palestinians Held in Israeli Prisons*",

*Taking into account* the letter from the head of the Knesset delegation to the Inter-Parliamentary Union dated 26 September 2017 and the hearing which the Committee on the Human Rights of Parliamentarians held with the Palestinian delegation during the 137<sup>th</sup> IPU Assembly (St. Petersburg 14-18 October 2017),

*Recalling* the following information on file regarding Mr. Barghouti's situation:

- He was arrested on 15 April 2002 in Ramallah by the Israeli Defence Forces and transferred to a detention centre in Israel; on 20 May 2004, Tel Aviv District Court convicted him on one count of murder relating to attacks that killed five Israelis, on one count of attempted murder relating to a planned car bomb attack, and on one count of membership of a terrorist organization, and sentenced him to five life sentences and two 20-year prison terms; Mr. Barghouti did not lodge an appeal because he does not recognize Israeli jurisdiction; in his comprehensive report on Mr. Barghouti's trial, Mr. Foreman stated that "the numerous breaches of international law make it impossible to conclude that Mr. Barghouti was given a fair trial"; those breaches included the use of torture;
- According to his letter of 6 January 2013, the Diplomatic Advisor to the Knesset stated: "Mr. Barghouti was detained in Hadarim Prison. He was held in a regular cell with other inmates, without any separation or isolation. Mr. Barghouti is entitled to and, in fact, receives regular visits from his family, the most recent of which took place on 4 December 2012",

*Recalling* that, according to the complainants, Mr. Barghouti was threatened before a disciplinary committee with solitary confinement should he publish another article like the one on 11 October 2015 in the Guardian newspaper, entitled: "There will be no peace until Israel's occupation of Palestine ends"; Mr. Barghouti ends his article with: "I joined the struggle for Palestinian independence 40 years ago, and was first imprisoned at the age of 15. This did not prevent me from pleading for peace in accordance with international law and United Nations resolutions. But Israel, the occupying power, has methodically destroyed this perspective year after year. I have spent 20 years of my life in Israeli jails, including the past 13 years, and these years have made me even more certain of this unalterable truth: the last day of occupation will be the first day of peace",

*Considering* that, Mr. Barghouti was placed in solitary confinement for initiating a mass hunger strike from 17 April to 30 May 2017 in protest against the detention conditions in Israeli prisons and for publishing an article about it in the New York Times entitled "Why We Are on Hunger Strike in Israel's Prisons"; *Considering* that, according to open-source information, Mr. Barghouti will be "prosecuted in a disciplinary court" as a result of the hunger strike he initiated and the opinion piece he published,

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<sup>3</sup> The delegation of Israel expressed its reservations regarding the decision.

*Considering* that the letter from the head of the Knesset delegation to the IPU dated 26 September 2017 did not provide any information on Mr. Barghouti's case and declined the Committee's invitation to a hearing during the 137<sup>th</sup> IPU Assembly (14-18 October 2017) in that regard; *recalling* that numerous requests for information on Mr. Barghouti's current conditions of detention, in particular his family visiting rights, along with information on the extent to which he has access to medical care, have been left unanswered by the Israeli authorities,

*Considering* that according to Mr. Azzam Al-Ahmad, member of the Palestinian delegation and Head of the parliamentary group of Fatah, the head of the PNC tried to work with members of the Knesset to obtain access to their Palestinian colleagues detained in Israeli prisons, particularly Mr. Barghouti, but that those efforts were to no avail,

