Governing Council
Item 11(b)

CL/193/11(b)-R.4
Geneva, 9 October 2013

DECISIONS OF THE COMMITTEE ON THE HUMAN RIGHTS OF PARLIAMENTARIANS

CONTENTS

Page

AFRICA

► **BURUNDI**

Case No. BDI/01 - SYLVESTRE MFAYOKURERA
Case No. BDI/05 - INNOCENT NDIKUMANA
Case No. BDI/06 - GERARD GAHUNGU
Case No. BDI/07 - LILIANE NTAMUTUMBA
Case No. BDI/29 - PAUL SIRAHENDA
Case No. BDI/35 - GABRIEL GISABWAMANA
Case No. BDI/60 - JEAN BOSCO RUTAGENGWA

Case No. BDI/02 - NORBERT NDIHOKUBWAYO

Case No. BDI/26 - NEPHTALI NDIKUMANA
Case No. BDI/36 - MATHIAS BASABOSE
Case No. BDI/37 - LÉONARD NYANGOMA
Case No. BDI/40 - FRÉDÉRIQUE GAHIGI
Case No. BDI/42 - PASTEUR MPAWENAYO
Case No. BDI/43 - JEAN MARIE NDUWABIKE
Case No. BDI/45 - ALICE NZOMUKUNDA
Case No. BDI/46 - ZAITUNI RADJABU

Case No. BDI/42 - PASTEUR MPAWENAYO
Case No. BDI/44 - HUSSEIN RADJABU
Case No. BDI/57 - GÉRARD NKURUNZIZA
Case No. BDI/59 - DEO NSHIRIMANA

Draft resolution 1

► **CAMEROON**

Case No. CM/01 - DIEUDONNÉ AMBASSA ZANG
Draft resolution 4

► **CHAD**

Case N° CHD/06 - SALEH KEBZABO
Case N° CHD/07 – MAHAMAT SALEH MAKKI
Case N° CHD/08 – MAHAMAT MALLOUM KADRE
Case N° CHD/09 – ROUTOUANG YOMA GOLOM
Case N° CHD/10 – GALI NGOTHE GATTA
Draft resolution 7

Page

► **DEMOCRATIC REPUBLIC OF THE CONGO**
Case No. DRC/32 - PIERRE JACQUES CHALUPA

Case No. DRC/49 - ALBERT BIALUFU NGANDU
Case No. DRC/50 - ANDRÉ NDALA NGANDU
Case No. DRC/51 - JUSTIN KILUBA LONGO
Case No. DRC/52 - SHADRACK MULUNDA NUMBI KABANGE
Case No. DRC/53 - HÉRITIER KATANDULA KAWINISHA
Case No. DRC/54 - MUAMUS MWAMBA MUSHIKONKE
Case No. DRC/55 - JEAN OSCAR KIZIAMINA KIBILA
Case No. DRC/56 – BONNY-SERGE WELO OMANYUNDU
Case No. DRC/57 - JEAN MAKAMBO SIMOL'IMASA
Case No. DRC/58 - ALEXIS LUWUNDJI OKITASUMBO
Case No. DRC/59 - CHARLES MBUTA MUNTU LWANGA
Case No. DRC/60 - ALBERT IFEFO BOMBI
Case No. DRC/61 - JACQUES DOME MOLOLIA
Case No. DRC/62 - RENÉ BOFAYA BOTAKA
Case No. DRC/63 - JEAN DE DIEU MOLEKA LIAMBI
Case No. DRC/64 - EDOUARD KIAKU MBUTA KIVUILA
Case No. DRC/65 - ODETTE MWAMBA BANZA (Ms.)
Case No. DRC/66 - GEORGES KOMBO NTONGA BOOKE
Case No. DRC/67 - MAMUYA RAMAZANI MASUDI KILELE
Case No. DRC/68 - CÉLESTIN BOLILI MOLA
Case No. DRC/69 - JÉRÔME KAMATE
Case No. DRC/70 - COLETTE TSHOMBA (Ms.)
Case No. DRC/73 - BOBO BARAMOTO MACULO
Case No. DRC/74 - ANZULUNI BEMBE ISILONYONYI
Case No. DRC/75 - ISIDORE KABWE MWEHU LONGO
Case No. DRC/76 - MICHEL KABEYA BIAYE
Case No. DRC/77 - JEAN JACQUES MUTUALE
Case No. DRC/78 - EMMANUEL NGOY MULUNDA
Case No. DRC/79 - ELIANE KABARE NSIMIRE (Ms.)

Case No. DRC/71 - EUGÈNE DIOMI NDONGALA

Case No. DRC/72 - DIEUDONNE BAKUNGU MYTHONDEKE

Case No. DRC/80 - ROGER LUMBALA TSHITENGE

Case No. DRC/81 - MUHINDO NZANGI

Draft resolution 10

► **ERITREA**
Case No. ERI/01 - OGBE ABRAHA
Case No. ERI/02 - ASTER FISSEHATSION
Case No. ERI/03 - B. GEBREGZIABEHER
Case No. ERI/04 - BERAKI GEBRESELASSIE
Case No. ERI/05 - HAMAD HAMID HAMAD
Case No. ERI/06 - SALEH KEKIYA
Case No. ERI/07 - GERMANO NATI
Case No. ERI/08 - ESTIFANOS SEYOUM
Case No. ERI/09 - MAHMOUD A. SHERIFFO
Case No. ERI/10 - PETROS SOLOMON
Case No. ERI/11 - HAILE WOLDETENSAE
Draft resolution 14

Page

► **MADAGASCAR**
Case No. MAG/05 - LANTONIAINA RABENATOANDRO
Case No. MAG/06 - HENRI RANDRIANJATOVO
Case No. MAG/07 - MAMISOA RAKOTOMANDIMBY
Case No. MAG/08 - RAYMOND RAKOTOZANDRY
Case No. MAG/09 - RANDRIANATOANDRO RAHARINAIVO
Case No. MAG/10 - ELIANE NAÏKA
Case No. MAG/11 - MAMY RAKOTOARIVELO
Case No. MAG/12 - JACQUES ARINOSY RAZAFIMBELO
Case No. MAG/13 - YVES AIMÉ RAKOTOARISON
Case No. MAG/14 - FIDISON MANANJARA
Case No. MAG/15 - STANISLAS ZAFILAHY
Case No. MAG/16 - RAKOTONIRINA HARIJAONA LOVANANTENAINA
Draft resolution 16

AMERICAS

► **COLOMBIA**
Case No. CO/142 - ÁLVARO ARAÚJO CASTRO
Draft resolution 19

Case No. CO/155 - PIEDAD DEL SOCORRO ZUCCARDI DE GARCIA
Draft resolution 21

ASIA

► **BAHRAIN**
Case No. BAH/03 - MATAR EBRAHIM MATAR
Case No. BAH/04 - JAWAD FAIRUZ GHULOOM
Draft resolution 24

► **CAMBODIA**
Case No. CMBD/01 - SAM RAINSY
Draft resolution 29

► **MALDIVES**
Case No. MLD/16 - MARIYA DIDI
Case No. MLD/28 - AHMED EASA
Case No. MLD/29 - EVA ABDULLA
Case No. MLD/30 - MOOSA MANIK
Case No. MLD/31 - IBRAHIM RASHEED
Case No. MLD/32 - MOHAMED SHIFAZ
Case No. MLD/33 - IMTHIYAZ FAHMY
Case No. MLD/34 - MOHAMED GASAM
Case No. MLD/35 - AHMED RASHEED
Case No. MLD/36 - MOHAMED RASHEED
Case No. MLD/37 - ALI RIZA
Case No. MLD/38 - HAMID ABDUL GHAFOOR
Case No. MLD/39 - ILYAS LABEEB
Case No. MLD/40 - RUGIYYA MOHAMED
Case No. MLD/41 - MOHAMED THORIQ

Page

MALDIVES (contd.)
Case No. MLD/42 - MOHAMED ASLAM
Case No. MLD/43 - MOHAMMED RASHEED
Case No. MLD/44 - ALI WAHEED
Case No. MLD/45 - AHMED SAMEER
Case No. MLD/46 - ABDULLA JABIR
Case No. MLD/47 - AFRASHEEM ALI

Case No. MLD/48 - ALI AZIM
Case No. MLD/49 - ALHAN FAHMY
Case No. MLD/50 - ABDULLA SHAHID

Draft resolution 31

► **MONGOLIA**
Case No. MON/01 - ZORIG SANJASUUREN
Draft resolution 34

► **PAKISTAN**
Case No. PAK/22 - SYED HAMID SAEED KAZMI
Draft resolution 36

CASE No. PAK/23 - RIAZ FATYANA
Draft resolution 38

► **PALESTINE / ISRAEL**
Case No. PAL/02 - MARWAN BARGHOUTI
Draft resolution 41

Case No. PAL/05 - AHMAD SA'ADAT
Draft resolution 43

Case No. PAL/17 - NAYEF AL-ROJOUB
Case No. PAL/18 - YASER MANSOUR
Case No. PAL/20 - FATHI QARAWI
Case No. PAL/21 - EMAD NOFAL
Case No. PAL/28 - MUHAMMAD ABU-TEIR
Case No. PAL/29 - AHMAD 'ATTOUN
Case No. PAL/30 - MUHAMMAD TOTAH
Case No. PAL/32 - BASIM AL-ZARRER
Case No. PAL/35 - MOHAMED ISMAIL AL-TAL
Case No. PAL/47 - HATEM QFEISHEH
Case No. PAL/48 - MAHMOUD AL-RAMAHI
Case No. PAL/57 - HASAN YOUSEF
Case No. PAL/60 - AHMAD MUBARAK
Draft resolution 45

► **SRI LANKA**
Case No. SRI/12 - JAYALATH JAYAWARDENA
Case No. SRI/49 - JOSEPH PARARAJASINGHAM
Case No. SRI/53 - NADARAJAH RAVIRAJ
Case No. SRI/61 - THIYAGARAJAH MAHESWARAN
Case No. SRI/63 - D.M. DASSANAYAKE
Case No. SRI/68 - SARATH FONSEKA
Case No. SRI/69 - SIVAGANAM SHRITHARAN
Draft resolution 49

Page

EUROPE

► **BELARUS**
Case No. BLS/05 - VICTOR GONCHAR
Draft resolution 51

► **ICELAND**
Case No. IS/01 - BIRGITTA JÓNSDÓTTIR
Draft resolution 53

► **TURKEY**
Case No. TK/41 - HATIP DICLE
Case No. TK/67 - MUSTAFA BALBAY
Case No. TK/68 - MEHMET HABERAL
Case No. TK/69 - GÜLSER YILDIRIM
Case No. TK/70 - SELMA IRMAK
Case No. TK/71 - FAYSAL SARIYILDIZ
Case No. TK/72 - IBRAHIM AYHAN
Case No. TK/73 - KEMAL AKTAS
Case No. TK/74 - ENGIN ALAN
Draft resolution 56

Geneva, 9 October 2013

BURUNDI

CASE No. BDI/01 - SYLVESTRE MFAYOKURERA
CASE No. BDI/05 - INNOCENT NDIKUMANA
CASE No. BDI/06 - GERARD GAHUNGU
CASE No. BDI/07 - LILIANE NTAMUTUMBA
CASE No. BDI/29 - PAUL SIRAHENDA
CASE No. BDI/35 - GABRIEL GISABWAMANA
CASE No. BDI/60 - JEAN BOSCO RUTAGENGWA

CASE N° BDI/02 - NORBERT NDIHOKUBWAYO

CASE No. BDI/26 - NEPHTALI NDIKUMANA
CASE No. BDI/36 - MATHIAS BASABOSE
CASE No. BDI/37 - LÉONARD NYANGOMA
CASE No. BDI/40 - FRÉDÉRIQUE GAHIGI
CASE No. BDI/42 - PASTEUR MPAWENAYO
CASE No. BDI/43 - JEAN MARIE NDUWABIKE
CASE No. BDI/45 - ALICE NZOMUKUNDA
CASE No. BDI/46 - ZAITUNI RADJABU

CASE No. BDI/42 - PASTEUR MPAWENAYO
CASE No. BDI/44 - HUSSEIN RADJABU
CASE No. BDI/57 - GÉRARD NKURUNZIZA
CASE No. BDI/59 - DEO NSHIRIMANA

The Committee,

Decides to recommend to the Governing Council of the Inter-Parliamentary Union that it adopt the following resolution:

The Governing Council of the Inter-Parliamentary Union,

Referring to its examination of the cases of the above-mentioned members of the Parliament of Burundi and to the resolution it adopted at its 190th session (April 2012),

Considering the report (CL/193/11(b)-R.1) on the visit conducted by the President of the Committee on the Human Rights of Parliamentarians to Burundi from 17 to 20 June 2013,

Recalling that the cases, which the Committee has been examining for many years, concern:

- The assassinations of six members of the National Assembly between 1994 and 1999, namely Mr. Sylvestre Mfayokurera (September 1994), Mr. Innocent Ndikumana (January 1996), Mr. Gérard Gahungu (July 1996), Mr. Paul Sirahenda (September 1997), Mr. Gabriel Gisabwamana (January 2000) and Ms. Liliane Ntamutumba (July 1996), the assassination in 2002 of Mr. Jean Bosco Rutagengwa and two assassination attempts on Mr. Norbert Ndihokubwayo (September 1994 and December 1995), all of which remain unpunished to date;
- The grenade attacks of 19 August 2007 and 6 March 2008 on eight members of the previous legislature (Mr. Nephtali Ndikumana, Mr. Pasteur Mpawenayo, Mr. Jean-Marie Nduwabike, Ms. Frédérique Gahigi, Mr. Mathias Basabose, Mr. Léonard Nyangoma, Ms. Zaituni Radjabu and Ms. Alice Nzomukunda) belonging to a dissident wing of the National Council for the Defence of Democracy - Forces for the Defence of Democracy (CNDD-FDD), which caused material damage but did not injure anyone and which have likewise gone unpunished;
- Criminal proceedings brought against Mr. Hussein Radjabu, Mr. Pasteur Mpawenayo, Mr. Gérard Nkurunziza and Mr. Déo Nshirimana, all of whom belonged to the dissident wing of the CNDD-FDD led by Mr. Radjabu (who was ousted on 7 February 2007 from the CNDD-FDD party leadership), all of whom lost their seats in parliament following the Constitutional Court ruling of 5 June 2007 declaring them to be sitting unconstitutionally, and whose judicial situation is currently as follows:

- Mr. Radjabu is serving a 13-year prison term for conspiracy against the State;
- Mr. Mpawenayo was arrested in July 2008 and initially accused of being Mr. Radjabu's accomplice and of having co-chaired the meeting at which the acts of which he and Mr. Radjabu were accused are alleged to have occurred; he was acquitted by the Supreme Court judicial chamber at the end of May 2012 and subsequently released;
- Mr. Nshirimana, who was arrested in October 2010 by agents of the National Intelligence Service (SNR), was charged, reportedly on the basis of hearsay, of plotting against the State; according to his lawyer, Mr. Nshirimana is also accused of not having allowed two players from the football team of his region to play against the President's team, which was qualified as incitement to disobedience; the Supreme Court acquitted Mr. Nshirimana on 26 November 2012, and Mr. Nshirimana was released after having served almost the entire maximum potential sentence while in remand;
- Mr. Nkurunziza was arrested in July 2008 and accused of having distributed weapons in his province, Kirundo, for a rebellion against the authority of the State; according to his lawyers, the investigation was based solely on hearsay and no weapons were seized; in five years of judicial proceedings, no Burundian court ever examined either Mr. Nkurunziza's detention or the charges against him until May 2012, when the Supreme Court at last heard the case and adjourned to deliberate; instead of ruling on the case, the Supreme Court decided to re-open it over one year later, even though it had still not considered the lawfulness of Mr. Nkurunziza's continued detention,

Bearing in mind that, according to the sources, the Supreme Court sat on Mr. Nkurunziza's case on 30 September 2013 and decided to re-open it without specifying why, that it refused to examine the lawfulness of Mr. Nkurunziza's detention since 2008 or to consider the case on the merits, and that it has not set a date for fresh hearings,

Considering furthermore that the mission report was sent to the Burundi authorities with a letter dated 8 August 2013, inviting them to forward any observations in writing by 15 September 2013; that, such observations not having been received, a reminder was sent on 24 September; that, by the time the Permanent Mission of the Republic of Burundi to the United Nations had contacted the secretariat of the Committee and requested a hearing, it was no longer possible to accommodate such a hearing in the Committee's schedule, so the secretariat asked the delegation to submit its observations in writing; that no such observations were ever received, but a formal application for a hearing was received on 7 October 2013, when the Committee had finished its deliberations, whereupon the Committee selected two of its members to meet with the delegation for an informal exchange; and that, following that exchange, the Committee members having been briefed about the concerns of the delegation, they repeated their request for those concerns to be made available in written form, so that the Committee could examine them properly at its next scheduled session,

1. *Thanks* the Speaker of the National Assembly for his cooperation, which enabled the President of the Committee to fulfil his terms of reference during the visit; *sincerely regrets* that no written observations have been received on the mission report to date, and *expresses the hope* that they will be provided soon;

2. *Thanks* the President of the Committee for his work and *endorses* his general conclusions;

3. *Is alarmed* to learn the Mr. Nkurunziza continues to be held in custody, five years after his arrest, and that the Supreme Court has re-opened the case; *is deeply disappointed to observe* that the authorities have not upheld the pledge they made during the visit of the Committee President to wind up the case before September 2013; *once again recalls* that justice delayed is justice denied and *considers* that these fresh delays are inexcusable and should prompt the authorities to release Mr. Nkurunziza immediately;

once again deplores the fact that, in this case, the judicial authorities continue to act with flagrant disregard for international and national fair-trial standards;

4. *Notes with interest* that Mr. Mpawenayo and Mr. Nshirimana have been acquitted but *observes* that they each spent several years in detention, a situation that could have been avoided had the authorities decided to speed up the proceedings or release them on bail; *sincerely hopes* that, once the current appeal has been heard, the acquittals will be confirmed without delay and the Committee will be able to consider these cases as definitively resolved and close them; *expresses concern* about and *requests* additional information on the threats and intimidation that Mr. Mpawenayo and Mr. Nshirimana allege they have been victim of since their release;

5. *Deeply regrets* the authorities' refusal to furnish a copy of the court decisions in the above cases to the Committee and *considers* that, until the Committee has been able to make its own analysis of the judgement in Mr. Mpawenayo's case, it cannot rule out that his acquittal should have prompted the authorities to re-examine the evidence on which Mr. Radjabu was convicted; *encourages* Mr. Radjabu and the competent authorities to explore all possible legal remedies, namely release on parole, a re-trial and a presidential pardon; *wishes* to be kept informed of progress in that regard and *renews* its request for a copy of the court decisions;

6. *Welcomes* the decision by the National Assembly's parliamentary working group to travel to the country's interior to collect detailed information on the circumstances of the above-mentioned assassinations, notably by meeting with the victims' families; *expresses satisfaction* that, after many delays, draft legislation on the Truth and Reconciliation Commission was at last tabled in the National Assembly in early 2013; *calls upon* the National Assembly to take due account of the concerns expressed about some of the draft legislation's provisions and to ensure that the draft legislation meets the aspirations expressed by the Burundian people during the consultations organized by the tripartite committee; *sincerely hopes* that an independent, legitimate and credible Truth and Reconciliation Commission will be established;

7. *Encourages* the National Assembly's parliamentary working group to continue following up the cases under consideration, notably by meeting regularly with all the competent authorities and with the former parliamentarians concerned and by observing any ongoing judicial proceedings; *trusts* that the parliamentary working group will in future forward its periodic activity reports to the Committee so as to enable the latter to be regularly and fully informed of the progress it is making;

8. *Requests* the Secretary General to forward this resolution to the parliamentary authorities and to the sources;

9. *Requests* the Committee to continue examining the cases.

