



Inter-Parliamentary Union

For democracy. For everyone.

Kenya

KEN/55 - Melitus Mugabe Were

Decision adopted unanimously by the IPU Governing Council at its 196th session (Hanoi, 1st April 2015)

The Governing Council of the Inter-Parliamentary Union,

Having before it the case of Mr. Melitus Mugabe Were, a member of parliament of Kenya who was assassinated in January 2008, 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 of the Committee) since its 121st session (April 2008),

Taking into account the letter of the Clerk of the National Assembly of Kenya dated 28 March 2015 and the information provided by the Kenyan delegation to the 132nd IPU Assembly (Hanoi, March 2015) on the occasion of the hearing of the Committee on the Human Rights of Parliamentarians,

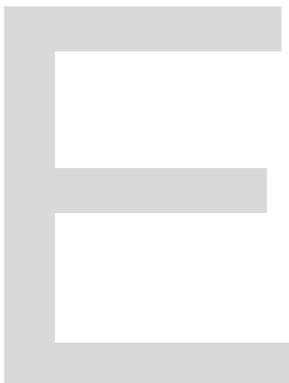
Considering the following information on file:

- Mr. Melitus Mugabe Were, a member of the opposition Orange Democratic Movement (ODM) of Kenya, was assassinated on 29 January 2008 amidst the violence that erupted following the contested Kenyan presidential elections of December 2007;
- The police concluded the investigation in 2008 and four persons were subsequently charged with the murder, all of whom were in custody at that time;
- Several witnesses appeared in court during trial proceedings, which encountered significant delays with repeated adjournments and changes in the presiding judges. The criminal proceedings were mishandled to the point that the judge in the case declared a mistrial in November 2011 and ordered that the case be retried;
- The retrial commenced in December 2011 and continued in 2012. Twelve witnesses had testified by July 2012 and 11 more were due to testify,

Considering that the Speaker of the National Assembly has regularly provided information on the trial proceedings of the four persons who were arrested after the crime up until October 2012, and that no further information has been forthcoming from the Kenyan authorities since that date,

Considering that, according to the information recently submitted by the National Assembly of Kenya in a letter dated 28 March 2015 and during the hearing held with the Kenyan delegation during the 132nd IPU Assembly:

- The High Court of Kenya concluded the first instance proceedings against the suspected murderers of Mr. Were on 10 February 2015, convicting three of the suspects to the death penalty and acquitting a fourth person. Mr. Were's widow has reportedly expressed her satisfaction. The persons convicted have not appealed the conviction to date, but may still do so as the time period to file a notice of appeal has not yet expired;



- It is not contested that the trial took a very long time to complete. The delays were caused by procedural requirements, as the proceedings had to be restarted afresh whenever a new judge took over the hearing of the case upon the request of the defence lawyers, in compliance with the rights of the accused pursuant to the criminal procedure and the Constitution of Kenya;
 - The Court established beyond any reasonable doubt that Mr. Were had been fatally shot in the course of an attempted robbery, on the basis of witness statements and forensic evidence (including fingerprints, DNA and ballistic expert examinations) adduced by the prosecution. The Court expressed its deep appreciation for the utmost professionalism and diligence shown by the police in the investigation and the subsequent quality of the evidence produced;
 - The Court has considered that it was clear that the motive for the assault on the newly elected parliamentarian was robbery, but it also noted in its ruling (without drawing further conclusions in that respect) that Mr. Were's election had been unexpected and had been challenged, as it had been assumed that the candidate from the Party of National Unity (PNU) would win the Embakasi constituency. A prosecution witness testified that Mr. Were had told some of his supporters that his life was in danger and had requested Parliament to provide him with a bodyguard. His request could not be granted, however, because he had not yet been sworn in as a member of parliament, due to persisting tensions in the country,
1. *Thanks* the parliamentary authorities of Kenya for the information provided;
 2. *Notes with satisfaction* that the High Court of Kenya finally completed the trial proceedings and sentenced the culprits for the murder of Mr. Were; *regrets nevertheless* the delays in the proceedings, which have taken more than seven years to reach a first-instance ruling;
 3. *Is pleased* that the Parliament of Kenya has continued monitoring the proceedings to date in line with its overall commitment to ensuring that the crimes committed in the aftermath of the 2007 presidential elections would not go unpunished; *trusts* that it will continue doing so, should an appeal take place;
 4. *Awaits further details* on the status of the proceedings at this stage and *wishes to be kept informed* should an appeal be filed, or should the conviction become definitive; in the event of an appeal, *would appreciate receiving information* on the process and to know whether the Court of Appeals upholds the ruling, including with regard to the motives of the crime;
 5. *Requests* the Secretary General to convey this decision to the parliamentary authorities 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.