1. *Regrets* that the head of the Knesset delegation to the IPU declined the Committee's invitation for a hearing; *considers* this all the more regrettable given the long-standing concerns and requests for information in this case; *stresses* that the Committee's work is based on the principle of dialogue with the authorities of the country concerned, first and foremost its parliament; *sincerely hopes* therefore that the Knesset will engage in regular written and face-to-face exchanges of views with the Committee in order to facilitate progress towards a satisfactory solution of the case;
2. *Remains* deeply concerned that 15 years after his arrest Mr. Barghouti remains in detention as the result of a trial which did not meet the fair-trial standards that Israel, as a party to the International Covenant on Civil and Political Rights, is bound to respect, and therefore did not establish Mr. Barghouti's guilt;
3. *Is concerned* about the reported threat of reprisals made against Mr. Barghouti earlier this year in connection with his exercise of the right to freedom of expression; *wishes* to receive the official views on this matter; *reiterates* its deep concern about the prison conditions in which Palestinian prisoners are reportedly held in Israel; *requests* in that regard information on the agreement reached between the Israeli Prison Service and Mr. Barghouti which led to the end of the 2017 hunger strike;
4. *Calls on* the Israeli authorities to release him without delay and to provide, until that occurs, new official information on his current conditions of detention;
5. *Regrets* that the authorities have not yet acceded to its own long-standing request, for as long as Mr. Barghouti remains imprisoned, to be granted permission to visit him; *sincerely hopes* that the authorities will finally respond favourably and facilitate such a visit;
6. *Requests* the Secretary General to convey this decision to the relevant authorities, the complainant and any third party likely to be in a position to supply relevant information;
7. *Requests* the Committee to continue examining this case and to report back to it in due course.

## Palestine

PAL/05 - Ahmad Sa'adat

***Decision adopted unanimously by the IPU Governing Council at its 201<sup>st</sup> session  
(St. Petersburg, 18 October 2017) <sup>4</sup>***

The Governing Council of the Inter-Parliamentary Union,

*Referring* to the case of Mr. Ahmad Sa'adat, elected in January 2006 to the Palestinian Legislative Council, and to the decision it adopted at its 195<sup>th</sup> session (October 2014),

*Referring* to the study produced by the Israeli non-governmental organization Yesh Din (Volunteers for Human Rights) on the implementation of due process rights in Israeli military courts in the West Bank, entitled *Backyard Proceedings*, which reveals the absence of due process rights in those courts, and to the study published in September 2006 by B'Tselem (the Israeli Information Center for Human Rights in the Occupied Territories), entitled *Barred from Contact: Violation of the Right to Visit Palestinians Held in Israeli Prisons*,

*Taking into account* the letter from the head of the Knesset Delegation to the Inter-Parliamentary Union dated 26 September 2017 and of the hearing which the Committee on the Human Rights of Parliamentarians held with the Palestinian delegation during the 137<sup>th</sup> IPU Assembly, (St. Petersburg, 14-18 October 2017),

*Recalling* the following information on file regarding Mr. Sa'adat's situation:

- On 14 March 2006, Mr. Sa'adat, whom the Israeli authorities had accused of involvement in the October 2001 murder of Mr. R. Zeevi, the Israeli Minister of Tourism, was abducted by the Israeli Defence Forces from Jericho Jail and transferred to Hadarim Prison in Israel, together with four other prisoners suspected of involvement in the murder; the Israeli authorities concluded one month later that Mr. Sa'adat had not been involved in the killing but charged the other four suspects; 19 other charges were subsequently brought against Mr. Sa'adat, all arising from his leadership of the Popular Front for the Liberation of Palestine (PFLP), which Israel considers a terrorist organization, none of these charges alleges direct involvement in crimes of violence; on 25 December 2008, Mr. Sa'adat was sentenced to 30 years in prison;
- Mr. Sa'adat suffers from cervical neck pain, high blood pressure and asthma, and has reportedly not been examined by a doctor and is not receiving the medical treatment he needs; when he was first detained, the Israeli authorities refused to let his wife visit him; for the first seven months, Mr. Sa'adat received no family visits; his children, who have Palestinian identity cards, were not allowed to visit their father, for reasons unknown; in March and June 2009, Mr. Sa'adat was placed in solitary confinement, prompting him to go on a nine-day hunger strike in June 2009;
- On 21 October 2010, Mr. Sa'adat's isolation order, due to expire on 21 April 2011, was confirmed a fourth time for a further six months; it was apparently again extended in October 2011, bringing Mr. Sa'adat's time in isolation to three years; his isolation ended in May 2012, as part of the agreement ending the April-May 2012 hunger strike by some 2,000 Palestinian detainees in Israel; one of the complainants affirmed in September 2012 that, while Mr. Sa'adat's wife and oldest son had been able to visit him, his other three children continued to be denied permits;
- According to his letter of 6 January 2013, the Diplomatic Advisor to the Knesset stated: "Mr. Sa'adat was detained in Hadarim Prison. He was held in a regular cell with other inmates, without any separation or isolation. Mr. Sa'adat is entitled to and, in fact, receives regular visits from his family, the last of which was on 4 December 2012",

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The delegation of Israel expressed its reservations regarding the decision.