CASE No. CM/01 - DIEUDONNÉ AMBASSA ZANG - CAMEROON

The Committee,

Decides to recommend to the Governing Council of the Inter-Parliamentary Union that it adopt the following resolution:

The Governing Council of the Inter-Parliamentary Union,

Referring to the case of Mr. Dieudonné Ambassa Zang, a member of the National Assembly of Cameroon, and to the resolution it adopted at its 192nd session (March 2013),

Taking into account the letter from the Secretary General of the National Assembly of Cameroon dated 4 October 2013,

Recalling the following information on file:

- Mr. Ambassa Zang, Minister of Public Works from August 2002 to December 2004 and known, according to the source, for having fought corruption within that ministry, was elected in 2007 on the ticket of the Cameroon People's Democratic Rally;
- On 7 August 2009 the Bureau, meeting in extraordinary session, lifted Mr. Ambassa Zang's parliamentary immunity to permit an investigation into allegations of misappropriation of public funds managed by Mr. Ambassa Zang when he was Minister of Public Works; although Mr. Ambassa Zang left Cameroon on 12 July 2009, he had a defence note sent on 3 August 2009 to all members of the Bureau; there is no indication that the note was included in the file before the Bureau;
- According to the authorities, the charges laid against Mr. Ambassa Zang stem from an audit prompted by a complaint by the French Development Agency (AFD), the funding source for the rehabilitation of the Wouri Bridge, for which Mr. Ambassa Zang had been responsible; according to the Prosecutor General, State companies, ministries and other State structures managing public funds are subject to annual audits by the Supreme State Audit Office (CONSUPE), which reviews the State's management; the Minister of Justice has linked the audit of Mr. Ambassa Zang's management to the fight against corruption initiated by the Cameroonian State in 2005;
- According to the Minister Delegate to the Office of the President in charge of the Supreme State Audit Office, the final audit report was submitted to the Head of State, who opted for criminal proceedings on a charge of misappropriation of public funds because of the need, highlighted by the international community, to put public finances on a sound footing; the file had therefore been referred to the Minister of Justice; a new, thorough examination had been conducted of the accounts and, after the lifting of Mr. Ambassa Zang's parliamentary immunity, the file had been handed over to the Prosecutor General of the Court of Appeal; the case was at the preliminary investigation stage;
- According to the source, Mr. Ambassa Zang has replied with defence memoranda to each of the charges, which he has rejected as unfounded; the few CONSUPE documents that Mr. Ambassa Zang has been able to obtain point to no wrongdoing or misappropriation in his favour of any sum whatsoever; according to the source, the final audit report was not forwarded to Mr. Ambassa Zang; moreover, it is clear that at least one new charge was apparently introduced into the file submitted to the judicial authorities but not raised in the request for information originally addressed to him; the source affirms that the acts of which Mr. Ambassa Zang is accused can be seen at worst as mismanagement of public funds and in no way amount to an offence; the source has therefore affirmed from the outset that the charges should not lead to criminal proceedings but should have been referred to the Budgetary and Financial Discipline Council (CDBF), particularly since it offers Mr. Ambassa Zang an opportunity to be represented by a lawyer;

- The source affirms that Mr. Ambassa Zang cannot at present return to Cameroon because he would be arrested as a fugitive without ever having been sentenced or prosecuted, and that his safety is no longer guaranteed in Cameroon,

Recalling that the authorities have repeatedly stated that Mr. Ambassa Zang is not specifically targeted by the investigation, which concerns many others, all of whom are at present free, that the authorities therefore suggest that Mr. Ambassa Zang return to Cameroon to defend himself before the judicial authorities in the case, in which only his testimony is missing, and that the source has replied that the charges laid against Mr. Ambassa Zang have to do with 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 and its German counterpart the Kreditanstalt für Wiederaufbau (KfW, or Reconstruction Credit Institute),

Considering that "Upon the orders of the President of the Republic of Cameroon, the Minister Delegate to the Office of the President in charge of CONSUPE signed, on 12 October 2012, a Decision bringing Mr. Ambassa Zang before the CDBF, that the said decision was reportedly notified to his counsel, Mr. Eba'a Manga, in early May 2013, or nearly seven months after its signing, and that no explanation was apparently given for this state of affairs",

Considering that on 20 August 2013 Mr. Ambassa Zang received a "partial request for information" from the Rapporteur in the case before the Budgetary and Financial Discipline Council, giving him 45 days in which to respond; *considering* that, according to the source, Mr. Ambassa Zang's lawyer was recently accused of having enjoyed liberalities amounting to some 8.5 million CFA francs during the period in which Mr. Ambassa Zang was Minister of Public Works, and that the accusation had never before been notified to the person concerned,

Considering that on 13 July 2010 the International Chamber of Commerce (ICC) handed down an arbitral award in the UDECTO *v.* State of Cameroon case, a dispute concerning the execution of the Wouri bridge rehabilitation works; since Cameroon essentially won in respect of its claims as UDECTO was sentenced to paying it substantial sums, the source affirms that, on the strength of the legal principle of "non bis in idem", the charges brought against Mr. Ambassa Zang regarding a prejudice he allegedly caused Cameroon become no longer applicable,

Considering that, according to some Cameroonian press articles, an arrest warrant was issued in June 2013 for Mr. Ambassa Zang in a new case concerning the execution of government contracts for the maintenance of rural roads in Mefou and Afamba department; according to the source, Mr. Ambassa Zang cannot be implicated in this case because the Minister of Public Works is not among the parties involved in the local management of government contracts using allotted credits and, contrary to the insinuations made, although the manageress of the enterprise awarded the contract is very close to him, he never secured her a single government contract or took the slightest step to see that she won the contract in question; *recalling* also that, according to an article published on 16 September 2011 in the Cameroonian daily *Le Jour* and in a number of other media, an investigation was opened into Mr. Ambassa Zang concerning the manner in which contracts were awarded for asphalting the bridge over the Moungo river in 2004 (the first bridge over that river bordering the coastal and south-west regions having collapsed), and that Mr. Ambassa Zang exercised his right of reply; *emphasizing* inter alia that the urgent measures needed to find a swift solution to the problem of the collapsed bridge were decided on by an inter-ministerial committee chaired by the Prime Minister on the orders of the President of the Republic and that the contract for maintenance of the bypasses was formalized and signed by the Minister for Economic Affairs, who guaranteed that they would be paid out of his ministry's budget for special government works,

Recalling that, according to the source, the prosecution of Mr. Ambassa Zang must be seen in the context of "Opération Épervier" (Operation Casting Net), which was widely criticized as a campaign originally intended to combat corruption and misappropriation of public funds but instead used to purge critically-minded public figures who, like Mr. Ambassa Zang, expressed views not always in line with those of their party; thus the Deputy Speaker of the National Assembly, in a statement to the press as he left a meeting of the Assembly's Bureau on 14 July 2009, reportedly expressed surprise at how fast the investigation of Mr. Ambassa Zang's case had been completed

and described the lifting of his parliamentary immunity as a settlement of scores; *recalling* the concerns expressed by human rights agencies, in particular the United Nations Human Rights Committee, on the independence of the judiciary in Cameroon,

Bearing in mind that Cameroon is party to the International Covenant on Civil and Political Rights and is thus bound to respect the fundamental rights therein guaranteed, such as the rights to freedom of expression, to freedom and security of person, and to a fair trial ensuring the rights of the defence,

Considering that elections to the National Assembly were held on 30 September 2013; *considering* the letter from the Secretary General of the National Assembly of Cameroon dated 4 October 2013, in which he responds to one of the IPU Committee's requests for information by saying that "the only means of information available to the National Assembly under the Constitution lies in questions to the members of the Government. These can only be put to them during the parliamentary sessions, which themselves take place in accordance with an agenda consisting, first and foremost, of items included by the Government",

1. *Thanks* the Secretary General of the National Assembly for his communication;

2. *Is pleased* that the Cameroonian authorities have decided to refer the accusations against Mr. Ambassa Zang which triggered the lifting of his parliamentary immunity to the Budgetary and Financial Discipline Council; *is nevertheless concerned* about the alleged delay in informing Mr. Ambassa Zang's lawyer of that decision and the allegation that the latter is suddenly obliged to defend his client against charges at a critical time for him; *wishes* to receive the official views on both points;

3. *Supposes* that, as a result of bringing the case before the Budgetary and Financial Discipline Council, the Cameroonian authorities have officially dropped the criminal proceedings against Mr. Ambassa Zang with regard to the same matter; *looks forward* to receiving confirmation of this;

4. *Trusts* that the Budgetary and Financial Discipline Council will ensure that Mr. Ambassa Zang's right to defence is fully respected, including by allowing him access to all the reports which form the basis of the charges against him, will examine his case as a matter of urgency given that 10 years have elapsed since the alleged events of which he is accused took place, and will take due account of the arguments presented in his defence, including the arbitral award of the International Chamber of Commerce in the UDECTO *v.* State of Cameroon case; *wishes* to ascertain whether a timetable exists for completion of the proceedings and to be kept informed of their progress;

5. *Is concerned* at unofficial reports that Mr. Ambassa Zang may be subject to yet another criminal investigation; *is eager* to receive official information on this matter and, should an investigation and arrest warrant indeed exist, to know the precise charges against him and the facts on which they are based, in particular in the light of the defence that he presents; *still earnestly wishes,* for the same reasons, to know whether Mr. Ambassa Zang is being officially investigated with regard to the awarding of contracts for the work done on the bridge over the Moungo river in 2004;

6. *Requests* the Secretary General to convey this resolution to the competent authorities, including the newly elected National Assembly, in the hope that it will exercise its constitutional powers to the fullest to monitor the case closely and obtain the necessary clarifications on the aforesaid points; *requests* him also to convey the resolution to the French Development Agency;

7. *Requests* the Committee to continue examining this case.

CASE N° CHD/06 – SALEH KEBZABO) CHAD
CASE N° CHD/07 – MAHAMAT SALEH MAKKI)
CASE N° CHD/08 – MAHAMAT MALLOUM KADRE)
CASE N° CHD/09 – ROUTOUANG YOMA GOLOM)
CASE N° CHD/10 – GALI NGOTHE GATTA)

The Committee,

Decides to recommend to Governing Council of the Inter-Parliamentary Union that it adopt the following resolution:

The Governing Council of the Inter-Parliamentary Union,

Having before it the case of Mr. Saleh Kebzabo, Mr. Mahamat Saleh Makki, Mr. Mahamat Malloum Kadre, Mr. Routouang Yoma Gola and Mr. Gali Ngothé Gatta, members of the National Assembly of Chad, which has been under examination by the Committee on the Human Rights of Parliamentarians since its 142nd session (5-8 October 2013) in accordance with the Procedure for the treatment by the Inter-Parliamentary Union of communications concerning violations of the human rights of members of parliament,

Taking into account the information provided by the delegation of Chad, led by the First Deputy Speaker of the National Assembly, to the Committee during the 129th IPU Assembly, and of the communication of the Speaker of the National Assembly dated 1 October 2013,

Considering the following information on file, as confirmed by both parties:

- On 1 May 2013, an attempted coup d'état was denounced on the national radio; late in the evening the deputies Mr. Saleh Makki and Mr. Malloum Kadre were arrested at their homes by the police under the flagrante delicto procedure;
- On 2 May 2013, the Government informed the National Assembly of their arrest and subsequently, on 7 May, requested its permission to hear four other deputies under the investigation into the attempted coup d'état; the Bureau of the National Assembly gave its consent but demanded respect for parliamentary immunity and for the procedure stipulated in the Constitution and sought additional information on the procedure followed, in particular the elements justifying recourse to flagrante delicto proceedings;
- On 8 May 2013, following their hearings, the deputies Mr. Gali Ngothé Gatta and Mr. Routouang Yoma Golom were in turn arrested; Mr. Saleh Kebzabo could not be heard or arrested since he was on an official mission outside Chad;
- The four deputies, two of whom are from the majority and two from the opposition, were charged with plotting and infringing the constitutional order; they are accused of having supported the preparation of a coup d'état by former rebels because among the documents found at the homes of those former rebels, and seized by the judiciary, was a call to stage a general uprising together with lists that included the names of the deputies;
- The deputies were placed in pretrial detention on the premises of the general intelligence services; they were denied any contact with their lawyers and families and with a doctor until 20 May 2013;
- Mr. Routouang Yoma Golom and Mr. Gali Ngothé Gatta were released on parole by the examining magistrate on 22 May 2013, Mr. Malloum Kadre on 1 July and Mr. Saleh Maki on 25 September 2013; all remain indicted and the investigation of the case is ongoing; once the investigation has been completed, the examining magistrate will transmit its findings to the Attorney General of the Republic, who will decide on the follow-up action to be taken in the proceedings;

- The National Assembly has observed that the parliamentary immunity of the deputies, Article 111 of the Constitution of Chad and Articles 205 and 206 of the Code of Criminal Procedure relating to flagrante delicto procedure were not respected, denouncing those serious breaches of the procedural rules in the absence of any request to lift the immunity of the four deputies; despite its repeated demands, the National Assembly was unable to obtain any evidence of the existence of flagrante delicto in this case, whereas only duly established flagrante delicto could have dispensed the authorities from requesting the lifting of parliamentary immunity;
- The National Assembly, including all parliamentary groups, rallied to ensure that the deputies arrested were given the benefit of release on parole, in view of the procedural flaws, and this was recently achieved; the National Assembly continues to work to conclude this case with due regard for the principle of separation of powers;
- In the case of Mr. Saleh Kebzabo, on his return to Chad in late May 2013 he was neither arrested nor charged by the judicial authorities in the regime destabilization case; on 23 July 2013, the Government sought the lifting of his parliamentary immunity for contempt of court, impairment of the authority of the judiciary and slander after he had given an interview criticizing the judicial proceedings brought against journalists; the National Assembly put in place in early August a parliamentary commission which heard both parties and filed its report on 25 August 2013; on 2 September 2013, the National Assembly adopted the recommendations of the parliamentary commission and rejected the request to lift immunity by a vote of 176 against, one in favour and two abstentions,

Recalling that in March 2012, deputy Mr. Gali Ngothé Gatta was arrested following misuse of the flagrante delicto procedure; the Committee, referring to the case, expressed its concerns in that respect; the Moundou Court of Appeal and subsequently the Supreme Court of Chad confirmed that the immediacy characterizing flagrante delicto did not exist in the case in point and that the deputy's parliamentary immunity had been disregarded,

1. *Sincerely thanks* the Speaker of the National Assembly and the delegation of Chad for their cooperation and for the information supplied;

2. *Notes with deep satisfaction* that the National Assembly reacted vigorously to the violation of the fundamental rights of the parliamentarians concerned and is maintaining its active involvement to ensure respect for their parliamentary immunity and the procedure prescribed by the Constitution of Chad; *is heartened* to learn that the four deputies have been given the benefit of release on parole and that parliamentary procedure was fully respected concerning the request to lift the parliamentary immunity of Mr. Saleh Kebzabo;

3. *Deeply regrets* the conditions in which the arrests and charging of the members of the National Assembly of Chad took place, in gross violation of the Constitution and of Chadian legislation;

4. *Is extremely concerned* at the seemingly new misuse of the flagrante delicto procedure to overstep the constitutional procedure; *considers* that the National Assembly must be able wholly to appreciate the legality of recourse to the flagrante delicto procedure to ensure full respect for parliamentary immunity, and *is therefore deeply worried* that, in the case at hand, the executive and judicial authorities have not provided it with the background data sought; *profoundly regrets* that the Executive has hampered the work of the National Assembly in breach of the Constitution, thereby prejudicing exercise of the parliamentary mandate by the four deputies arrested;

5. *Expresses the firm hope* that the competent authorities will promptly take the necessary steps to remedy the present situation with due regard for the independence of the Judiciary and fair trial standards; *requests* the National Assembly to keep it informed of developments in the case;

6. *Requests* the Secretary General to convey this resolution to the competent authorities and to the sources;

7. *Requests* le the Committee to continue examining this case.

DEMOCRATIC REPUBLIC OF THE CONGO

CASE No. DRC/32 - PIERRE JACQUES CHALUPA

CASE No. DRC/49 - ALBERT BIALUFU NGANDU
CASE No. DRC/50 - ANDRÉ NDALA NGANDU
CASE No. DRC/51 - JUSTIN KILUBA LONGO
CASE No. DRC/52 - SHADRACK MULUNDA NUMBI KABANGE
CASE No. DRC/53 - HÉRITIER KATANDULA KAWINISHA
CASE No. DRC/54 - MUAMUS MWAMBA MUSHIKONKE
CASE No. DRC/55 - JEAN OSCAR KIZIAMINA KIBILA
CASE No. DRC/56 – BONNY-SERGE WELO OMANYUNDU
CASE No. DRC/57 - JEAN MAKAMBO SIMOL'IMASA
CASE No. DRC/58 - ALEXIS LUWUNDJI OKITASUMBO
CASE No. DRC/59 - CHARLES MBUTA MUNTU LWANGA
CASE No. DRC/60 - ALBERT IFEFO BOMBI
CASE No. DRC/61 - JACQUES DOME MOLOLIA
CASE No. DRC/62 - RENÉ BOFAYA BOTAKA
CASE No. DRC/63 - JEAN DE DIEU MOLEKA LIAMBI
CASE No. DRC/64 - EDOUARD KIAKU MBUTA KIVUILA
CASE No. DRC/65 - ODETTE MWAMBA BANZA (Ms.)
CASE No. DRC/66 - GEORGES KOMBO NTONGA BOOKE
CASE No. DRC/67 - MAMUYA RAMAZANI MASUDI KILELE
CASE No. DRC/68 - CÉLESTIN BOLILI MOLA
CASE No. DRC/69 - JÉRÔME KAMATE
CASE No. DRC/70 - COLETTE TSHOMBA (Ms.)
CASE No. DRC/73 - BOBO BARAMOTO MACULO
CASE No. DRC/74 - ANZULUNI BEMBE ISILONYONYI
CASE No. DRC/75 - ISIDORE KABWE MWEHU LONGO
CASE No. DRC/76 - MICHEL KABEYA BIAYE
CASE No. DRC/77 - JEAN JACQUES MUTUALE
CASE No. DRC/78 - EMMANUEL NGOY MULUNDA
CASE No. DRC/79 - ELIANE KABARE NSIMIRE (Ms.)