*Recalling* that, according to the information provided by one of the complainants, a complete ban on family visits was imposed on Mr. Sa'adat from July 2014, at a time when violence had flared up in the region, which was only lifted in September 2015,

*Considering* that, according to a letter from the Speaker of the Knesset dated 23 November 2015, Mr. Sa'adat was detained in Hadarim Prison and held in a regular cell with other inmates and without separation or isolation; the Speaker further said that Mr. Sa'adat was entitled to and received regular visits from his family, the latest having taken place on 8 October 2015; however, according to information provided on 25 January 2016 by one of the complainants, Mr. Sa'adat's daughter had been denied visiting rights from 2006 to 2015 during which she was granted a single visit,

*Considering* that, in April 2017, Mr. Sa'adat took part in a mass hunger strike conducted by Palestinian detainees in protest against the detention conditions in Israeli prisons and was reportedly temporarily moved to solitary confinement in Ohlikdar Prison as a result,

*Considering* also that, according to one of the complainants in September 2017, Mr. Sa'adat's general health is satisfactory but he still suffers from poor medical care; Mr. Sa'adat was denied visits from other family members for security reasons and only his wife could visit him,

*Considering* that the letter from the head of the Knesset delegation to the IPU dated 26 September 2017 did not provide any information on Mr. Sa'adat's case and declined the Committee's invitation to a hearing during the 137<sup>th</sup> IPU Assembly (14-18 October 2017) in that regard,

*Considering* that according to Mr. Azzam Al-Ahmad, member of the Palestinian delegation and head of the parliamentary group of Fatah, the head of the PNC had tried to work with members of the Knesset to obtain access to their Palestinian colleagues detained in Israeli prisons, particularly Mr. Sa'adat, but that these efforts were to no avail,

1. *Regrets* that the head of the Knesset delegation to the IPU declined the Committee's invitation for a hearing; *considers* this all the more regrettable given the long-standing concerns and requests for information in this case; *emphasizes* that the Committee's work is based on the principle of dialogue with the authorities of the country concerned, first and foremost its parliament; *sincerely hopes* therefore that the Knesset will engage in regular written and face-to-face exchanges of views with the Committee in order to facilitate progress towards a satisfactory solution of the case;
2. *Deeply deplores* that more than 11 years after his arrest Mr. Sa'adat remains in detention as a result of a politically motivated trial; *reaffirms* in this regard its long-standing position that Mr. Sa'adat's abduction and transfer to Israel were related not to the original murder charge but rather to his political activities as PFLP General Secretary;
3. *Calls on* the Israeli authorities to release him without delay and to provide, until that occurs, new official information on his current conditions of detention and on the extent to which he has access to the required medical treatment; *remains concerned* in this regard about the reported prison conditions in which Palestinian prisoners are held in Israel;
4. *Regrets* that the authorities have not yet acceded to its own long-standing request, for as long as Mr. Sa'adat remains imprisoned, to be granted permission to visit him; *sincerely hopes* that the authorities will finally respond favourably and facilitate such a visit;
5. *Requests* the Secretary General to convey this decision to the relevant authorities, the complainant and any third party likely to be in a position to supply relevant information;
6. *Requests* the Committee to continue examining this case and to report back to it in due course.



## Palestine

PAL28 - Muhammad Abu-Teir  
PAL29 - Ahmad 'Attoun  
PAL30 - Muhammad Totah  
PAL32 - Basim Al-Zarrer  
PAL47 - Hatem Qfeisheh  
PAL57 - Hasan Yousef  
PAL61 - Mohd. Jamal Natsheh<sup>5</sup>  
PAL62 - Abdul Jaber Fuqaha  
PAL63 - Nizar Ramadan  
PAL64 - Mohd. Maher Bader  
PAL65 - Azzam Salhab  
PAL75 - Nayef Rjoub  
PAL78 - Husni Al Borini  
PAL79 - Riyadhgh Radad  
PAL80 - Abdul Rahman Zaidan  
PAL82 - Khalida Jarrar  
PAL84 - Ibrahim Dahbour  
PAL85 - Ahmad Mubarak  
PAL86 - Omar Abdul Razeq Matar  
PAL87 - Mohammad Al-Tal  
PAL89 - Khaled Tafesh  
PAL90 - Anwar Al Zaboun