CASE No. DRC/71 - EUGÈNE DIOMI NDONGALA

CASE No. DRC/72 - DIEUDONNE BAKUNGU MYTHONDEKE

CASE No. DRC/80 - ROGER LUMBALA TSHITENGE

CASE No. DRC/81 - MUHINDO NZANGI

The Committee,

Decides to recommend to the Governing Council of the Inter-Parliamentary Union that it adopt the following resolution:

The Governing Council of the Inter-Parliamentary Union,

Referring to the cases of the former members of the National Assembly Mr. Pierre-Jacques Chalupa, Mr. Eugène Diomi Ndongala, Mr. Dieudonné Bakungu Mythondeke, and those of the 29 disqualified members of the National Assembly, and to the resolutions adopted at its 191st and 192nd sessions (October 2012 and March 2013),

Having before it the cases of Mr. Roger Lumbala and Mr. Muhindo Nzangi, which were examined by the Committee on the Human Rights of Parliamentarians in accordance with the Procedure for the treatment by the Inter-Parliamentary Union of communications concerning violations of the human rights of members of parliament,

Considering that, in the case of Mr. Muhindo Nzangi, whose case has recently come before the Committee, the source indicates that on 13 August 2013 this Assembly member from the majority party was sentenced by the Supreme Court at first and last instance to three years in prison for offences against State security; that this sentence represents, according to the source, a grave violation of parliamentarians' freedom of expression, because Mr. Nzangi was put on trial for expressing his point of view on the war in the east of the country on the radio on 11 August 2013, criticizing the policy of the government; and that the trial was not fair, according to the source, because his lawyer had not had the necessary time to prepare the defence, given the accelerated procedure used against him, and in the absence of any avenue of appeal against the conviction,

Considering the report (CL/193/11(b)-R.2) of the mission conducted by the Committee on the Human Rights of Parliamentarians to the Democratic Republic of the Congo from 10 to 14 June 2013,

Taking into account the 30 September 2013 communication from the Speaker of the National Assembly, setting out his observations on the mission report, and the information provided by sources from July to September 2013,

Considering the following information communicated by the sources in the time since the mission:

- *On 7 September 2013, in his speech marking the opening of national consultation procedure, the Head of State promised to obtain the release on parole or the pardon of certain prisoners, in advance of a parliamentary vote on an amnesty law. The report produced from the national consultation exercise recommends that political prisoners be released;*
- In the matter of Mr. Pierre-Jacques Chalupa, the authorities have still not responded to his application for release on parole, which was filed in January 2013, although over one thousand prisoners have been so released from the prison of Kinshasa since 31 August 2013;
- In the matter of Mr. Diomi Ndongala:
  - during the legislature's closing session on 15 June 2013, Mr. Diomi Ndongala had his parliamentary mandate revoked on the grounds of prolonged, unsubstantiated absence without prior notice;
  - Mr. Ndongala remains in pre-trial custody, and the Supreme Court's orders to move him to house arrest are not being carried out;
  - Mr. Ndongala's health has deteriorated sharply since the end of July 2013, and yet the authorities have refused to transfer him to a hospital, despite repeated applications from the penitentiary administration to do so, and Mr. Ndongala thus remains without the necessary medical care;
  - The majority of the hearings scheduled in the proceedings against Mr. Ndongala had to be adjourned, given procedural faults and violations of the right to a defence, which Mr. Ndongala's lawyers have denounced, and given his poor state of health;
- In the matter of the 29 former members of the National Assembly disqualified by the Supreme Court's decisions on 25 April 2012, the Speaker of the National Assembly has refused to see the disqualified members, despite his promise to do so, following the Committee's mission; in the time since the mission, no progress has been made whatsoever, and the situation of the disqualified members is becoming ever more difficult; they are prepared to settle for compensation in the form of a payment equal to twenty months of their parliamentary pay, in addition to their regular entitlements; they are increasingly apprehensive about their safety, because of the resolute stand they have taken towards the authorities responsible, and are concerned by the refusal of the authorities to engage in discussions with a view to finding a solution,

Considering the comment made by the Speaker of the National Assembly in his observations, to the effect that the mission report contains certain "excessive allegations and untruths that cannot but reflect on its integrity", on which he registered his reservations, in particular the following observations:

- The application for Mr. Chalupa's release on parole filed by his attorneys is currently being examined by the competent authorities;
- Mr. Ndongala remains in pre-trial custody for the purposes of the investigation of the offences of which he has been accused by the justice system; he was brought before the judge at public hearings on 17 and 22 July and 16 September 2013; the investigation is proceeding normally, and the presumption of innocence continues to apply to him;
- Mr Roger Lumbala abandoned his parliamentary functions and joined the M23 insurgency, which has been condemned by the United Nations Security Council; the National Assembly stripped him of his mandate due to unsubstantiated and unauthorized absences, in accordance with the Constitution and with the Standing Orders of the Assembly;
- The National Assembly continues to respect the principle of the separation of powers in the case of the Assembly members disqualified by the plenary of the Assembly pursuant to the decisions of the Supreme Court; the Bureau of the National Assembly has received claims from the former Assembly members for payment of the installation allowance, back pay and the removal allowance; conscious of the need to restore political calm, the Bureau partially acceded to the demands, and accepted the principle that the following payments should be made: an installation allowance equal to six months' salary, full payment of the salary due up to the date on which the plenary of the Assembly disqualified them, and reimbursement of the expenses they incur in returning to their constituencies, along with spouses and dependent children duly declared to the registry of the National Assembly; the Bureau has commenced with a part payment of these benefits; however, drawing a lesson from the challenges that were raised against the process by which the electoral disputes of 2006 and 2011 were managed and the concerns voiced at that time, the parliament intends to amend the electoral law with a view to not only strengthening the eligibility conditions and improving the mechanisms for resolving electoral disputes, but also, and above all, ensuring that electoral disputes are dealt with before the electoral mandates are confirmed, for both chambers of the parliament,

1. *Thanks* the authorities for having hosted and cooperated with the mission delegation; *takes note with interest* of the comments by the Speaker of the National Assembly and *welcomes* the announcement of the parliament's plan to amend the legal provisions relating to electoral disputes and the confirmation of the electoral mandates; *wishes to be kept informed* of progress with the announced changes and *to receive* a copy of the draft legislation prepared to this effect;

2. *Further thanks* the mission delegation for the work done, and *endorses* its overall conclusions;

3. *Reiterates* its serious concerns about the cases under investigation and *notes with alarm* that the 34 former members concerned were all expelled from the National Assembly, and certain members were taken into custody and prosecuted, after they had expressed political opinions deviating from those of the presidential majority and the Head of State, and *points out* that depriving a member of parliament of the mandate because of a political opinion he or she expressed is a violation of Article 19 of the International Covenant on Civil and Political Rights, to which the DRC is a signatory;

4. *Laments* the lack of significant progress since the Committee's mission and *reiterates its call* for the authorities to work towards a settlement of the cases with all available

means, including, wherever appropriate, release on parole, pardons and amnesties, as promised by the Head of State and recommended in the report that emerged from the national consultations; *urges* the National Assembly, too, to fulfil as soon as possible the commitments it undertook towards the 29 disqualified members of parliament in the matter of their entitlements, and to reinitiate and pursue the dialogue with them so as to arrive at an agreement on the compensation to be paid;

5. *Deplores* the worrying deterioration in Mr. Ndongala's situation; *notes with consternation* that Mr. Ndongala is being denied access to medical care, and *urges* the competent authorities to transfer him rapidly to an appropriate medical care facility; *notes* that, according to the sources, the start of his trial was marred by faults, and *requests* that the Committee continue to follow the judicial proceedings closely and to investigate the possibility of sending an observer to the hearings;

6. *Further notes with concern* that, in all of the cases investigated, serious doubts have been cast on the independence of the judiciary and respect of international fair-trial standards; *urges* the competent authorities to take all necessary steps to ensure that the independence of the judiciary is protected, in particular by setting up rapidly the high courts for which the Constitution makes provision, to replace the Supreme Court; *emphasizes* that the possibility of appeal is one of the most important guarantees of a fair trial, and once again *invites* the parliament of the Democratic Republic of the Congo to create a separate avenue of redress in the judicial process that applies to parliamentarians so as to give them full protection of their rights of defence in any judicial proceedings against them, as for any citizen of the DRC;

7. *Points out* that parliamentarians have their mandate from the people, and the revocation of a mandate in the middle of a legislature should be an exceptional occurrence, limited strictly to cases determined by the Constitution and following a procedure that protects the rights of defence; *wonders, accordingly,* about the large number of parliamentary mandates recently revoked on grounds of prolonged absences; *cautions* the competent authorities against the misuse of this practice, and if the intention is to reduce chronic absences of members of the parliament, to apply it in an impartial and not a selective manner, in respect of the rights of defence;

8. *Requests* the Secretary General to convey this resolution to the Speaker of the National Assembly and to all competent authorities, including the Head of State, the Justice Minister and the Prosecutor General;

9. *Requests* the Committee to continue examining this case.

ERITREA

CASE No. ERI/01 - OGBE ABRAHA
CASE No. ERI/02 - ASTER FISSEHATSION
CASE No. ERI/03 - BERHANE GEBREGZIABEHER
CASE No. ERI/04 - BERAKI GEBRESELASSIE
CASE No. ERI/05 - HAMAD HAMID HAMAD
CASE No. ERI/06 - SALEH KEKIYA
CASE No. ERI/07 - GERMANO NATI
CASE No. ERI/08 - ESTIFANOS SEYOUM
CASE No. ERI/09 - MAHMOUD AHMED SHERIFFO
CASE No. ERI/10 - PETROS SOLOMON
CASE No. ERI/11 - HAILE WOLDETENSAE

The Committee,

Decides to recommend to the Governing Council of the Inter-Parliamentary Union that it adopt the following resolution:

The Governing Council of the Inter-Parliamentary Union,

Referring to the case of the above-mentioned parliamentarians, former members of Eritrea's National Assembly, and to the resolution adopted at its 190th session (April 2012),

Taking into account the information provided by a family member of two of the parliamentarians concerned to the Committee during the 129th Assembly (Geneva, October 2013),

Recalling the following:

- The parliamentarians concerned (often referred to as the "G11") were arrested on 18 September 2001, after publishing an open letter calling for democratic reform, and have been held incommunicado ever since, accused of conspiracy and attempting to overthrow the legitimate government, without ever being formally charged or tried;
- In November 2003, upon examination of a complaint concerning their situation, the African Commission on Human and Peoples' Rights found that the State of Eritrea had violated Articles 2, 6, 7(1) and 9(2) of the African Charter on Human and Peoples' Rights, which address the right to liberty and security of person, the right to a fair trial and the right to freedom of expression, and urged the State of Eritrea to order the immediate release of the former parliamentarians and to pay them compensation; the Eritrean authorities have rejected that decision,

Recalling that, according to non-governmental sources, on 3 April 2010, Mr. Eyob Bahta Habtemariam, a former prison guard who fled Eritrea, stated in an interview with Radio Wegahta that only two of the 11 former parliamentarians were still alive, namely Mr. Petros Solomon and Mr. Haile Woldetensae, the others having died since 2001, and that he provided details in this respect,

Recalling that this information is unconfirmed and that, according to one of the sources, no concrete evidence exists to support the prison guard's statements; *recalling also* that the European Commission regularly raises the case of the former parliamentarians concerned with the Eritrean authorities, particularly in the framework of political dialogue, but that the Eritrean side refused to discuss individual cases during the September 2010 session of political dialogue on human rights,

Considering resolution 23/21 of the Human Rights Council on the situation of human rights in Eritrea, which calls upon the Government of Eritrea, without delay, to account for and release all political prisoners, including members of the G11, that resolution being adopted by the Council on 25 June 2013 upon presentation of the first report of the United Nations Special Rapporteur on the situation of human rights in Eritrea, wherein the Special Rapporteur highlights the gravity of the human rights situation in Eritrea, refers to the 11 members of parliament arrested in 2001 as being among the most prominent cases of enforced disappearances and incommunicado detentions, states that the Government has refused to provide any information on their fate and points out that "The basic tenets of the rule of law are not respected in Eritrea owing to a centralized system of

Government where decision-making powers are concentrated in the hands of the President and his close collaborators", that "The separation of powers among the various arms of the State is inexistent", "Legislative functions accorded to the National Assembly by the unimplemented Constitution have been assumed entirely by the Government", "The National Assembly has not been convened since 2002" and "the court system is weak and prone to interference",

Taking into account that the lives of relatives of the G11 prisoners have been deeply affected by this situation, that their children have all fled Eritrea and grown up without their parents and that families continue to demand to know the truth about the fate of their loved ones,

1. *Deplores* the Eritrean authorities' contempt for the most basic human rights of 11 former parliamentarians by keeping them incommunicado for the last 12 years because they exercised their right to freedom of expression by calling for democratic reform;

2. *Is appalled* by the continued silence of the authorities and *considers* that the absence of all information about the fate of the former parliamentarians is an affront not only to the former parliamentarians' human dignity but also to their relatives' right to know what befell them;

3. *Remains deeply concerned* about the allegation that only two of the 11 former parliamentarians may still be alive, and *believes* that this allegation must be taken seriously in the light of the very critical reports on the human rights situation in Eritrea, in particular the recent report of the United Nations Special Rapporteur on the human rights situation in Eritrea;

4. *Once more urges* the Eritrean authorities to provide information on the fate of the G11 prisoners and to release them forthwith;

5. *Considers* that the international community, including the global parliamentary community, cannot remain silent in the face of these violations, *invites* all IPU members to exert insistent pressure on Eritrean authorities for the release of the persons concerned, including by making representations to the diplomatic missions of Eritrea in their countries and raising the case publicly, *and appeals* to the African Union, the Pan-African Parliament and the European Union to do everything in their power to achieve this objective;

6. *Requests* the Secretary General to convey this resolution to the parliamentary authorities and to the sources for their observations, and to continue making every effort to draw international attention to this case;

7. *Requests* the Committee to continue examining this case.

MADAGASCAR

CASE No. MAG/05 - LANTONIAINA RABENATOANDRO
CASE No. MAG/06 - HENRI RANDRIANJATOVO
CASE No. MAG/07 - MAMISOA RAKOTOMANDIMBINDRAIBE
CASE No. MAG/08 - RAYMOND RAKOTOZANDRY
CASE No. MAG/09 - RANDRIANATOANDRO RAHARINAIVO
CASE No. MAG/10 - ELIANE NAÏKA
CASE No. MAG/11 - MAMY RAKOTOARIVELO
CASE No. MAG/12 - JACQUES ARINOSY RAZAFIMBELO
CASE No. MAG/13 - YVES AIMÉ RAKOTOARISON
CASE No. MAG/14 - FIDISON MANANJARA
CASE No. MAG/15 - STANISLAS ZAFILAHY
CASE No. MAG/16 - RAKOTONIRINA HARIJAONA LOVANANTENAINA

The Committee,

Decides to recommend to the Governing Council of the Inter-Parliamentary Union that it adopt the following resolution:

The Governing Council of the Inter-Parliamentary Union,

Referring to the case of the above-mentioned persons, all members of the Parliament of Madagascar that was suspended in March 2009, and to the resolution it adopted at its 189th session (October 2011),

Bearing in mind the letter of 26 March 2013 from the Speaker of the Transitional Congress and that of 23 September 2013 from the President of the Court of Appeals and the special commission within the Supreme Court,

Recalling that this case must be viewed in the context of events in Madagascar since the March 2009 coup d'état and the establishment of the transition regime, in particular the Accord concluded in March 2011 by the Malagasy political players and the last crisis-exit road map, entitled Engagements des acteurs politiques malgaches (Pledges by the Malagasy Political Players) and signed on 16 September 2011 under the auspices of the Southern African Development Community (SADC), Article 20 of which provides that "[…] The High Transitional Authority (HAT) shall urgently develop and promulgate the necessary legal instruments, including an amnesty law, in order to guarantee the political freedom of all Malagasy citizens in the inclusive process culminating in the holding of free, fair and credible elections", and Article 26 of which states that "Any person who has been a victim of the political events between 2002 and the date of signature of the present road map who may have suffered prejudices of any nature whatsoever shall be entitled to reparation and/or compensation by the State in accordance with modalities laid down by the Malagasy Reconciliation Council",

Recalling that the persons concerned all belonged to the movement of the deposed President, Mr. Ravalomanana; noting that two of them (Mr. Rakotoarison and Mr. Mananjara) have reportedly since left that movement,

Recalling furthermore that Mr. Mamy Rakotoarivelo, currently the Speaker of the Transitional Congress, confirmed in a letter dated 27 December 2012 that all the persons concerned were currently members of the Transitional Congress or the Higher Transitional Council, except Mr. Randrianatoandro Raharinaivo, former Speaker of the Transitional Congress, who is no longer a member of parliament,

Considering that the following information is at present on file with respect to the situation of the persons in question:

- Mr. Lantoniaina Rabenatoandro, Mr. Henri Randrianjatovo, Mr. Mamisoa Rakotomandimbindraibe and Mr. Raymond Rakotozandry were arrested on 23 April 2009 and accused of distribution of weapons and money, incitement to civil war and civil unrest, and destruction of public property; they were released on 18 August 2009 after being sentenced the same day to a suspended 12-month prison term; an appeal against the sentence was pending at the end of 2011; no information has been received about the appeal, and it is therefore not clear whether in fact it took place and led to a final decision;
- Ms. Eliane Naïka was arrested on 12 September 2009 by military personnel who beat her up and took her away, without an arrest warrant, to a gendarmerie post; she was charged with concerted use of force, with jeopardizing internal State security, and with insults and abuse; on 18 September 2009 she was released on parole and left the country; on her return to Madagascar, the authorities and the sources differed as to whether the proceedings against her had been dropped; Ms. Naïka was granted *de jure* amnesty on 15 February 2013;
- Mr. Randrianatoandro Raharinaivo was arrested on 15 September 2009 and charged with concerted action to commit violence, unauthorized gatherings, and insults and abuse; he was released on parole on 19 November 2009; no information has been received about any progress in the proceedings or about a final judicial decision on his case; he was elected to the post of Speaker of the Transitional Congress in October 2010 and is apparently no longer a member of parliament;
- Mr. Mamy Rakotoarivelo, Mr. Jacques Arinosy Razafimbelo, Mr. Yves Aimé Rakotoarison and Mr. Fidison Mananjara were the subject of judicial proceedings on the charge of undermining public order; according to information supplied by the authorities in October 2010 and also by the President of the Court of Appeals, the Public Prosecutor has decided to dismiss the case; Mr. Rakotoarivelo was also arrested on 15 March 2011 and charged with instigating the bomb attack on Mr. Rajoelina's vehicle on 3 March 2011; he was subsequently released; no information has been received about the current status of the judicial proceedings;
- Mr. Stanislas Zafilahy, head of the parliamentary group of the Ravalomanana movement and presently Deputy Speaker of the Transitional Congress, was arrested on 11 November 2010 and accused of taking part in an unauthorized gathering, refusing to obey a dispersal order and destroying private property; according to the sources, the gathering in question was an authorized demonstration against the constitutional referendum of November 2010; according to the authorities, Mr. Zafilahy was charged with criminal conspiracy and undermining public security and was given a suspended 10-month prison sentence on 9 February 2011; an appeal was pending at the end of 2011; according to the information provided by the Ministry of Justice in April 2011, other criminal proceedings had been launched against Mr. Zafilahy and 27 other people accused of criminal conspiracy and undermining public order, with hearings scheduled to start on 19 May 2011; no information has been received since 2011 about progress in these proceedings;
- Mr. Rakotonirina Lovanantenaina was arrested with four other persons on 22 February 2011; he was reportedly accused of endangering State security by encouraging a group of amateur journalists to set up and run an illegal radio station called "Radio-n'ny Gasy"; the source affirms that this radio station was established in response to the closure by the authorities of some 90 private radio stations in 2010 and the detention of all journalists critical of the authorities; Mr. Lovanantenaina requested conditional release, which was initially refused but finally granted on 29 September 2011; the judicial proceedings continue, however, and Mr. Lovanantenaina is regularly summoned to appear for hearings; in September 2013 the source indicated that Mr. Lovanantenaina's judicial file did not show any conviction,

Considering that, following the postponement of the elections, the new timetable provides for the presidential election to be held on 25 October 2013 and the legislative elections on 20 December 2013 (along with the second round of the presidential election, if one is required),

Recalling the following information on file: a law granting amnesty in the interests of national reconciliation was promulgated in May 2012; Article 2 of the amnesty law provides that a broad, *ipso jure* amnesty applies to the members of State institutions, political figures, the leaders of political parties and entities and civilians for offences related to the political events that occurred between 2002 and 2009; amnesty may also be granted on request to individuals being prosecuted but not eligible for *ipso jure* amnesty; and a special Supreme Court commission has been set up to investigate and rule on amnesty applications,

Taking into account that the president of the special commission has confirmed that Ms. Naïka was granted amnesty by a decision of 15 February 2013, but also indicated that no other parliamentarian has submitted an amnesty application to the competent authorities to date, and in the case of Mr. Zafilahy and Mr. Rakotonirina Lovanantenaina, as the events in question took place in 2010-2011, it would be indispensable for them to submit an application to the CRM so that the case could be reviewed,

Taking into consideration furthermore that, according to the source, the competent authorities are applying the amnesty adjudication procedure in a selective and politicized manner, with amnesties being granted only in exchange for political concessions; that this is one reason why the parliamentarians with pending charges do not wish to submit applications in the present circumstances, along with the fact that they consider the charges to be unfounded, and prefer to defend themselves before an independent justice system so that they can be exonerated of what they consider to be trumped-up accusations; that the persons concerned are not informed about the status of the proceedings in their cases; that most of the judicial proceedings are reportedly suspended but none formally closed, so that they could be resumed at any time; and that this judicial uncertainty, like the amnesty adjudication, constitutes a way of putting pressure on the parliamentarians,

Considering that the laws on the presidential and legislative elections stipulate that parliamentarians subject to judicial proceedings who have not been sentenced at final instance are free to take part in the political process and in the forthcoming elections as voters and candidates; and that several had indeed registered as candidates for the legislative elections, according to the source,

1. *Sincerely thanks* the authorities for their cooperation and for the information conveyed;

2. *Notes with interest* that Ms. Naïka has been granted amnesty, and that some of the persons concerned have been able to register for the legislative elections;

3. *Points out* that the legal situation of the various parliamentarians still needs to be clarified, and *expresses its desire* to obtain detailed information on all of the legal cases, including the status of any appeals;

4. *Notes with concern* that, according to the source, the persons concerned are themselves without clear information about the status of the legal proceedings being conducted against them, and the resulting, according to the source, constitutes a way of putting pressure on them; *takes note furthermore* of the source's allegation that the competent authorities are applying the amnesty adjudication procedure in a selective and politicized manner, with amnesties being granted only in exchange for political concessions;

5. *Requests* the Secretary General to convey this resolution to the parliamentary authorities and to the sources, inviting them to make any observations and provide the information requested;

6. *Requests* the Committee to continue examining this case.

CASE No. CO/142 - ÁLVARO ARAÚJO CASTRO - COLOMBIA

The Committee,

Decides to recommend to the Governing Council of the Inter-Parliamentary Union that it adopt the following resolution:

The Governing Council of the Inter-Parliamentary Union,

Referring to the case of Mr. Álvaro Araújo Castro, a former member of the Colombian Congress, and to the resolution it adopted at its 192nd session (March 2013),

Recalling the following information on file:

- On 15 February 2007, the Supreme Court issued detention orders for then Senator Araújo Castro on charges of aggravated criminal conspiracy and voter intimidation;
- Given that members of Congress are investigated and judged in single-instance proceedings by the Supreme Court, Mr. Araújo Castro relinquished his seat in Congress on 27 March 2007; as a result, his case was transferred to the ordinary judicial system, under which he would be investigated by the Prosecution Office and tried by an ordinary court with the possibility of appeal;
- However, after a reinterpretation of its jurisprudence, the Supreme Court re-established its jurisdiction with respect to his case and, on 18 March 2010, without giving him the opportunity of being heard, declared him guilty of aggravated criminal conspiracy and voter intimidation and sentenced him to a prison term of 112 months and payment of a fine; in the same ruling, the Supreme Court ordered that an investigation be conducted to establish whether or not Mr. Araújo Castro could be considered part of the paramilitary command structure and therefore to share responsibility for the crimes against humanity they had committed; as with the original charges, both the investigation and any subsequent trial on this matter are entrusted to the Supreme Court, whose ruling would not be subject to appeal;
- A legal expert, Mr. Alejandro Salinas, asked by the Committee to examine whether the right to a fair trial had been respected in the case, concluded that the legal proceedings against Mr. Araújo Castro were fundamentally flawed;
- Mr. Araújo Castro was conditionally released in February 2011, having served three fifths of his prison sentence,

Recalling that in June 2012 the President of Colombia formally objected to a legislative initiative for judicial reform proposing inter alia the establishment of an appeal instance in the procedure applicable to members of Congress in criminal cases, and that his objection subsequently led Congress to dismiss the initiative; *recalling also* that an IPU mission travelled to Bogotá in August 2011 to help strengthen the National Congress of Colombia and, as part of that assignment, formulated a series of recommendations, including with a view to helping ensure greater respect for fair-trial standards in criminal cases against members of Congress,

Considering that the IPU Secretary General, at the invitation of the outgoing President of the Colombian Congress, was invited to address the Colombian Senate on 4 June 2013 to discuss ways to strengthen Congress's work, including ensuring adequate legal protection for its members,

Recalling that Mr. Araújo Castro submitted a petition to the Inter-American Commission on Human Rights in 2012 denouncing the flawed judicial proceedings in his case,

1. *Reaffirms* its longstanding view that Mr. Araújo Castro was convicted in legal proceedings that violated his right to a fair trial and in the absence of compelling tangible and direct evidence to substantiate his conviction, on the grounds of his complicity with the paramilitary forces, on charges of aggravated criminal conspiracy and voter intimidation;

2. *Remains deeply concerned*, therefore, that the Supreme Court invoked this conviction to order an investigation into the much more serious accusation that he was in fact part of the paramilitary command structure, and that such investigation, which relates to crimes against humanity, can run indefinitely as it is not subject to the statute of limitations;

3. *Considers* that so long as basic fair-trial concerns are not addressed and there is no convincing evidence for the lesser charge, such investigation is inapposite; *sincerely hopes,* therefore, that the Supreme Court will discontinue it;

4. *Remains convinced* that concerns about the lack of fair-trial standards inherent in the procedure applicable to Colombian members of Congress in criminal matters can only be fully addressed through new legislation; *is aware* that enhanced legal protection for members of Congress is a very sensitive subject in Colombia, as it is easily perceived as unduly serving the interest of its members; *expresses the hope,* therefore, that the National Congress, along with the executive, judicial and administrative authorities, will come out together in support of new legislation that will introduce a genuine separation between the investigating authorities and the courts and a real possibility for members of Congress to appeal; *encourages* the IPU and the current Colombian parliamentary authorities to continue to work closely together for this purpose;

5. *Recalls* that the American Convention on Human Rights and related jurisprudence provide extensive protection of the right to a fair trial; *considers,* therefore, that action by the Inter-American Commission on Human Rights is crucial to helping address the apparent injustice suffered by Mr. Araújo Castro; *requests* the Committee's Vice-President and the Secretary General to contact the Inter-American Commission with a view to encouraging its swift consideration of Mr. Araújo Castro's petition;

6. *Requests* the Secretary General to convey this resolution to the competent authorities and to the source;

7. *Requests* the Committee to continue examining this case.

CASE No. CO/155 - PIEDAD DEL SOCORRO ZUCCARDI DE GARCIA - COLOMBIA

The Committee,

Decides to recommend to the Governing Council of the Inter-Parliamentary Union that it adopt the following resolution:

The Governing Council of the Inter-Parliamentary Union,

Having before it the case of Ms. Piedad del Socorro Zuccardi de García, a member of the Colombian Senate, which has been the subject of a study and report of the Committee on the Human Rights of Parliamentarians following the Procedure for the treatment by the Inter-Parliamentary Union of communications concerning violations of the human rights of members of parliament,

Considering the following sequence of judicial steps against Senator Zuccardi, who, like any Colombian member of Congress, is investigated and judged in single-instance proceedings by the Supreme Court in criminal matters:

- On 28 June 2010, a preliminary investigation was opened on the instructions of the Supreme Court on the basis of suspicions that Senator Zuccardi de García, of Colombian and Italian nationality, had cooperated during the 2000-2003 period with paramilitary groups; the investigations were launched following statements made in 2009 by a paramilitary who had been demobilized and was seeking to benefit under the Justice and Peace Act;
- On 12 June 2012, the Office of the *Procuraduría* (Procurator-General) sought the closure of the investigation and the dropping of charges, one of the two grounds being that there was no reasonable evidence or any clue to indicate that the Senator might have been involved in any kind of alliance with paramilitary groups, particularly for the purpose of securing electoral backing for herself or anyone else;
- On 11 February 2013, the Supreme Court issued an arrest warrant which was acted upon on 23 February, despite the protests of the defence; on 5 March 2013, the Supreme Court decided to charge the Senator with aggravated criminal association and place her in provisional detention;
- The Supreme Court decided in early August 2013 to close the investigation phase of the case, opening a legal time limit of 20 days for the defence to file its nonsuit memorial; the reopening of the investigation was sought by the defence following the inclusion of a strongly contested statement, which was nevertheless rejected by the Court scheduling the filing of the defence memorial for 20 September 2013; the decision of the Supreme Court on any committal for trial is expected in October 2013.

Considering that the source affirms that Senator Zuccardi was arrested on 23 February 2013 and imprisoned without a court being able to rule on her detention before 5 March 2013, namely over a week later, the court that examined the question of her detention is the same as that which ordered her arrest, the Supreme Court itself, the Senator was unable to appeal that decision and to have the legality of her detention examined by a competent jurisdiction, as unambiguously provided for in the Inter-American Convention,

Considering also that the preliminary investigation reportedly exceeded the time limit prescribed in Law No. 600 of 2000, namely six months in accordance with Article 325, and that Article 239 of Law No. 600, authorizing the transfer of evidence, the validity of the technical investigations and respect for the publicity and adversarial criteria, was violated.

Considering also that the source affirms more precisely with regard to the evidence-taking and the impartiality of the Supreme Court that:

- Several witnesses have cast doubt on the impartiality and methods of the investigators; those witnesses reportedly themselves denounced acts of pressure and intimidation vis-à-vis the Supreme Court, which required no verification measure;
- The auxiliary magistrate of the Supreme Court who is in charge of the file carries out transfers of testimonies out of context and denies the defence a full reading of the proceedings of previous hearings; for example, the source emphasizes that the auxiliary magistrate systematically distorts the statements of witnesses in their form to modify such terms as "You have said that…" instead of "I have heard that…" (witness Alias Diego VECINO);
- The Supreme Court authorizes and conducts the transfer of evidence and testimonies from other proceedings to include them in the present proceedings, without allowing the defence access to a full reading of all the external records, or while the transfer of evidence is only partial;
- Although the Supreme Court decided in early August 2013 to close the investigation phase of the case, it decided to add further material to the file, notably the statement of a former mayor, Mr. Torres Serra, incriminating the Senator; now he was sentenced in October 2012 to 35 months' imprisonment solely on the strength of those same statements falsely accusing her;
- Those in charge of the investigations were incriminated in particular by a witness (alias NEVER) for having exerted pressures and extracted a false testimony for the prosecution against Senator Zuccardi de García; that witness reportedly filed a complaint to this effect in the public prosecutor's office (*Fiscalía*), but the Supreme Court refused to include as incriminating evidence both that complaint and the records of investigations conducted in this regard;
- The Court uses as prosecution evidence police reports without ever checking the information in them,

Considering also that, according to the source, there is no evidence to incriminate Senator Zuccardi and *emphasizing* in this respect the complete lack of direct eyewitnesses of her involvement; in response to the accusations levelled against her, the source affirms that the Senator had not attended or taken part in any meeting with members of AUC (Autodefensas Unidas de Colombia) in the years 2000 to 2003 and that in electoral terms, and on analysis of the voting, she had absolutely no need to seek support for her elections and re-elections; the source adds that, while Senator Zuccardi did indeed in 2000 take part in three meetings, including just one in the presence of the paramilitary leader Mr. Carlos Castaño, it was in the company of a great many elected officials and representatives and under the auspices of the High Commissioner for Peace, and in an absolutely official and public manner; according to the source, there were therefore no hidden consultations but institutional meetings linked to the security difficulties for the population of the south of Bolívar department; with that exception, the source affirms that no paramilitary witness has ever seen or met Senator Zuccardi de García; the source also stresses that the Supreme Court mentions no preventive date regarding the Senator but confines the accusation to the years 2000 to 2003,

Recalling that in June 2012 the President of Colombia formally objected to a legislative initiative for judicial reform proposing inter alia the establishment of an appeal instance in the procedure applicable to members of Congress in criminal cases, and that his objection subsequently led Congress to dismiss the initiative; *recalling also* that an IPU mission travelled to Bogotá in August 2011 to help strengthen the National Congress of Colombia and, as part of that assignment, formulated a series of recommendations, including with a view to helping ensure greater respect for fair-trial standards in criminal cases against members of Congress,

Considering that the IPU Secretary General, at the invitation of the outgoing President of the Colombian Congress, was invited to address the Colombian Senate on 4 June 2013 to discuss ways of strengthening the work of the Colombian Congress, inter alia in order to ensure adequate legal protection for its members,

Bearing in mind that Colombia is a party to the American Convention on Human Rights and the International Covenant on Civil and Political Rights, and is therefore legally bound to ensure full respect for the right to a fair trial,

1. *Recalls* its concerns regarding respect for fair-trial guarantees in criminal proceedings against members of the Colombian Parliament, the credibility of testimonies of demobilized paramilitaries and the manner in which they are obtained and used in criminal cases against members of parliament;

2. *Considers*, in the light of these concerns, which include the lack of any possibility of challenging judgments on appeal, that it is all the more important that the proceedings in the case of Senator Zuccardi strictly comply with due process;

3. *Is therefore deeply concerned* that the general concerns about fair trial in criminal proceedings against Colombian parliamentarians are compounded in the case at hand by allegations of further extensive and serious irregularities, including the inclusion of testimony, after the closure of the investigation, from someone who was sentenced to a prison term for perjury on account of his false statements implicating Senator Zuccardi;

4. *Trusts* that the Supreme Court will take due account of all the material presented by the defence in deciding whether or not to commit the case for trial; *eagerly awaits* therefore the ruling of the Supreme Court in this regard;

5. *Considers* it crucial, in the light of the aforesaid concerns about due process, to send a trial observer to follow the proceedings should the Supreme Court decide to commit the case for trial; *requests* the Secretary General to make the necessary arrangements to this end;

6. *Remains convinced* that concerns about the lack of fair-trial standards inherent in the procedure applicable to Colombian members of Congress in criminal matters can only be fully addressed through new legislation; *is aware* that enhanced legal protection for members of Congress is a very sensitive subject in Colombia, as it is easily perceived as unduly serving the interest of its members; *expresses the hope,* therefore, that the National Congress, along with the executive, judicial and administrative authorities, will come out together in support of new legislation that will introduce a genuine separation between the investigating authorities and the courts and a real possibility for members of Congress to appeal; *encourages* the IPU and the current Colombian parliamentary authorities to continue to work closely together for this purpose;

7. *Requests* the Secretary General to convey this decision to the competent authorities and to the source;

8. *Decides* to continue examining this case.