***Decision adopted unanimously by the IPU Governing Council at its 201<sup>st</sup> session  
(St. Petersburg, 18 October 2017) <sup>6</sup>***

The Governing Council of the Inter-Parliamentary Union,

*Referring* to the case of the above-mentioned parliamentarians, all of whom were elected to the Palestinian Legislative Council (PLC) in January 2006, and to the decision it adopted at its 197<sup>th</sup> session (October 2015),

*Taking into account* the letter from the head of the Knesset delegation to the Inter-Parliamentary Union dated 26 September 2017,

*Also taking into account* the hearing which the Committee on the Human Rights of Parliamentarians held with the Palestinian delegation led by Mr. Azzam Al-Ahmad, head of the parliamentary group of Fatah, during the 137<sup>th</sup> IPU Assembly (St. Petersburg, October 2017),

*Recalling* that some of the parliamentarians concerned were elected to the PLC on the Electoral Platform for Change and Reform and arrested following the kidnapping of an Israeli soldier on 25 June 2006; that they were prosecuted and found guilty of membership of a terrorist organization (Hamas), holding a seat in parliament on behalf of that organization, providing services to it by sitting on parliamentary committees, and supporting an illegal organization; and that they were sentenced to prison terms of up to 40 months,

*Noting* that, while most of the parliamentarians concerned were released upon serving their sentences, many were subsequently rearrested, sometimes several times, and placed in administrative detention, as in the case of Ms. Khalida Jarrar who was rearrested on 2 June 2017 and placed in administrative detention on 12 July 2017,

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<sup>5</sup> Only PLC member from the list currently in (administrative) Israeli detention.

<sup>6</sup> The delegation of Israel expressed its reservations regarding the decision.

*Considering* that, as of September 2017, the number of PLC members held in administrative detention stood at ten,

*Recalling* that, with regard to the use of administrative detention:

- The Supreme Court of Israel has ruled that the exceptional measure of administrative detention, which is usually ordered for six months but may in fact be prolonged indefinitely, can only be applied if there is current and reliable information to show that the person poses a specific and concrete threat, or if the confidential nature of the intelligence and the security of the sources prohibit the presentation of evidence in an ordinary criminal procedure; according to the Israeli authorities, there are two avenues of judicial review: first, the independent and impartial military courts, which have the authority to assess the material relevant to the detainee in question in order to determine whether the decision to detain him/her was reasonable, given his/her general rights to a fair trial and freedom of movement, and, second, military prosecution, which implements a “cautious and level-headed” policy in the use of administrative detention, an approach which is said to have reduced the number of administrative detention orders;
- Human rights organizations in and outside Israel have repeatedly stressed that administrative detention is usually justified by reference to a “security threat”, without, however, specifying the scope and nature of the threat or disclosing the evidence; accordingly, although administrative detainees are entitled to appeal, this right is ineffective, given that the detainees and their lawyers lack access to the information on which the orders are based and are therefore unable to present a meaningful defence,

*Considering* that, according to information provided by the complainant in 2017, Mr. Al-Natsheh was released on 10 February 2016 after spending three years in administrative detention and was rearrested on 28 September 2016 and placed in administrative detention; that Mr. Hassan Youssef and Mr. Azzam Salhab were placed in administrative detention on 20 October 2015 and 6 December 2016 respectively; that the following individuals have also been placed in administrative detention: Mr. Ahmad Mubarak (6 January 2017); Mr. Ibrahim Dahbour (23 March 2017); Mr. Mohammed Bader (28 June 2017); Ms. Khalida Jarrar (12 July 2017) and Mr. Omar Abdul Razeq (23 July 2017),

*Considering* that, on 17 April 2017, Palestinian detainees staged a mass hunger strike which lasted for 51 days in protest against detention conditions inside Israeli prisons,