CASE No. BAH/03 - MATAR EBRAHIM MATAR) BAHRAIN
CASE No. BAH/04 - JAWAD FAIROOZ GHULOOM)

The Committee,

Decides to recommend to the Governing Council of the Inter-Parliamentary Union that it adopt the following resolution:

Referring to the outline of the case concerning Mr. Matar Ebrahim Matar and Mr. Jawad Fairooz Ghuloom, and to the resolution adopted at its 191st session (October 2012),

Having considered the letters from the Speaker of the Council of Representatives dated 25 September, 18 March and 9 January 2013 and the extensive information provided by the Bahraini delegation, led by Mr. Jamal Fakhro, First Deputy Speaker of the Shura Council, at hearings held in January 2013 and during the 128th IPU Assembly (Quito, March 2013) and the 129th IPU Assembly (Geneva, October 2013),

Recalling that Mr. Matar and Mr. Fairooz, who both belong to the Al-Wefaq party, were elected in 2010 and supported the call for political and social reform in Bahrain, that they and the other 16 Al-Wefaq parliamentarians tendered their resignations on 27 February 2011 in protest at the government's response to the demonstrations that started in the capital on 14 February 2011, and that their resignations were accepted by the Council of Representatives on 29 March 2011,

Noting with deep concern the outline of events provided by the source, to wit: that both men were arbitrarily arrested on 2 May 2011 by security forces and taken to different detention centres, where they were ill-treated and denied access to family and legal counsel; that Mr. Fairooz was allowed only a five-minute telephone call to his family on 29 May 2011, but forbidden to divulge his location; that their families only found out what had happened to them when trial proceedings started against them on 12 June 2011 before the National Safety Court, which was also the first time that they had access to a lawyer; that the accused were informed at the court hearing that they were being charged with spreading false information, instigating hatred against the authorities, organizing and participating in gatherings without having properly notified the authorities in advance, and using the gatherings to prepare or facilitate crimes, or to undermine public security; that both men denied the charges, and were released from detention on 7 August 2011; that Mr. Matar was acquitted on 20 February 2012, while Mr. Fairooz was tried on the last two counts; that on 7 November 2012 Mr. Fairooz was sentenced to a 15-month prison sentence, with payment of a fine of 300 Bahraini dinars as an alternative; that Mr. Fairooz appealed the sentence, and that the High Court on 15 January 2013 confirmed the sentence without providing reasons,

Aware that the Speaker of the Council of Representatives in his letter of 18 March 2013 disputes the arbitrary nature of the arrests, and asserts that Mr. Matar and Mr. Fairooz were receiving regular family visits, which were documented in the official records of the detention centre,

Recalling further that the Bahrain Independent Commission of Inquiry, an independent body set up by the King of Bahrain to investigate alleged human rights abuses during and following the 2011 protests in the country, presented its official report on 23 November 2011 with the following findings:

- The text and application of Articles 165, 168, 169, 179 and 180 of the Bahrain Penal Code "raises questions about their conformity with international human rights law and the Constitution of Bahrain"; the Government of Bahrain "used these articles to punish those in the opposition and to deter political opposition";
- "[In] a substantial number of the arrests carried out by law enforcement agencies arrest warrants were not presented to arrested individuals and arrested individuals were not informed of the reasons for their arrest";

- "In many cases, government security forces resorted to the use of unnecessary and excessive force, and in a manner that sought to terrorise individuals"; "many detainees were subjected to torture and other forms of physical and psychological abuse while in custody, which indicated patterns of behaviour by certain government agencies"; "[the] extent of this physical and psychological mistreatment is evidence of a deliberate practice"; the techniques used to mistreat detainees "fall within the meaning of torture as defined in the Convention Against Torture… to which Bahrain is a State Party"; "the lack of accountability of officials within the security system in Bahrain has led to a culture of impunity, whereby security officials have few incentives to avoid mistreatment of prisoners or to take action to prevent mistreatment by other officials",

Having examined copies of the letters dated 27 September 2011, along with a detailed five-page complaint outlining their allegations of arbitrary arrest, detention and ill-treatment, which Mr. Matar and Mr. Fairooz sent to the King of Bahrain, the President of the Supreme Judicial Council, the Supreme Commander of the Bahrain Defence Force, the Minister of Social Development and Human Rights, the Minister of the Interior, the Minister of Justice, the Public Prosecutor, the Head of Military Justice, the Chairman and members of the Bahrain Independent Commission of Inquiry, and the National Foundation for Human Rights,

Noting the indications provided by the Speaker in his 18 March 2013 letter, according to which: the complaints were acted on by a military prosecutor, given that the alleged perpetrators were associated with the defence force; on 23 October 2011 the prosecution heard Mr. Fairooz and observed that he was unable to recognize any of the alleged perpetrators; Mr. Fairooz's wife, whom he had cited as a witness, testified under oath that her husband had been arrested in a respectful manner, although she did not know on what authority the arrest had been carried out; the military prosecutor likewise heard Mr. Matar on the same day; testifying at his request, Mr. Matar wife stated under oath that her husband had been arrested by a group of civilians, but that he had escaped briefly, before being caught and arrested again; she testified that she had received a telephone call from him, and when asked by the military prosecutor whether she had seen anyone beating her husband or insulting him, she said that she had not; with respect to both Mr. Fairooz and Mr. Matar, the military prosecutor questioned the security personnel individually, and all of them denied all involvement in ill-treatment,

Noting also the further statements by the Speaker of the Council of Representatives in the same 18 March 2013 letter, according to which: the military prosecution decided not to take legal action on the allegations because of the conclusive evidence that the alleged violations had not in fact taken place, including the statements of the wives of the former parliamentarians and the dearth of evidence in support of the accusations, the complainants having failed to present any evidence whatsoever in support of their claims; neither Mr. Fairooz nor Mr. Matar had appealed the decision by the military prosecutor to close the investigation; the possibility of re-opening the investigation remained, if new evidence were to come to light, in accordance with Article 163 of the Criminal Procedure Law,

Bearing in mind in this connection Mr. Fairooz's declaration that he was never officially informed of the military prosecutor's decision to close the investigation, nor did he received any information about its results,

Considering that the evidence cited in the judgment against Mr. Fairooz seems to consist essentially of his own admission that he had been involved in organizing peaceful protests and had spoken at rallies (recorded speeches) and given interviews to representatives of the international media, the United Nations and the European Parliament, along with the fact that some other participants at the gatherings had advocated the overthrow of the current regime and committed violent acts; although Mr. Fairooz himself addressed those gathered at the Pearl Roundabout on two occasions, but he was neither violent nor advocated the use of violence or the overthrow of the regime; although at one point, he took the stage to address the gathering against the backdrop of a poster advocating the overthrow of the regime, for which he was criticized by the military prosecutor during the interrogation, the suggestion being that Mr. Fairooz should have refused to speak unless the poster was taken down,

Bearing in mind also that the United Nations Special Rapporteur on the right to freedom of peaceful assembly and of association, and the Special Rapporteur on the right to freedom of opinion

and expression, have made it clear that organizers should not be criminalized for not requesting an authorization and that assembly organizers should not be held liable for violent behaviour committed by others,

Having duly noted the assurances provided by the Speaker of the Council of Representatives and the Bahraini delegation regarding the significant legislative and institutional reforms carried out by the authorities in reaction to the report of the Bahrain Independent Commission of Inquiry, including amending the Penal Code with a view to strengthening freedom of expression, creating the position of Ombudsman within the Ministry of the Interior and a Special Investigations Unit within the Public Prosecutor's Office, and setting up a foundation to provide compensation for victims of abuse; *taking note also* of the Speaker's 9 January 2013 letter, wherein he indicates that 3 police and security officers have thus far been sentenced to seven-year prison terms for ill-treating demonstrators, with another 12 cases against law enforcement officers pending before the courts,

Considering the following information on file: on 6 November 2012, Mr. Fairooz, who was visiting the United Kingdom that day, was stripped of his nationality by an administrative decision, along with 30 others, under the Citizenship Law, which permits the revocation of nationality when a holder of Bahraini citizenship undermines State security; Mr. Fairooz, who states that he has always been committed to the peaceful expression of views, the rejection of violence and the promotion of political reform to create a genuine constitutional monarchy, is now stateless as a result; of the 31 persons affected by this decision, 9 decided to challenge it, but only one actually brought a case to court, in June 2013,

Emphasizing that the Universal Declaration of Human Rights stipulates that no one is to be arbitrarily deprived of nationality, that the 1961 Convention on the Reduction of Statelessness, to which Bahrain is not a party, enshrines the basic principle that no one should be deprived of nationality if such deprivation results in statelessness, and that exceptions to this principle under the Convention require that a State wishing to deprive an individual of his or her nationality do so in accordance with the law and with full procedural guarantees, including the right to a fair hearing,

Aware that on 28 July 2013 the Council of Representatives reportedly adopted recommendations giving the authorities the power to revoke the citizenship of anyone recognized as guilty of committing an act of terrorism or incitement thereto and to ban all protests in the capital, Manama, and that the King of Bahrain has reportedly ordered the swift implementation of these measures,

Bearing in mind further that the United Nations High Commissioner for Human Rights, in her opening address on 9 September 2013 before the 24th session of the United Nations Human Rights Council, stated that "the human rights situation in Bahrain remains an issue of serious concern: the deep polarization of society and the harsh clampdown on human rights defenders and peaceful protesters continue to make a durable solution more difficult to secure. I reiterate my call on Bahrain to fully comply with its international human rights commitments, including respect for the rights to freedoms of expression, peaceful assembly and association. The cancellation of the scheduled visit of the Special Rapporteur on Torture is regrettable, and important recommendations made by the Bahrain Independent Commission of Inquiry have still not been implemented. I also wish to express my disappointment that the cooperation with the Government of Bahrain, which started fruitfully with the deployment of an OHCHR team in December 2012, has not developed further and an OHCHR follow-up mission has been stalled since then",

Drawing attention to the 24 April 2013 report of the United Nations Special Rapporteur on the right to freedom of assembly (A/HRC/23/39), which qualifies the specific situation of Bahrain with the words, "peaceful assemblies have been prohibited or repressed because the [messages] conveyed do not please the authorities". The report also states: "[The Special Rapporteur] is particularly troubled by the imposition of blanket bans in many States, such as… Bahrain, typically in the interests of national security, public safety or public order. He firmly believes that such blanket bans are intrinsically disproportionate and discriminatory measures as they impact on all citizens willing to exercise their right to freedom of peaceful assembly",

Noting further the statement by the Bahraini delegation at the hearing held during the 129th IPU Assembly (Geneva, October 2013) asserting that the country is steadily advancing, including with respect to the full implementation of the BICI recommendations and offering to make available the quarterly reports detailing the steps taken in this regard by the authorities,

Noting with regret that the Speaker of the Council of Representatives, in his letter of 25 September 2013, responded to the proposal for an on-site visit to Bahrain by stating that there was nothing further to add given that the parliamentary authorities had already provided all the necessary information to the Committee, while the Bahraini delegation, at the aforesaid hearing, declared that the authorities remained committed to responding to any further queries,

1. *Thanks* the Speaker of the Council of Representatives and the members of the Bahraini delegation for their cooperation and the information they have provided;

2. *Appreciates* their continued readiness to provide further information on any outstanding questions there may be in this case;

3. *Remains concerned*, however, at the absence of evidence of an effective official investigation into the detailed allegations of ill-treatment inflicted on Mr. Fairooz and Mr. Matar in custody, particularly as the Bahrain Independent Commission of Inquiry has reported that it received numerous other complaints alleging very similar treatment at the hands of law enforcement officials, and has reached unequivocal conclusions regarding the use of torture and other forms of physical and psychological abuse of detainees during and after the protests and the lack of accountability of law enforcement officials;

4. *Emphasizes its profound concern* that the alleged victims have apparently not been kept informed of steps taken in the investigation into their alleged ill-treatment, including the decision to close it, and *urgently requests* to be provided with a copy of that decision, the communications by which Mr. Fairooz and Mr. Matar were informed of the closure, the investigation report detailing the concrete steps that the authorities have taken to shed light on the allegations and, in the light of the contradictory information on file, a copy of the record of the detainees' visitors, particularly for the first month of the detention;

5. *Expresses its perplexity*, following examination of the translated texts of the first-instance and appeal judgment against Mr. Fairooz, as to the legal justification of the depiction of his actions as criminal, in the light of the relevant international human rights norms and the observations that the United Nations Special Rapporteur on the rights to freedom of peaceful assembly and of association has made about the situation in Bahrain, and *accepts* therefore the offer made by the Bahraini delegation to provide clarification in the matter;

6. *Notes with deep concern* that, close to one year after Mr. Fairooz was stripped of his nationality, he still does not know why this decision was taken; *emphasizes* that, under international law, the revocation of nationality is an extremely serious measure, all the more so if it leads to statelessness, and should only be taken with full respect for due process, which should include hearing the individual concerned; *expresses its appreciation for* the official assurances that Mr. Fairooz can challenge the revocation in the courts of Bahrain, but *considers* that this should not be understood as exempting the competent authorities from the requirement to inform him in advance of the grounds for such a decision, so as to allow him, apart from anything else, to prepare a defence;

7. *Reaffirms* the value that an on-site mission would have in giving a better understanding of this case and moving towards a solution, given the important and complex issues involved, and therefore *urges* the Speaker of the Council of Representatives to give further consideration to the mission proposal;

8. *Requests* the Secretary General to convey this resolution to the parliamentary authorities and to the source;

9. *Requests* the Committee to continue examining this case.

CASE No. CMBD/01 - SAM RAINSY - CAMBODIA

The Committee,

Decides to recommend to the Governing Council of the Inter-Parliamentary Union that it adopt the following resolution:

The Governing Council of the Inter-Parliamentary Union,

Referring to the case of Mr. Sam Rainsy, leader of the opposition and a member of parliament at the time of the communication's submission, and to the resolution it adopted at its 192st session (March 2013),

Recalling the following information on file:

- Having had his parliamentary immunity lifted in a closed session by a show of hands and without being afforded the opportunity to defend himself, Mr. Sam Rainsy was prosecuted and, in judgments handed down in January and September 2010, sentenced to 12 years in prison and a heavy fine for: (a) having pulled out border post #185 marking the Cambodian/Vietnamese border in a village in Svay Rieng province and inciting racial hatred; and (b) divulging false information by having published a map reportedly showing a false border with Viet Nam; on 20 September 2011, the Appeal Court reduced the prison sentence on the second count from ten to seven years; on 25 April 2011, Mr. Sam Rainsy was found guilty in a third case on charges of defaming Cambodian Foreign Minister Hor Namhong in 2008 and of incitement to discrimination; he was sentenced at first instance to two years in prison and a fine, and ordered to pay compensation to the Minister; Mr. Sam Rainsy appealed the sentence in the third case;
- The verdict whereby Mr. Sam Rainsy was found guilty of destroying public property was upheld in March 2011 by the Supreme Court, and the National Assembly stripped Mr. Sam Rainsy of his parliamentary mandate on 15 March 2011 by virtue of Article 34 of the Law on the Election of Members of the National Assembly, which stipulates that members convicted at final instance of a crime and sentenced to imprisonment forfeit their membership in the National Assembly;
- On 5 November 2012 the National Election Committee removed Mr. Sam Rainsy from the list of eligible voters for the parliamentary elections of 28 July 2013,

Recalling that no one disputes the fact that the border between Viet Nam and Cambodia is at present being demarcated, that border post #185 was a temporary wooden post, that the Government recognized that it was not a legal border marker, as confirmed by the Prime Minister himself in his response to a question from Sam Rainsy Party (SRP) parliamentarians on this matter, stating inter alia that "because the joint technical group from the two countries has not planted border post #185 yet, the border demarcation work, which is the work of the joint technical group after the planting of that post, has not started either", and that, following the publication of the Prime Minister's response, Mr. Sam Rainsy asked for a review of his sentence in the case concerning the destruction of property and incitement to racial hatred; *recalling further* that there is at present no map recognized as official and binding by Viet Nam and Cambodia,

Recalling that, according to the members of the Cambodian delegation heard during the 126th IPU Assembly (Kampala, March-April 2012), Mr. Sam Rainsy should have raised his concerns regarding the border between Viet Nam and Cambodia in the National Assembly; *recalling* in this regard that, when opposition parliamentarians asked for a public parliamentary debate on the issue, the Government reportedly refused to take part, arguing that it had already provided all necessary explanations in the past,

Considering that the Minister of Justice, in his meeting with the Secretary General, said that Mr. Sam Rainsy had created a very dangerous situation on the border when he removed the

border post, thereby putting many persons' lives at risk, and that this was tantamount to a serious provocation that could have endangered the security of the country,

Recalling the following: in his report of 16 July 2012 to the United Nations Human Rights Council (A/HRC/21/63), the Special Rapporteur on the human rights situation in Cambodia stated that "respect for freedom of expression, opinion and assembly remains a principal concern in Cambodia (…) It appears that many Cambodians exercise self-censorship in what they say and write, provoked by a fear of arrest and detention. This holds particularly true in respect of people wishing to express views critical of those in power (…)", and that "a political solution should be found to enable [Mr. Sam Rainsy], as the leader of the opposition, to play a full role in Cambodian politics. The Special Rapporteur believes that a concerted effort by the ruling and opposition parties towards reconciliation is in the interests of strong and deeper democratization of Cambodia"; in his previous report of August 2011 (A/HRC/18/46), the Special Rapporteur expressed concern at the use of the judiciary for political ends and had the following to say regarding the Sam Rainsy case in particular: "The allegation made by the Government was that Mr. Sam Rainsy had manipulated a map to show that Viet Nam had encroached on the territory of Cambodia. In any properly functioning democracy, such political matters should be debated in the parliament and become a matter of public debate rather than the subject of a criminal case before courts. Scrutinizing the activities of the Government and requiring the Government to respond to any criticisms of its policy decisions is one of the basic functions of the leaders of opposition parties and they should not be subjected to criminal proceedings for discharging their responsibilities in a peaceful manner"; the Special Rapporteur recommended inter alia that "Parliament should safeguard the right to freedom of expression of its own members and protect their parliamentary immunity",

Considering that on 12 July 2013 the King of Cambodia pardoned Mr. Sam Rainsy, following a request by the Prime Minister; Mr. Sam Rainsy returned to Cambodia on 19 July but was not allowed to stand as a candidate in the elections which took place on 28 July,

Considering that according to official election results the ruling Cambodian People's Party won 68 seats - a greatly reduced majority - while the opposition, Cambodia National Rescue Party, garnered 55 seats; the opposition has contested these results, claiming widespread rigging, demanded an independent inquiry and, in the absence of one, decided to boycott their participation in the work of the National Assembly,

1. *Welcomes* the fact, in the light of its long-standing concerns in the case, that the authorities have allowed Mr. Sam Rainsy to return to Cambodia as a free man;

2. *Deeply regrets,* however, that no allowances were made for Mr. Sam Rainsy, as the country's principal opposition leader, to stand in the recent parliamentary elections;

3. *Calls on* the majority and opposition parties to do their utmost to resolve the current political stalemate so as to ensure that the National Assembly can soon effectively start its work and in due representation of the Cambodian people;

4. *Reaffirms* in this regard that it is essential to have healthy working relationships within parliament, inter alia by ensuring that all parties are consulted and have a say when parliament takes major decisions, that the rights and responsibilities of the opposition are duly upheld and that there is full respect for parliamentary immunity; *suggests* that the IPU, as part of its ongoing programme of assistance to the National Assembly, explore with the parliamentary authorities the possibility of sharing its expertise for this purpose; *requests* the Secretary General to raise this matter with the parliamentary authorities;

5. *Decides* to close further examination of the case.

MALDIVES

CASE No. MLD/16 - MARIYA DIDI
CASE No. MLD/28 - AHMED EASA
CASE No. MLD/29 - EVA ABDULLA
CASE No. MLD/30 - MOOSA MANIK
CASE No. MLD/31 - IBRAHIM RASHEED
CASE No. MLD/32 - MOHAMED SHIFAZ
CASE No. MLD/33 - IMTHIYAZ FAHMY
CASE No. MLD/34 - MOHAMED GASAM
CASE No. MLD/35 - AHMED RASHEED
CASE No. MLD/36 - MOHAMED RASHEED
CASE No. MLD/37 - ALI RIZA
CASE No. MLD/38 - HAMID ABDUL GHAFOOR
CASE No. MLD/39 - ILYAS LABEEB
CASE No. MLD/40 - RUGIYYA MOHAMED
CASE No. MLD/41 - MOHAMED THORIQ
CASE No. MLD/42 - MOHAMED ASLAM
CASE No. MLD/43 - MOHAMMED RASHEED
CASE No. MLD/44 - ALI WAHEED
CASE No. MLD/45 - AHMED SAMEER
CASE No. MLD/46 - ABDULLA JABIR
CASE No. MLD/47 - AFRASHEEM ALI

Case No. MLD/48 - ALI AZIM
Case No. MLD/49 - ALHAN FAHMY
Case No. MLD/50 - ABDULLA SHAHID

The Committee,

Decides to recommend to the Governing Council of the Inter-Parliamentary Union that it adopt the following resolution:

The Governing Council of the Inter-Parliamentary Union,

Referring to the case of the first group of 21 parliamentarians above, all members of the People's Majlis of the Maldives and all, except Mr. Abdulla Jabir and Dr. Afrasheem Ali, members of the opposition Maldivian Democracy Party (MDP), and to the resolution it adopted at its 192nd session (March 2013),

Recalling the report of the mission by the Committee on the Human Rights of Parliamentarians to the Maldives from 19 to 21 November 2012,

Having before it the cases of Mr. Abdulla Shadid, Mr. Alhan Fahmy and Mr. Ali Azim, and *also having before it* fresh allegations regarding Mr. Hamid Abdul Ghafoor, Ms. Eva Abdulla and Mr. Ali Waheed,

Bearing in mind the following information provided by the source in this regard, including at a hearing with the Committee during the 129th IPU Assembly (Geneva, October 2013):

- The first round of the presidential election was held in the Maldives on 7 September 2013; voter turnout was 88 per cent and the results were as follows: MDP – 45.45 per cent; Progressive Party of Maldives (PPM) – 25.35 per cent; Jumhooree Party (JP) – 24.07 per cent; incumbent President Waheed – 5.1per cent;
- Article 111 of the Constitution stipulates that the Election Commission is to organize elections within 21 days of the first round if no candidate obtains an absolute majority;
- The first round was deemed free, fair and transparent by all independent observers, including those from the Commonwealth, the European Union and the United Nations; one candidate, Mr. Gasim Abrahim (JP), nevertheless petitioned the Supreme Court to annul the first round, and the PPM petitioned it to delay the second round;
- The Supreme Court asserted jurisdiction over the cases, in contravention of Article 172 of the Constitution, and four of the seven Justices, with the Chief Justice dissenting, ordered that the second round be delayed until it had ruled on the case;

- The Election Commission, however, citing the Constitution and the Maldives Elections Act, which also stipulates that the second round must be held within 21 days, decided to carry on with the election arrangements;
- On 23 September, the People's Majlis, meeting in special session, adopted a resolution calling on all State institutions to ensure that the second round of the presidential election was held as scheduled by the Election Commission; the Speaker, Mr. Abdulla Shahid, who had been threatened by government members of parliament and was therefore surrounded by security agents, called for a vote by show of hands; supporters aligned with the PPM and the JP surrounded the Majlis and chanted "hang Abdulla Shahid"; the Speaker reported the matter to the Ministry of National Defense, which is in charge of protecting the Speaker and other parliamentarians; the Chief of Staff assured the Speaker that the police would guarantee his security; however, the Speaker's brother's car, parked inside the Speaker's garage, was destroyed in an arson attack in the middle of the night that the Speaker described "as a terrorist attack", given that it occurred hours after political opponents called for him to be hung; the Deputy Chair of the MDP Parliamentary Group, Mr. Ali Waheed, also received death threats and his car was burnt in another arson attack; thus far, none of these cases has been investigated;
- On 26 September, the Supreme Court ordered the security forces to forcibly prevent the Election Commission from conducting the second round of the presidential election; the Maldives Police Service executed that order and the Election Commission was forced to call off the elections; in so doing, the Election Commissioner cited "intimidation of elections officials, government ministries including Finance refusing to provide finances, Home Minister refusing to provide security and other ministries refusing the logistical back up required";
- Thousands of protestors took to the streets on 27 September 2013, demanding that the second round of the presidential election be held on 28 September, as stipulated in the Constitution and demanded by parliament and the international community; photographs show police officers attacking peaceful protesters, including Mr. Mohamed Nasheed and Mr. Abdulla Shahid, with pepper spray;
- Following the Election Commission's decision to call off the elections, the Police Service initially surrounded the Election Commission building, prevented media from entering the premises, obstructed the movements of Election Commission staff and refused access to the Election Commissioner by anyone, including the British High Commissioner;
- The Election Commission issued a statement stating that the Commissioners and staff were being continuously intimidated by those opposed to holding the election and had received death threats,
- On 7 October, the Supreme Court annulled the results of the first round of voting in the presidential elections, and called for fresh elections by 20 October,

Considering that the PPM and the JP have reportedly renewed their calls for the arrest and expedited trial of MDP presidential contender and former President, Mr. Mohamed Nasheed;

Bearing in mind the following information provided by the source: since the Supreme Court's unconstitutional order, four MDP members of parliament have been arrested; Mr. Ali Azim was violently arrested by riot police around midnight on 29 September at the peaceful demonstration calling for an election date; on the morning of 30 September, the MDP's international spokesperson, Mr. Hamid Abdul Ghafoor, was arrested by the police and ordered to appear in court in the ongoing criminal proceedings against him on suspicion of possessing drugs and alcohol; Mr. Alhan Fahmy was summoned by the police on 30 September, on allegations that he had threatened judges; Ms. Eva Abdulla was arrested during a protest on 1 October and released in a few hours later; *considering* that the Department of Immigration of the Maldives withheld the passport of MDP member of parliament Zahir Adam for two days when he attempted to leave the country for medical treatment,

Considering that, according to the information provided by the source at the hearing with the Committee, several MDP parliamentarians have received death threats and are not receiving adequate protection,

Considering also that the source affirms that the PPM has said it will petition the Supreme Court to remove members from the People's Majlis for speaking out against judicial corruption and for challenging the Supreme Court's order to delay the second round of the presidential election,

1. *Is extremely concerned* about the latest reports of alleged arbitrary arrests, attacks and harassment of MDP members of parliament; *is keen* to receive, as a matter of urgency, official information on the grounds and factual basis for the arrests of Mr. Ali Azim and Ms. Eva Abdulla and to know if the former is still in detention;

2. *Is shocked* at the alleged death threats against the Speaker of the People's Majlis, the alleged violence committed at his residence and the reported attack at close range with pepper spray that he suffered in the course of a demonstration; *calls on* the authorities to take these matters, along with the alleged death threats made against other parliamentarians, such as Mr. Ali Waheed, very seriously and to investigate them speedily and effectively; *also calls on* the authorities to put in place, as a matter of urgency and in agreement with the parliamentarians concerned, the security measures their situations warrant;

3. *Is alarmed* at the climate of confrontation spawned by the first round in the presidential election; *notes* in this regard that none of the international observers have cast doubt on the results of that first round; *is deeply concerned* that parliament's authority is apparently once again being challenged in the current political crisis; *is alarmed* in this regard that members of parliament may be facing legal action because of opinions they expressed and positions they adopted in parliament; *would like* to receive the authorities' views on this matter;

4. *Calls on* the competent authorities, in particular the law enforcement agencies, to show restraint and abide fully by international and national human rights standards when handling protests; *recalls* in this regard that the Committee mission's report underscored that several opposition parliamentarians had been subject to arbitrary police action following the transfer of power in February 2012, and that accountability for that action has yet to be established;

5. *Considers* that the urgency and seriousness of the current situation warrants an urgent on-site mission by the Committee, so that it can gather first-hand information on the allegations and ascertain the prospects for their examination and clarification in the current political situation in the Maldives;

6. *Requests* the Secretary General to convey this resolution to the competent authorities and to seek their approval for the urgent dispatch of the mission; *requests* him also to convey a copy to the source;

7. *Requests* the Committee to continue examining this case.

CASE No. MON/01 - ZORIG SANJASUUREN - MONGOLIA

The Committee,

Decides to recommend to the Governing Council of the Inter-Parliamentary Union that it adopt the following resolution:

The Governing Council of the Inter-Parliamentary Union,

Referring to the case of Zorig Sanjasuuren, a member of the State Great Hural of Mongolia who was murdered on 2 October 1998, and to the resolution adopted at its 190th session (April 2012),

Considering the letter from the Vice-Chairman of the State Great Hural dated 17 October 2012 and the information provided by the source,

Recalling the following:

- Zorig Sanjasuuren, a leader of the democracy movement in Mongolia in the 1990s, was assassinated in October 1998; the investigation carried out by the police and the Central Intelligence Agency has been to no avail so far; this failure has been attributed largely to police inexperience in investigating contract killings such as this, the failure to secure the crime scene and the decision to allow 40 to 50 people to pollute it, together with a certain lack of political will on the part of the authorities in place at the time;
- Technical assistance in forensic matters was provided to the investigators but, owing to the confidentiality of the investigation, no information has been made available as to whether or not the results of the tests carried out shed more light on the murder and helped move the investigation forward;
- The State Great Hural set up a working group on this case which functioned from 1998 to 2000; a new working group established in 2006 continues to function, its terms of reference being to monitor the investigation and to ensure that it receives the necessary assistance and support; however, no information has ever been provided on any results it may have achieved;
- In 2010, members of parliament put a query to the Minister of Justice regarding this case in the hope of initiating a parliamentary debate that nevertheless failed to materialize, the Minister invoking the confidentiality of the investigation;
- In September 2011, a meeting of the National Security Council (comprising the President, the Prime Minister and the Speaker of the State Great Hural) was convened to discuss the investigation with the Prosecutor General,

Considering that the State Great Hural indicated in 2012 that the investigation was now being monitored by its special oversight subcommittee and that the National Security Council had renewed the mandate of the working group, which continued to work on the case and was made up of intelligence and police officers and officials from the special investigation unit in the Prosecutor General's Office,

Taking into account that the State Great Hural has asked the IPU for help in identifying countries willing to assist the investigation by running unidentified fingerprints found on the crime scene in their identification systems,

Considering that unconfirmed media reports of February 2013 indicate that two suspects of Mongolian nationality may have been arrested in the United States for the murder,

Further considering the following information provided by Oyun Sanjasuuren, the victim's sister, who is a member of parliament and a minister in the current government: she has not been able to obtain information from the working group for confidentiality reasons; she nevertheless confirms that the investigation continues and expects that the National Security Council will meet again in October 2013 to discuss the status of the investigation, further to a request she made to the Speaker; she believes that there is still hope that the case will be cleared up as some of the officers in the working group are genuinely trying to solve it,

1. *Thanks* the Vice-Chairman of the State Great Hural for the information provided;

2. *Recalls* that Zorig Sanjasuuren was brutally murdered in his home 15 years ago and is very disappointed that the culprits have not been identified despite uninterrupted investigations since his death; *continues to believe*, as examples from around the world show, that cases such as this one can be resolved even after so many years have elapsed, provided the competent authorities show the requisite determination and are given the necessary support;

3. *Is concerned* that, after all these years, the investigation remains shrouded in secrecy and *is particularly troubled* that the special oversight subcommittee of the State Great Hural and Zorig Sanjasuuren's sister are not being provided with any regular updates on the investigation; *invites* the National Security Council to authorize the working group on the investigation to disclose appropriate information on a regular basis on the status of the investigation, the steps taken and their outcome, while fully acknowledging that certain details of the investigation may need to remain confidential;

4. *Considers* that, without such information, the State Great Hural cannot properly exercise its oversight function and ensure that the competent authorities are indeed doing their utmost to shed light on Zorig Sanjasuuren's murder, and *once again encourages* the State Great Hural, in particular the special oversight subcommittee, to conduct a parliamentary debate on the case and its non-confidential aspects;

5. *Reiterates* its commitment to assisting the State Great Hural; *wishes* to obtain information on the progress made in the investigation since 2011 and to ascertain whether suspects have indeed been recently arrested; *further wishes* to know whether the foreign forensic assistance provided in the past has helped shed light on the murder and move the investigation forward, and how, before providing a response to the State Great Hural's latest request for assistance;

6. *Requests* the Secretary General to convey this resolution to the President of Mongolia, the Speaker of the State Great Hural and the Prosecutor General;

7. *Requests* the Committee to continue examining this case.

CASE No. PAK/22 - SYED HAMID SAEED KAZMI - PAKISTAN

The Committee,

Decides to recommend to the Governing Council of the Inter-Parliamentary Union that it adopt the following resolution:

The Governing Council of the Inter-Parliamentary Union,

Referring to the case of Mr. Syed Hamid Saeed Kazmi, a member of the National Assembly of Pakistan and of the Pakistan People's Party (PPP) and a former Minister for Religious Affairs, and to the resolution it adopted at its 191st session (October 2012),

Taking into account the information provided by the member of the delegation of Pakistan who appeared before the Committee on the Human Rights of Parliamentarians during the 129th IPU Assembly (Geneva, October 2013), and the information transmitted by the source,

Considering the following:

- Mr. Kazmi was detained at Adiyala Central Prison in Islamabad on allegations of financial corruption in the course of the 2010 Hajj pilgrimage, between March 2011 and 27 August 2012, when he was granted bail;
- The source alleges that, despite the extensive investigations conducted by the Federal Investigation Agency since Mr. Kazmi's arrest, no evidence has been found to incriminate him;
- According to the source, in 2009 Mr. Kazmi was seriously injured in an assassination attempt, following his efforts, as Minister for Religious Affairs, to weaken the influence of "militant groups in the Muslim community"; these groups initiated a concerted media campaign against Mr. Kazmi in 2010; unsubstantiated media reports relating to the Hajj pilgrimage corruption scandal were reportedly used as evidence by the Supreme Court of Pakistan to order the arrest of Mr. Kazmi and initiate a criminal inquiry; the allegations brought against Mr. Kazmi are politically motivated and not supported by any evidence;
- According to the source, since his release Mr. Kazmi has consistently expressed concern about the fairness of the proceedings against him,

Recalling that during the 127th IPU Assembly (Quebec, October 2012) a member of the delegation of Pakistan confirmed that the National Assembly had been fully informed of Mr. Kazmi's situation, that the Speaker had taken all appropriate action to allow him to continue attending parliament while in pre-trial detention, and that the case was in the hands of the Supreme Court, whose exclusive authority the National Assembly was bound to respect by virtue of the principle of separation of powers,

Considering that, according to the source, a total of 49 witnesses, including former MPs of rival political parties, have appeared at Mr. Kazmi's ongoing trial so far, without, however, providing any evidence against Mr. Kazmi; and that no other evidence, whether direct or circumstantial, has been presented to support the charges brought against him, confirming the doubts about the fairness of the procedure,

Taking into account the statements that the member of the delegation of Pakistan made before the Committee at the 129th Assembly, confirming that the trial against Mr. Kazmi was ongoing before a Central Special Court but noting that the Pakistani Parliament has no formal mechanism in place to monitor judicial proceedings against members of Parliament, and additionally reporting that, with Mr. Kazmi no longer a member of Parliament, following his defeat in the May 2013 general elections, attention has shifted even further away from his case,

Further considering that the report of the investigating judge in the case of Mr. Kazmi, a copy of which was provided by the member of the delegation, provides the following information on the procedure brought against him:

- Mr. Kazmi and two other persons are accused of having misused their official positions to acquire buildings in Saudi Arabia and rent them to Hajj pilgrims at exorbitant rates for their personal gain, and of having received kick-backs and bribes for granting Hajj permits and accommodation;
- Mr. Kazmi himself has been charged for his role in the Hajj pilgrimage corruption scheme as Minister of Religious affairs on the grounds that: (i) he gave directions for the appointment of Mr. Ahmed Faiz as Hajj building supervisor (Mr. Faiz is accused of having been the front-man in the corruption scheme); (ii) he wrote a letter requesting the issuance of an official passport for Mr. Faiz, to which he was not entitled; (iii) his direct connection with Mr. Faiz has been proved beyond a doubt, as they remained in touch by telephone and with personal visits to Saudi Arabia for the purpose of inspecting rented buildings; (iv) he abused his authority by depriving thousands of persons of their chance to do the Hajj pilgrimage even though they had paid their dues to the Ministry, and granted permission to many others through a kick-back scheme, and (v) the investigating judge reports that Mr. Kazmi was not able to account for amounts shown in his bank records, and failed to explain a striking increase in his personal wealth during 2009-2010, out of all proportion to his legitimate sources of income;

1. *Thanks* the member of the delegation of Pakistan for the information provided;

2. *Notes with interest* that the trial of Mr. Kazmi is now ongoing and *takes note* both of the information contained in the report of the investigating judge and of the concerns expressed by the source about the lack of due process in the proceedings against Mr. Kazmi;

3. *Trusts* that all appropriate measures are being taken by the competent authorities to ensure a fair trial for Mr. Kazmi and *wishes* to be kept informed of developments in the ongoing proceedings; *requests* the Committee to continue monitoring the proceedings closely, paying particular attention to due process and the rights of the defence, including by exploring the possibility of sending a trial observer;

4. *Recalls* that the Parliament has a duty to ensure that due process and fair trial guarantees are fully respected in proceedings launched against parliamentarians and *expects* the Parliament of Pakistan to take appropriate action in that respect even though Mr. Kazmi is no longer a member of Parliament;

5. *Notes* that no formal mechanism is currently in place to enable the Pakistani Parliament to monitor judicial proceedings against members of Parliament so as to help to ensure that their fundamental right to a fair trial is fully respected; *invites* the Pakistani Parliament therefore to consider establishing such a mechanism as part of its oversight function;

6. *Requests* the Secretary General to forward this resolution to the parliamentary authorities and to the source;

7. *Requests* the Committee to continue examining this case.