*Considering* that, according to the head of the Palestinian delegation Mr. Azzam Al-Ahmad, despite the recent hunger strike the Israeli prison service did not significantly improve the detention conditions of detainees, who are still not entitled to appropriate family visiting rights and medical care,

*Bearing in mind* that, in its concluding observations on the third periodic report of Israel to the International Covenant on Civil and Political Rights,<sup>7</sup> the United Nations Human Rights Committee remained concerned at the continuing practice of administrative detention of Palestinians, at the fact that, in many cases, the detention order is based on secret evidence and at the denial of access to counsel, independent doctors and family contacts (articles 4, 9, and 14), and therefore recommended that the practice of administrative detention and the use of secret evidence in administrative detention proceedings be discontinued, and that individuals subject to administrative detention orders be either promptly charged with a criminal offence or released,

*Recalling* that, in his letter of 22 December 2015, the Senior Diplomatic Advisor to the Knesset stated that Mr. Al-Borini had been released on 14 June 2015 after being convicted for attending a gathering of an unlawful association and sentenced as part of a plea bargain to a 12-month prison term, and after receiving a six-month suspended sentence for a similar violation during a three-year probation period; *recalling also* that, according to information provided previously by one of the complainants, Mr. Riyadh Radad and Mr. Abdul Rahman Zaidan, who had first been held in administrative detention, were at some point held in detention on criminal charges,

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<sup>7</sup> CCPR/C/ISR/CO/4.

*Recalling* the following information on file with regard to the revocation of the residency permits of three PLC members, namely that, in May 2006, the Israeli Minister of the Interior revoked the East Jerusalem residency permits of Mr. Muhammad Abu-Teir, Mr. Muhammad Totah and Mr. Ahmad Attoun, arguing that they had shown disloyalty to Israel by holding seats in the PLC; that the order was not implemented, owing to their arrest in June 2006; that after their release in May/June 2010, the three men were immediately notified that they had to leave East Jerusalem; that Mr. Abu-Teir was ordered to leave by 19 June 2010 and, refusing to do so, was arrested on 30 June 2010 and later deported to the West Bank; and that the other two parliamentarians were ordered to leave by 3 July 2010 and, likewise refusing to comply with the order, took refuge in the International Committee of the Red Cross (ICRC) building in Jerusalem, from which they were removed by the Israeli authorities on 26 September 2011 and 23 January 2012 respectively,

*Considering* that the head of the Knesset delegation, in his letter dated 26 September 2017 addressed to the IPU Secretary General, stated: "The activities of individuals named in your letters, notably Ms. Jarrar, have been addressed at length on various occasions in recent years, both in our correspondence and in face-to-face meetings. I am sure you can appreciate the sensitivity of these matters, which prevent me from commenting in detail on the nature of these allegations. Nonetheless, I can assure you that Israel's actions were taken in response to legitimate and concrete security concerns and not to the typical "political work" expected of members of parliament. As such, in detaining these individuals, Israel was acting well within the right of self-defence that is accorded all nations"; the head of the Knesset delegation to the IPU declined the Committee's invitation to a hearing in that regard during the 137<sup>th</sup> IPU Assembly (14-18 October 2017),

*Considering* that, according to the head of the Palestinian delegation, the head of the PNC tried to work with members of the Knesset to obtain access to their Palestinian colleagues detained in Israeli prisons, but that those efforts were to no avail; the Palestinian parliamentary authorities reached out to the Speaker of the Knesset to understand the reasons behind Ms. Jarrar's arrest in an effort to maintain a culture of dialogue, but the Israeli parliamentary authorities were not forthcoming regarding Ms. Jarrar's detention or any of the other cases,