CASE No. PAK/23 - RIAZ FATYANA - PAKISTAN

The Committee,

Decides to recommend to the Governing Council of the Inter-Parliamentary Union that it adopt the following resolution:

The Governing Council of the Inter-Parliamentary Union,

Referring to the case of Mr. Riaz Fatyana, a member of the National Assembly of Pakistan affiliated with the Pakistan Muslim League Q and a substitute member of the IPU Standing Committee on Democracy and Human Rights, and to the resolution it adopted at its 191st session (October 2012),

Taking into account the information provided by a member of the delegation of Pakistan who appeared before the Committee on the Human Rights of Parliamentarians during the 129th IPU Assembly (Geneva, October 2013), and the information transmitted by the sources,

Recalling that Mr. Fatyana was the Chairman of the Parliamentary Standing Committee on Human Rights and has been a vocal critic of Pakistan's police system, repeatedly denouncing police heavy-handedness and brutality in parliamentary debates, and that he has been outspoken on other violations of human rights, such as missing persons, targeted and extrajudicial killings, abuse of authority and acts of torture carried out by law enforcement agencies,

Recalling the following information provided by the sources:

- On 19 June 2012, Mr. Fatyana's residence was attacked by a group of activists from the ruling political party in Punjab province, the Pakistan Muslim League-N (PML-N);
- The police, when they arrived at the scene, allegedly allowed the attackers free access to his house and arbitrarily arrested and kept Mr. Fatyana in detention until 21 June 2012; 13 of Mr. Fatyana's employees were arrested at the same time and were reportedly charged, together with Mr. Fatyana, with killing one of the attackers, an allegation which the sources claim is false;
- During Mr. Fatyana's detention, the police brought charges against him for being involved in the attack against his own residence, including through arson (FIR No. 205/12); the sources allege that these charges were fabricated and are not supported by any evidence; after a long investigation the case against Mr. Fatyana was dismissed; however, the 13 employees arrested with Mr. Fatyana were kept in detention in Toba Tek Singh district of Punjab province;
- The police refused to register Mr. Fatyana's complaint about the attack for three days, but eventually did so on 22 June 2012, following the intervention of the Provincial Police Office (FIR No. 206/12); no serious investigation was undertaken by the police, and none of the attackers were arrested; it appears that the report of the Commissioner and the District Coordinator Officer on the incident exposed a personal vendetta of the local police against Mr. Fatyana and confirmed the names of the accused; however, instead of arresting these suspects, the police arrested a member of Mr. Fatyana's personal staff;
- Mr. Fatyana was threatened by the police both during and after his detention, and has been forced to flee, together with his entire family; while in detention, he was told by police officials that he should not run in the forthcoming National Assembly elections, otherwise he and his family would face reprisals;
- The sources believe that Mr. Fatyana has been framed by the Punjab police, at the instigation of PML-N leaders in Punjab and of Mr. Chourdry Asad ur Rehman Ramdey, his long-standing main political opponent in the constituency, in order to sideline him in the run-up to the general elections in May 2013; the sources indicated that the local

police, the lower ranks of the judiciary and the local administration of Punjab are completely controlled by these officials,

Considering the following new information provided by the sources: Mr. Fatyana and his 13 employees were all acquitted of murder charges in March 2013; the police has not investigated the complaint lodged by Mr. Fatyana and none of the attackers have been arrested to date; the case therefore currently remains pending before the trial court of Kamalia more than 18 months after the attack; the attackers have threatened Mr. Fatyana with reprisals if he pursues the case against them; no sanction has been taken against the police officers responsible for Mr. Fatyana's arbitrary arrest and for bringing trumped-up charges against him; Mr. Fatyana was not able to run his electoral campaign properly as the police did not provide him with the security he required to move around and campaign freely in his constituency; Mr. Fatyana is no longer a member of Parliament as he was not re-elected during the May 2013 elections; the source claims that the elections in Mr. Fatyana's constituency were rigged in favour of his political opponent and indicated that a complaint has been lodged with the election tribunal on these grounds,

Recalling that a member of the delegation of Pakistan to the 127th Assembly (Quebec, October 2012) confirmed that the National Assembly was fully informed of the situation and that the Speaker had strongly condemned the attack against Mr. Fatyana,

Taking into account that, during the 129th Assembly, the member of the delegation of Pakistan who met with the Committee confirmed the acquittal of Mr. Fatyana and his employees and the fact that the case against his attackers remained pending before the trial court of Kamalia; however, contrary to the source, he indicated that the attackers had been arrested; he further stated that the Parliament had not been able to formally monitor Mr. Fatyana's situation and the judicial proceedings as no formal mechanism exists within the Parliament of Pakistan enabling it to do so; he observed that attention has shifted from his case now that Mr. Fatyana is no longer a member of Parliament following the May 2013 general elections,

1. *Thanks* the member of the delegation of Pakistan for the information provided;

2. *Notes with interest* that Mr. Fatyana has been acquitted of murder charges but *remains deeply disturbed* that, 18 months after the attack against Mr. Fatyana's residence, the case has not yet been resolved although the identities of the attackers are known to the competent authorities; *observes* that it has received contradictory information regarding the arrests of the alleged attackers and *wishes* to receive official information on this matter; *further wishes* to ascertain whether complicit police officers have been sanctioned;

3. *Requests* the Committee to continue monitoring closely the proceedings, particularly in the case pending before the trial court of Kamalia against Mr. Fatyana's attackers, paying particular attention to due process, and *wishes* to be kept informed of any developments in that respect;

4. *Is alarmed* that Mr. Fatyana and his family have continued receiving serious threats; *observes* that this situation greatly affected Mr. Fatyana's ability to reach out to his constituents and therefore to carry out his parliamentary mandate and *notes with concern* that the source claims in this regard that Mr. Fatyana was prevented from campaigning freely for re-election due to police refusal to provide him with appropriate protection;

5. *Recalls* that each Parliament has a special interest to ensure that crimes against members of Parliament do not remain unpunished and *trusts* the Pakistani Parliament will take appropriate action in that respect even though Mr. Fatyana is no longer a member of Parliament;

6. *Notes* that no formal mechanism is currently in place to enable the Pakistani Parliament to monitor the situation of parliamentarians whose rights are allegedly being violated,

including by following judicial proceedings, and therefore *invites* the Pakistani Parliament to consider establishing such a mechanism as part of its oversight function;

7. *Requests* the Secretary General to convey this resolution to the Speaker of the National Assembly;

8. *Requests* the Committee to continue examining this case.

CASE No. PAL/02 - MARWAN BARGHOUTI - PALESTINE/ISRAEL

The Committee,

Decides to recommend to the Governing Council of the Inter-Parliamentary Union that it adopt the following resolution:

The Governing Council of the Inter-Parliamentary Union,

Referring to the case of Mr. Marwan Barghouti, an incumbent member of the Palestinian Legislative Council, and to the resolution it adopted at its 191st session (October 2012),

Also 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 of 6 January 2013 from the Diplomatic Advisor to the Knesset,

Recalling the following: Mr. Barghouti 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 in 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,

Considering that according to his letter of 6 January 2013, the Diplomatic Advisor to the Knesset stated that: "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 last of which was on 4 December 2012,"

Recalling that, under the terms of the Israel/Hamas-brokered prisoner exchange, Israel released 477 Palestinian prisoners on 18 October 2011 and another 550 Palestinian prisoners during December 2011, and that those released included prisoners convicted of plotting suicide bombings inside buses and restaurants, such as Ms. Ahlam Tamimi, who had been sentenced to 16 life sentences, but not Mr. Barghouti; *recalling also* that several members of the Knesset have in the past called for Mr. Barghouti's release, including Mr. Amir Peretz in March 2008 and later Mr. Guideon Ezra, member of Kadima, and that, following Mr. Barghouti's election in August 2009 to Fatah's Central Committee, the then Israeli Minister for Minority Affairs, Mr. Avishaï Braverman, expressed support for his release,

Considering that on 13 August 2013, Israel released 26 long-serving Palestinian prisoners as part of a United States-brokered deal allowing the resumption of Israeli-Palestinian peace talks; the 26 individuals form the first of four groups of Palestinian prisoners detained before 1993, totalling 104 individuals, who should be released, as approved by the Israeli Cabinet, at staged intervals within nine months, assuming that progress is made in the negotiations,

1. *Thanks* the Diplomatic Advisor for his letter; *takes note with interest* of the information contained therein regarding Mr. Barghouti's family visiting rights*; would appreciate* receiving further details in this regard along with information on the extent to which he has access to medical care;

2. *Deeply regrets* that Mr. Barghouti has spent over 11 years in detention as a result of a trial which, in the light of the compelling legal arguments put forward in Mr. Foreman's report (on which the Israeli authorities have never provided their observations), did not meet the fair-trial standards which 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. *Reiterates,* therefore, its call for his immediate release and *sincerely hopes* that the Israeli authorities will extend the list of Palestinian prisoners to be released by including Mr. Barghouti; *is eager* to receive the official views on such a prospect;

4. *Requests* the Secretary General to forward this resolution to the Speaker of the Knesset and to the competent governmental authorities, and to seek from them the requested information;

5. *Requests* the Committee to continue examining this case.

CASE No. PAL/05 - AHMAD SA'ADAT - PALESTINE / ISRAEL

The Committee,

Decides to recommend to the Governing Council of the Inter-Parliamentary Union that it adopt the following resolution:

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 resolution it adopted at its 191st session (October 2012),

Referring also 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 of 6 January 2013 from the Diplomatic Advisor to the Knesset,

Recalling the following:

- 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, and none of which allege 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 sources 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,

Considering that, according to his letter of 6 January 2013, the Diplomatic Advisor to the Knesset stated that: "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,"

Considering that on 13 August 2013 Israel released 26 long-serving Palestinian prisoners as part of a United States-brokered deal allowing the resumption of Israeli-Palestinian

peace talks; the 26 individuals form the first group of four groups of Palestinian prisoners who were detained before 1993, totalling 104 individuals, who should be released, as approved by the Israeli Cabinet, at staged intervals within nine months, assuming that progress is made in the negotiations,

1. *Thanks* the Diplomatic Advisor for his letter; *takes note with interest* of the information contained therein regarding Mr. Sa'adat's family visiting rights; would appreciate receiving further details in this regard, in particular whether all his children have been allowed to see him, along with information on the extent to which he has access to medical care;

2. *Reaffirms* its long-standing position that Mr. Sa'adat's abduction and transfer to Israel were related not to the murder charge but rather to his political activities as PFLP General Secretary, and that the proceedings against him were therefore politically motivated; *reiterates,* therefore, its call for his immediate release; and *sincerely hopes* that the Israeli authorities will extend the list of Palestinian prisoners to be released by including Mr. Sa'adat; *is eager* to receive the official views on such a prospect;

3. *Requests* the Secretary General to forward this resolution to the Speaker of the Knesset and to the competent Israeli governmental authorities, and to seek from them the information requested;

4. *Requests* the Committee to continue examining this case.

CASE No. PAL/17 - NAYEF AL-ROJOUB) PALESTINE / ISRAEL
CASE No. PAL/18 - YASER MANSOUR)
CASE No. PAL/20 - FATHI QARAWI)
CASE No. PAL/21 - EMAD NOFAL)
CASE No. PAL/28 - MUHAMMAD ABU-TEIR)
CASE No. PAL/29 - AHMAD 'ATTOUN)
CASE No. PAL/30 - MUHAMMAD TOTAH)
CASE No. PAL/32 - BASIM AL-ZARRER)
CASE No. PAL/35 - MOHAMED ISMAIL AL-TAL)
CASE No. PAL/47 - HATEM QFEISHEH)
CASE No. PAL/48 - MAHMOUD AL-RAMAHI)
CASE No. PAL/57 - HASAN YOUSEF)
CASE No. PAL/60 - AHMAD MUBARAK)

The Committee,

Decides to recommend to the Governing Council of the Inter-Parliamentary Union that it adopt the following resolution:

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 resolution it adopted at its 192nd session (March 2013),

Recalling that the parliamentarians concerned were elected to the Palestinian Legislative Council 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 in 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 having served their sentences, many were subsequently rearrested, sometimes several times, and placed in administrative detention,

Further recalling that the Diplomatic Advisor to the Knesset, in his letter of 6 January 2013, stated that the following five members of the Palestinian Legislative Council were in administrative detention and provided the following details in this regard:

- Mr. Basim Al-Zarrer was arrested on 22 November 2012; the Military Commander issued an order for him to be placed in administrative detention for six months, until 22 May 2013; the administrative order was presented for judicial review on 28 November and 5 December 2012; on the latter occasion Mr. Al-Zarrer's attorney, Mr. Fadi Kawasme, asked the Court to postpone the review as he intended to propose an alternative to arrest to the relevant authorities;
- Mr. Fathi Qarawi was arrested on 23 November 2012; the Military Commander issued an order for him to be placed in administrative detention for three months, from 3 December 2012 to 23 February 2013; according to the Israeli authorities, Mr. Qarawi is a member of the Reform and Change Party, which is a faction of Hamas; the administrative order was presented for judicial review before a military judge on 10 December 2012 and approved for the entire period; Mr. Qarawi has appealed the decision;
- Mr. Nayef Al-Rojoub was arrested on 5 December 2010; since then, a number of orders have been issued for his administrative detention and subsequently approved in judicial reviews; according to the Israeli authorities, the most recent order was for six months of

detention, expiring 27 May 2013, on the basis of newly received information indicating that Mr. Al-Rojoub, who is a senior Hamas member, continues from his cell to organize and order the execution of terrorist activities endangering public security; the administrative order was presented for judicial review on 4 December 2012, and the reviewing judge decided to shorten the detention, with expiry on 27 March 2013;

- Mr. Mahmoud Al-Ramahi was arrested on 22 November 2012; the Military Commander issued an order for him to be placed in administrative detention for six months, from 25 November 2012 to 22 May 2013; according to the Israeli authorities, Mr. Al-Ramahi is a senior Hamas member involved in prominent recent activities that constitute a clear and immediate threat to public and regional security; the order was presented for judicial review on 28 November 2012 and approved for the entire period;
- Mr. Yaser Mansour was arrested on 24 November 2012; the Military Commander issued an order for him to be placed in administrative detention for six months, from 26 November 2012 until 24 May 2013; the Israeli authorities claim that Mr. Mansour is a senior Hamas member currently involved in Hamas activities and thus represents a danger to public and regional security; the administrative order was presented for judicial review on 29 November 2012 and approved for the whole period,

Aware of reports that the administrative detention of Mr. Basim Al-Zarrer, Mr. Mahmoud Ismael Al-Ramahi and Mr. Yaser Mansour was extended in May 2013 by six months and that Mr. Fathi Qarawi and Mr. Nayef Al-Rojoub were released on 23 May and 27 March 2013 respectively,

Aware furthermore that Mr. Ahmad Attoun, Mr. Mohamed al-Tal and Mr. Hatem Qafisheh are also said to be in administrative detention, following their re-arrest by Israeli forces at the beginning of February 2013,

Noting the letter from the Diplomatic Advisor to the Knesset, indicating that criminal indictments have been issued against three members of the Palestinian Legislative Council under the following circumstances:

- Mr. Hasan Yousef was arrested in July 2012 and charged with being a member of and active in Hamas: in September 2011, he allegedly started attempting to establish a sub-committee of Hamas leaders in the Ramallah area, in order to revive and strengthen the organization's activities in the West Bank;
- Mr. Ahmad Mubarak was arrested in July 2012 and charged with being a member of and active in the above-mentioned sub-committee, and with providing assistance to Hamas;
- Mr. Emad Nofal was arrested on 22 November 2012; the Military Commander ordered him to be placed in administrative detention for a period of six months, from 26 November 2012 to 22 May 2013; Mr. Nofal is said to be a senior and active Hamas member and a member of the outlawed Atslah WaTa'ir party, which is part of Hamas; the administrative order was presented for judicial review on 3 December 2012; however, it was then decided to file criminal charges against Mr. Nofal, based on the appearance of unclassified information that made this possible; on 6 December 2012, Mr. Nofal was charged with participating in the assembly of an unlawful association in that he participated in an illegal Hamas parade in the Qalqilia area in 2011; he has been remanded in custody until the end of the criminal proceedings;

Noting further 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 can 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, namely 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 military prosecution, which implements a "cautious and level-headed" policy in the use of administrative detention; this approach 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 do not have access to the information on which the orders are based and are therefore unable to present a meaningful defence,

Considering that, during the mission in March 2013 by the delegation of the Committee on Middle East Questions to Israel and Palestine, an invitation was extended to the Committee on the Human Rights of Parliamentarians to observe the legal proceedings in one or more cases of administrative detention of PLC members directly,

Recalling also the following information on file with regard to the revocation of the residence permits of three PLC members: in May 2006, the Israeli Minister of the Interior revoked the Jerusalem residence 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 Palestinian Legislative Council; the order was not implemented owing to their arrest in June 2006; after their release in May/June 2010, the three men were immediately notified that they had to leave East Jerusalem; 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; 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; it appears that Mr. Totah has been remanded in custody since then; in response to a petition against the revocation of the residence permits and the deportation orders filed with the Supreme Court, on 23 October 2011 the Court asked the government to respond within 30 days to the claim that the Minister of the Interior did not have legal authority to revoke a residence permit; *considering* that, according to the letter from the Diplomatic Advisor to the Speaker of the Knesset, after several delays, the government submitted its response in July 2012 and the next hearing was scheduled for 16 January 2013,

Bearing in mind, lastly, that, in its concluding observations on the third periodic report of Israel under the International Covenant on Civil and Political Rights,[1] the United Nations Human Rights Committee recommended inter alia that all persons under Israel's jurisdiction and effective control be afforded full enjoyment of the rights enshrined in the Covenant,

1. *Expresses its deep concern* at reports that six PLC members remain in administrative detention and *requests* official information on this point and on the reported release from such detention of two other PLC members, namely Mr. Fathi Qarawi and Mr. Nayef Al-Rojoub;

2. *Regrets* the fact that, as recent reports show, even when PLC members are released, they remain subject to renewed arrest and can be placed in administrative detention again at any time, a practice which lends weight to claims that the use of such detention is arbitrary;

3. *Draws attention* to the need for further clarification as to how, given that administrative detention often relies on classified evidence, those so detained can fully benefit from due process in practice, and to what extent they can effectively challenge their deprivation of liberty, as the authorities affirm; *expresses its appreciation,* therefore, of the invitation to attend judicial reviews of PLC members in administrative detention and

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[1] CCPR/C/ISR/CO/3.

requests the Secretary General to make the necessary arrangements for a Committee member to attend at least one such hearing;

4. *Renews its request* for a copy of the indictments in the cases of the three PLC members who, according to the Israeli authorities, are facing criminal charges, in order to better understand the facts underpinning the charges and verify whether the latter indeed relate primarily to membership of and activity in Hamas; *recalls* in this regard its previous concerns that the PLC members who were sentenced shortly after the 2006 elections were convicted not on specific criminal charges but rather on account of their political affiliation;

5. *Requests* confirmation in the matter of reports received from sources indicating that Mr. Totah is also being prosecuted and an indication of the grounds, if that is the case;

6 *Reiterates* its concerns about the decision to revoke the residence permits of three PLC members and the manner of its implementation; *considers* that the revocation is at odds with the Hague Convention (IV) of October 1907 on the rules of customary international law, Article 45 of which stipulates that the inhabitants of an occupied territory, of which East Jerusalem may be considered an example, are not to be compelled to swear allegiance to the occupying power; *trusts* that the Supreme Court of Israel will rule on the petition expeditiously, with due regard to Israel's international obligations, and *requests* to be kept informed in this regard;

7. *Requests* the Secretary General to convey this resolution to the Israeli parliamentary authorities and the sources, inviting them to provide the requested information;

8. *Requests* the Committee to continue examining this case.