1. *Thanks* the head of the Knesset delegation for his letter,
2. *Regrets* however that he chose not to meet with the Committee for a hearing; *considers* this all the more regrettable given the long-standing concerns and requests for information in this case; *emphasizes* that the Committee's work is based on the principle of dialogue with the authorities of the country concerned, first and foremost its parliament; *sincerely hopes* therefore that the Knesset will engage in regular written and face-to-face exchanges of views with the Committee in order to facilitate progress towards a satisfactory solution of the case;
3. *Is concerned* about the re-arrest and administrative detention of Mr. Al-Natsheh and Ms. Jarrar and the fact that eight other MPs are also in such detention; *considers* that, as the case history shows, even when PLC members are released, they remain subject to renewed arrest and can be placed in administrative detention again at any time;
4. *Remains deeply concerned* in this regard that the practice of administrative detention often relies on classified evidence, as the Israeli authorities acknowledge; *understands* that, at the normative level and that of the relevant jurisprudence of the Supreme Court, safeguards are provided for with a view to preventing the abusive use of administrative detention; nevertheless *notes with regret* that the reality of administrative detention is quite different, mainly owing to the lack of any effective possibility for the detainees to defend themselves, with the result that they are open to arbitrary treatment; *calls on* the Israeli authorities to abandon the practice of administrative detention by putting in place in the meantime effective safeguards against possible abuses, notably with regard to the use of classified evidence;

5. *Requests* the Secretary General to convey this decision to the relevant authorities, the complainant and any third party likely to be in a position to supply relevant information;
6. *Requests* the Committee to continue examining this case and to report back to it in due course.

## Palestine

PL/84 - Najat Abu Bakr

### ***Decision adopted unanimously by the IPU Governing Council at its 201<sup>st</sup> session (St. Petersburg, 18 October 2017)***

The Governing Council of the Inter-Parliamentary Union,

*Having before it* the case of Ms. Najat Abu Bakr, a member of the Palestinian Legislative Council, which has been examined by the Committee on the Human Rights of Parliamentarians pursuant to the Procedure for the examination and treatment of complaints (Annex I of the Revised Rules and Practices),

*Considering* the letter from the Speaker of the Palestinian National Council (PNC) dated 30 August 2017,

*Taking into account* the hearing which the Committee on the Human Rights of Parliamentarians held with the Palestinian delegation during the 137<sup>th</sup> IPU Assembly, (St. Petersburg, October 2017),

*Considering* the following information provided by the complainant:

- Ms. Abu Bakr was deprived of her parliamentary immunity in December 2016 following a presidential decision that paved the way for the Attorney General to pursue an investigation against her; Ms. Abu Bakr was never provided with a written decision notifying her of such measure or justifying the reasons behind it;
- The presidential decision to revoke Ms. Abu Bakr's parliamentary immunity was underpinned by a Constitutional ruling of November 2016 which supported President Abbas's 2012 decree revoking the parliamentary immunity of former parliamentarians; according to the ruling, "President Abbas is not overstepping his authority as he is issuing legal decisions to revoke the immunity of members of the Palestinian Legislative Council while it is not in session"; the complainant pointed out in this regard that the Palestinian Legislative Council has not been able to convene since the 2007 conflict between Hamas and Fatah;
- Ms. Abu Bakr has been subjected to harassment, intimidation and restrictions since February 2016, primarily after she requested an investigation into transactions by the Minister of Local Governance in light of corruption allegations and was then herself accused of defamation;
- The authorities unsuccessfully attempted to arrest Ms. Abu Bakr on defamation charges; she sought refuge in the premises of the Palestinian Legislative Council (PLC) from 22 February to 10 March 2016; Ms. Abu Bakr ended her sit-in and handed the corruption files to the Attorney General after she was persuaded to do so by the head of the parliamentary group of Fatah, Mr. Azzam Al-Ahmed; she also provided oral testimony before the Palestinian Anti-corruption Commission against the above-mentioned minister, but no action has been taken by the Anti-corruption Commission or the parliamentary authorities to investigate those allegations, and a case for defamation is still pending against her;
- Ms. Abu Bakr's salary was stopped without notice in June 2017 and she did not receive any written explanation for the measure; pursuant to orders from the Palestinian authority, Ms. Abu Bakr has not been allowed to exercise any kind of paid professional activity since the suspension of her salary; she was subject to a travel ban after June 2016, which was lifted in early August 2017; she has been receiving threatening letters and facing daily acts of intimidation;
- Ms. Abu Bakr filed a complaint before the Palestinian courts with regard to the lifting of her parliamentary immunity, the stopping of her salary and the travel ban but, owing to

the lack of independence of the Palestinian judiciary, her lawyer was unable to reinstate her salary and parliamentary immunity or even obtain a decision allowing him to enter the PLC during Ms. Abu Bakr's sit-in without risking his own arrest,

*Considering* that, according to the letter from the Speaker of the Palestinian National Council dated 30 August 2017, most of the complainant's allegations are erroneous, since Ms. Abu Bakr did not submit a complaint before the PNC about her case and did not submit any question or interrogation to the above-mentioned minister within the framework and rules of procedure of the Legislative Council; that, despite Ms. Abu Bakr's behaviour, no legal action was pending against her because the matter had already been resolved thanks to a "tribal reconciliation carried out in accordance with the popular tradition between the family of the minister and the family of Ms. Abu Bakr"; and that she did not seek legal redress through a formal complaint on the other allegations concerning the stopping of salary and harassment,

*Considering* the following information that Mr. Azzam Al-Ahmad, member of the Palestinian delegation and head of the parliamentary group of Fatah, provided at the hearing held during the 137<sup>th</sup> IPU Assembly;

- With regard to the lifting of Ms. Abu Bakr's parliamentary immunity, only the parliamentary authorities are competent and such decision does not lie within the President's powers; Ms. Abu Bakr was facing an organizational issue with her parliamentary faction, Fatah, due to her divergent views on the political course of the party; she resorted to the media to provide a statement against the Fatah leadership and, as a result, was brought before a Fatah committee which decided to dismiss her from the party;
- The PNC's procedures and methods of work prevent parliamentarians from resorting to the media to publicly accuse ministers of violations of any kind; Ms. Abu Bakr should have referred the complaint against the mentioned minister to the parliamentary authorities; the minister accused by Ms. Abu Bakr of corruption was not even a minister at the time; she had faced similar issues in the past with former ministers who also accused her of defamation; the parliamentary authorities supported Ms. Abu Bakr and offered her protection within the PLC's premises when she was about to be arrested; Mr. Al-Ahmad mediated in the case and informed the presidency that, as a parliamentarian, Ms. Abu Bakr is protected by her parliamentary immunity; the Palestinian authorities informed him that there was no case pending against her;
- The Attorney General, however, as an independent authority and in accordance with his powers, was able to investigate Ms. Abu Bakr; Mr. Al-Ahmad accompanied Ms. Abu Bakr to the Attorney General's Office where she was questioned for about an hour before she was permitted to leave without any charges against her; a tribal reconciliation was carried out, in accordance with the popular tradition, between the family of the minister and the family of Ms. Abu Bakr;
- The parliamentary authorities did not issue a decision ordering the stopping of Ms. Abu Bakr's salary; the Ministry of Finance was the relevant authority to rule on such matters; Ms. Abu Bakr might have been deprived of her salary due to her lack of attendance at parliamentary sessions, and she could seek legal redress through a formal complaint;
- Concerning the alleged travel ban, Ms. Abu Bakr was able to travel numerous times in 2016 and 2017,

*Considering* that the State of Palestine is a party to the International Covenant on Civil and Political Rights, which it ratified in 2014 and which guarantees the right to freedom of expression and association together with freedom of movement, thus entailing the prohibition of restrictions related to the aforementioned rights,

1. *Thanks* the parliamentary authorities for their cooperation and for the information provided;
2. *Is deeply concerned* about the lifting of Ms. Abu Bakr's parliamentary immunity, which seems to have come in response to the legitimate exercise of her parliamentary mandate and freedom of opinion; *is likewise concerned* that it appears that her parliamentary

immunity was lifted by the President, which would contradict the principle of separation of powers and the independence of parliament;

3. *Is eager* therefore to receive official information about the facts and legal grounds supporting the President's decision to lift Ms. Abu Bakr's parliamentary immunity, as well as a copy thereof;
4. *Sincerely* hopes that the court will rule swiftly on her complaint regarding the stopping of her salary and the lifting of her parliamentary immunity; *trusts* that the Parliament will monitor this matter and assist her during the proceedings, if need be;
5. *Requests* the Secretary General to convey this decision to the parliamentary authorities, the complainants and any third party likely to be in a position to provide relevant information;
6. *Requests* the Committee to continue examining this case and to report back to it in due course.

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