SRI LANKA

CASE No. SRI/12 - JAYALATH JAYAWARDENA
CASE No. SRI/49 - JOSEPH PARARAJASINGHAM
CASE No. SRI/53 - NADARAJAH RAVIRAJ
CASE No. SRI/61 - THIYAGARAJAH MAHESWARAN
CASE No. SRI/63 - D.M. DASSANAYAKE
CASE No. SRI/68 - SARATH FONSEKA
CASE No. SRI/69 - SIVAGANAM SHRITHARAN

The Committee,

Decides to recommend to the Governing Council of the Inter-Parliamentary Union that it adopt the following resolution:

The Governing Council of the Inter-Parliamentary Union,

Referring to the cases of the above-mentioned parliamentarians: Mr. Joseph Pararajasingham, assassinated on 24 December 2005; Mr. Nadarajah Raviraj, assassinated on 10 November 2006; Mr. Thiyagarajah Maheswaran, assassinated on 1 January 2008; Mr. D.M. Dassanayake, Minister of Nation-Building, assassinated on 8 January 2008; Mr. Sarath Fonseka who has been the subject of several legal proceedings, and to the resolutions adopted at its 190th session (April 2012),

Having before it the case of Mr. Sivaganam Shritharan, who was the victim of an attempt on his life on 7 March 2011 and alleged harassment in the exercise of his parliamentary mandate, which has been examined by the Committee on the Human Rights of Parliamentarians, pursuant to the Procedure for the treatment by the Inter-Parliamentary Union of communications concerning violations of the human rights of members of parliament,

Considering the report (CL/193/11(b)-R.3) of the Committee's mission to Sri Lanka from 9 to 11 July 2013 and the authorities' observations on the report, dated 30 September 2013,

Taking into account the information provided by Minister Mahinda Samarasinghe, Special Envoy of the President of Sri Lanka for Human Rights, to the Committee at the hearing held during the 129th IPU Assembly (Geneva, October 2013),

1. *Thanks* the Sri Lankan authorities for the information and observations provided and for their cooperation;

2. *Also thanks* the mission for its work and *endorses* its overall conclusions;

3. *Welcomes* the authorities' continued stated commitment to help ensure that full light is shed on and accountability established for the murders of the four parliamentarians; *fully appreciates* in this regard that the authorities have been able to find and sentence the culprit in the case of Mr. Maheswaran, that one of those responsible for the killing of Mr. Dassanayake has been held to account and that indictments have been brought against two other suspects; *sincerely hopes* that taking into account the observations made in the mission report, it can soon close its examination of both cases;

4. *Is deeply concerned,* however, that, in contrast to those cases, no progress has been made in the murder cases of Mr. Pararajasingham and Mr. Raviraj, in which the sources have pointed from the outset to the possible involvement of paramilitary forces; *considers* that this regrettable state of affairs, eight and seven years respectively after those crimes were committed, should make the authorities do

everything possible to look for fresh evidence and to re-examine carefully the existing leads and information;

5. *Remains convinced* that an effective witness protection bill can help facilitate such efforts and *is eager* therefore to receive a copy of the witness protection bill once it becomes available;

6. *Takes note* of the steps taken by the authorities to investigate the attempt on Mr. Shritharan's life, but *regrets* that they have not led to any concrete progress towards identifying the culprits; *remains concerned* about allegations that Mr. Shritharan is being harassed on account of his parliamentary work; *considers* therefore that it is crucial to follow carefully his situation, including with regard to any possible legal action that may be taken against him;

7. *Is saddened* by Dr. Jayawardena's death following a history of heart disease; *decides* to close further examination of his case, while underscoring all the while that it has brought to the fore the need for adequate protection for opposition members of parliament in their work both in and outside parliament;

8. *Requests* the Secretary General to convey this resolution to the authorities, the sources and to other parties concerned;

9. *Requests* the Committee to continue examining this case.

CASE No. BLS/05 - VICTOR GONCHAR - BELARUS

The Committee,

Decides to recommend to the Governing Council of the Inter-Parliamentary Union that it adopt the following resolution:

The Governing Council of the Inter-Parliamentary Union,

Referring to the case of Mr. Victor Gonchar, a member of the Thirteenth Supreme Soviet of Belarus, who disappeared, together with his friend, Mr. Anatoly Krasovsky, on 16 September 1999, and to the resolution it adopted at its 192nd session (March 2013),

Recalling, among the extensive information on file, the following:

- The investigation into the disappearances of Mr. Gonchar and Mr. Krasovsky after their abduction has thus far yielded no results, and the authorities have consistently refuted the conclusions of a report by the Parliamentary Assembly of the Council of Europe into disappearances for allegedly political reasons in Belarus (Pourgourides report), which linked senior officials to the disappearances; the evidence collected by Mr. Pourgourides to this effect includes a handwritten document from the then police chief, General Lapatik (the authenticity of which the Belarusian authorities have acknowledged), in which General Lapatik accuses Mr. V. Sheyman, then Secretary of the Belarusian Security Council, of having ordered the killing of Mr. Zakharenko, a former Minister of the Interior, and states that the order was carried out by a special task force (SOBR unit) commanded by Colonel Pavlishenko, with the assistance of the then Minister of the Interior, Mr. Sivakov, who provided Colonel Pavlishenko with an official pistol, temporarily removed from SIZO-1 prison, for the execution; the same method was reportedly used in the executions of Mr. Gonchar and Mr. Krasovsky;
- According to the results of the initial investigation by the Belarusian authorities, Mr. Gonchar and Mr. Krasovsky were abducted by an organized armed group and driven to an undisclosed location; the traces of blood discovered at the scene proved to belong to Mr. Gonchar; witnesses were found to the abduction; in November 2000, after the mass media reported the alleged implication of senior State officials, the Prosecutor General, the KGB Chairman and his deputy, and the officials involved in the investigation were removed from duty and Mr. Sheyman, the main suspect at the time in the case, was appointed Prosecutor General[2]; according to the sources, it was at that time that the investigation started to drag and two volumes disappeared from the investigation file;
- In an interview President Lukashenko gave on 10 June 2009 to the Russian newspaper *Zavtra*, he stated that the cases of Mr. Gonchar and Mr. Krasovsky "were murders for business reasons; they had to buy or sell something and failed to stick to their promises, so they were killed, as is usual in 'half-bandit' circles; traces of a murderer have recently been found in Germany"; the German authorities nevertheless denied this, and Mrs. Krasovsky denied that her husband had any business problems;
- In July and August 2010, a documentary entitled "The Nation's Godfather" was aired on a Russian TV channel and was also available in Belarus; the film dealt inter alia with the involvement of State authorities in the disappearance of politicians, including Mr. Gonchar; no response has been received to an application made to the Prosecutor General to investigate the evidence presented in the documentary,

Taking into consideration the following: according to the letter dated 8 January 2013 from the Chairman of the House of Representatives Standing Committee on National Security, who was appointed after the September 2012 legislative elections in Belarus, the Standing Committee

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2 Following heavy criticism of his appointment, including in a joint statement issued by the Committee on Legal Affairs of the Parliamentary Assembly of the Council of Europe and the IPU Committee on the Human Rights of Parliamentarians, Mr. Sheyman was later removed from this post.

was informed by the General Prosecutor's Office that the case of the disappearance of Mr. Gonchar and Mr. Krasovsky had been transferred from the Minsk City Prosecutor's Office to the new Investigative Committee of the Republic of Belarus, which was established on 1 January 2012 and was now in charge of conducting the preliminary investigation under the oversight of the General Prosecutor's Office and pursuant to an additional investigation plan; in his letter, the Chairman further indicated that the investigation had once more been extended, this time until 24 March 2013, but, yet again, provided no new information, and in particular no response to or observations on the specific questions and considerations long raised in previous resolutions; the Chairman merely reiterated that various lines of investigation were being pursued, that no details regarding the investigation could be revealed before the investigation was closed, and that the House of Representatives lacked supervisory authority over the Prosecutor General's Office, thereby precluding any possibility of studying the case material being investigated by the Office,

Noting that, in April 2012, the United Nations Human Rights Committee established under the International Covenant on Civil and Political Rights issued its decision on the merits of the application filed by Mrs. Krasovsky and her daughter regarding the disappearance of Mr. Krasovsky,

Considering that the Human Rights Committee concluded that Belarus had violated its obligation to investigate properly and take appropriate remedial action regarding Mr. Krasovsky's disappearance and requested Belarus to provide the victims thereof with an effective remedy, including a thorough and diligent investigation and prosecution and punishment of the perpetrators, that the Human Rights Committee further required Belarus to provide adequate information concerning the results of the investigation, as well as adequate compensation to the authors of the complaint, and that Belarus was given 180 days by the Human Rights Committee to submit information about the measures taken pursuant to its decision,

1. *Regrets* that the authorities have not replied to the request by the Committee on the Human Rights of Parliamentarians to conduct a visit to Belarus;

2. *Reiterates* that a visit to Belarus by a Committee delegation would offer a timely opportunity to obtain first-hand information on the current state of the investigation and the prospects for progress in the case and *expresses the firm hope* that the Committee will be able to conduct a visit before its next session;

3. *Recalls* that the decision by the United Nations Human Rights Committee in the case of Mr. Krasovsky confirms its own long-standing concerns about the absence of an effective investigation into both disappearances and the secrecy in which the investigation has been shrouded from the beginning; *wishes* to be informed of the measures taken to comply with the decision and to ascertain if the authorities have likewise informed Mr. Gonchar's family, as the United Nations Human Rights Committee has required them to do in the case of Mr. Krasovsky's family, about the results of the investigation;

4. *Firmly believes* that the grave conclusions reached by the Human Rights Committee should prompt the House of Representatives to do everything possible to help ensure that an effective investigation is indeed carried out; *urges* the House of Representatives to do this, in particular by insisting on obtaining specific information regarding the leads being pursued and any progress made in the investigation;

5. *Engages* the authorities to leave no stone unturned in shedding full light on this crime, notably by thoroughly investigating the many leads and concerns that have emerged thus far, in particular in the report of the Parliamentary Assembly of the Council of Europe, and *is therefore keen* to know how the investigation plan has been addressing these leads and concerns;

6. *Requests* the Secretary General to convey this resolution to the parliamentary authorities and to continue seeking the authorities' agreement for the visit;

7. *Requests* the Committee to continue examining this case.

CASE No. IS/01 - BIRGITTA JÓNSDÓTTIR - ICELAND

The Committee,

Decides to recommend to the Governing Council of the Inter-Parliamentary Union that it adopt the following resolution:

The Governing Council of the Inter-Parliamentary Union,

Referring to the case of Ms. Birgitta Jónsdóttir, a member of the Icelandic Parliament, and to the resolution it adopted at its 189th session (October 2011),

Recalling the following information on file:

- Birgitta Jónsdóttir has been a member of the Icelandic Parliament since July 2009. She was the co-producer of a video, released by WikiLeaks, showing United States soldiers shooting civilians in Baghdad from a helicopter;
- On 7 January 2011, she was informed by Twitter that it had received an Order from the United States District Court for the Eastern Division of Virginia to turn over to the United States the records and other information concerning her account. Twitter was given until 26 January to pass on the information to the United States Government;
- The information sought by the United States Government with respect to Ms. Jónsdóttir concerned extensive subscriber account information;
- The first court order, dated 14 December 2010, was originally kept secret and was only revealed to Ms. Jónsdóttir and two other persons concerned by the same order, after Twitter took steps to ensure that it could notify the individual concerned;
- The Order of 14 December 2010 was challenged by the three individuals, with the Electronic Frontier Foundation, the American Civil Liberties Union and the American Civil Liberties Union Foundation representing Ms. Jónsdóttir in the proceedings; on 26 January 2011, the defence counsel of the three individuals submitted a joint sealed motion to the United States District Court for the Eastern District of Virginia, requesting it to unseal the still secret court record of the United States Government's efforts to collect private records from Twitter as well as other companies which might have received such demands; a second joint motion, filed that same day, requested the Court to reconsider and overturn the 14 October 2010 Order;
- At the request of Ms. Jónsdóttir's legal counsel in the United States, the IPU submitted on 14 February 2011 a Memorandum to the Court concerning Ms. Jónsdóttir; the Memorandum was accepted by the judge and has become part of the court records; it sets out concerns regarding the potential impact of the Twitter order on: (a) Ms. Jónsdóttir's freedom of expression and her ability fully to exercise her parliamentary mandate; (b) parliamentary immunity as the Twitter order renders the immunity guaranteed to her under Article 49 of the Constitution of Iceland null and void; (c) her right to privacy; and (d) her right to defend herself insofar as the United States authorities may be seeking disclosure of information from other service providers; the Memorandum, therefore, supported the defence motion to vacate the Twitter order and to unseal all other similar disclosure orders regarding Ms. Jónsdóttir;
- On 11 March 2011, the Court denied the motion to vacate, granted the motion to unseal only in part and took the request for public docketing of certain material under consideration; the defence counsel has filed objections against the ruling, which were dismissed on 10 November 2011; Ms. Jónsdóttir decided not to challenge the latter decision, while pursuing her legal efforts, through her lawyers, to establish whether other US-based service providers had been ordered to provide information on her,

Considering moreover that:

- Members of parliament enjoy fundamental freedoms, including the rights to freedom of expression and privacy as well as specific measures of protection to allow them to carry out their work unimpeded;
- Parliamentary immunity ensures that members of parliament cannot be held to account for the opinions they express and the votes they cast, and countries, as is the case with Iceland, have generally put special mechanisms in place to ensure that they can carry out their mandate without undue restrictions and with full respect for their freedom of expression;
- In all countries, freedom of expression is essential to democracy. It is critical to members of parliament and is recognized as such by courts the world over; without the ability to express their opinions freely, members of parliament cannot represent the people who have elected them. They are unable to perform these duties if they cannot receive and exchange information freely without fear of intimidation;
- Citizens cannot exercise their right to vote or take part in public decision-making if they lack free access to information and ideas and are unable to express their views freely; citizens will not communicate sometimes sensitive information to their representative without the assurance that their identity will be protected. Moreover, citizens may be communicating sensitive information to their representative on the, sometimes erroneous, understanding that the information will only reach the intended recipient,

Considering also that social media have created new opportunities for legislatures and members of parliament by providing new ways to communicate and engage with the public, consult on legislation, deliver educational resources and promote transparency; *considering also* in this regard the advice on how to do this effectively that is contained in the publication *IPU Social Media Guidelines for Parliaments* (2013),

Considers furthermore that while modern communication technology has radically increased individuals' access to information and facilitated their active participation in society, it has also contributed to a blurring of the lines between the public and private spheres and permitted unprecedented levels of interference with the right to privacy, primarily by States and businesses; *considering also* in this regard that the United Nations Guiding Principles on Business and Human Rights, endorsed by the UN Human Rights Council in 2011, set out a global standard for preventing and addressing adverse impacts on human rights linked to business activity,

1. *Reaffirms* that freedom of expression lies at the heart of democracy and is essential to members of parliament; without the ability to express their opinions freely, members of parliament cannot represent the people who have elected them; if they cannot receive and exchange information freely without fear of interference, they cannot legislate and hold the government to account;

2. *Recalls* that Article 19 of the Universal Declaration of Human Rights upholds the right of everyone to freedom of opinion and expression; it stipulates that this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers;

3. *Notes* that, under standard human rights conventions and their jurisprudence, restrictions on the freedom of expression are subject to a threefold test: they should be prescribed by law, they must be necessary in a democratic society, and they must be proportionate to these necessary purposes;

4. *Fails to see* how the restrictions on freedom of expression that would result from compliance with the Twitter court order can be justified on such grounds, and *holds* that, on the contrary, such compliance would jeopardize a member of parliament's right to freedom of expression and hence his/her ability to seek, receive and impart information freely, which is absolutely necessary in a democratic society;

5. *Is concerned* that the national and international legal framework concerning the use of electronic media, including social media, does not appear to provide sufficient guarantees to ensure respect for freedom of expression, access to information and the right to privacy; the guarantees protecting freedom of expression and privacy in the "offline world" seem not to operate in the "online world";

6. *Notes also with concern* that the parliamentary immunity Ms. Jónsdóttir would have enjoyed under Icelandic law is not operational in this case; *considers* that, since the use of social networks by parliamentarians with their constituents and others is today commonplace in many countries, disclosure orders such as that in question would undermine and even render void the ability of States to protect their members of parliament from unwarranted interference with their mandates;

7. *Expresses deep concern*, therefore, at the efforts made by a State to obtain information about the communications of a member of parliament of another State and the likely consequences of this for members of parliament the world over on their ability to discharge their popular mandate freely;

8. *Is further concerned* that Ms. Jónsdóttir may have been subject, without her knowledge, to court orders addressed to United States-based service providers other than Twitter with the instruction to give information they possess on her; *notes* in this regard that, unlike Twitter, other companies do not necessarily inform their users of judicial requests for information concerning them directly; *considers* that such a situation would be a grave breach of Ms. Jónsdóttir's fundamental right to defend herself;

9. *Requests* the Secretary General to communicate its concerns in this case to the parliamentary authorities in Iceland and in the United States of America, and to seek their views; *also requests* him to bring the matter to the attention of Twitter, Google, Facebook and Microsoft;

10. *Considers* that the wider ramifications of the case at hand, which concern fundamental challenges to protecting human rights in the face of fast-moving technological developments, warrants further attention and action; *requests* therefore the Secretary General to explore ways of promoting a discussion of these challenges, their impact on parliamentary life, and the opportunities for parliamentary action among members of parliaments, human rights experts and representatives of the information technology industry;

11. *Requests* the Committee to continue examining this case.

TURKEY

CASE No. TK/41 - HATIP DICLE
CASE No. TK/67 - MUSTAFA BALBAY
CASE No. TK/68 - MEHMET HABERAL
CASE No. TK/69 - GÜLSER YILDIRIM (Ms.)
CASE No. TK/70 - SELMA IRMAK (Ms.)
CASE No. TK/71 - FAYSAL SARIYILDIZ
CASE No. TK/72 - IBRAHIM AYHAN
CASE No. TK/73 - KEMAL AKTAS
CASE No. TK/74 - ENGIN ALAN

The Committee,

Decides to recommend to the Governing Council of the Inter-Parliamentary Union that it adopt the following resolution:

The Governing Council of the Inter-Parliamentary Union,

Referring to the case of the above-mentioned Turkish parliamentarians, who were elected in the June 2011 parliamentary elections, and to the resolution it adopted at its 192nd session (March 2013),

Taking into account the letter of 15 May 2013 from the President of the Turkish IPU Group and the information provided by the Turkish delegation to the 129th IPU Assembly (Geneva, October 2013) at a hearing with the Committee on the Human Rights of Parliamentarians,

Recalling that Mr. Balbay and Mr. Haberal were elected on the Republican People's Party list, Mr. Alan on the National Action Party list and the six others as members of the pro-Kurdish Peace and Democracy Party, that all nine were certified by the Supreme Election Board (YSK) while in prison as eligible to stand in the legislative elections, and that, once elected, their petitions for release to enable them to take up their parliamentary duties were rejected by the competent courts,

Noting the following information on file on their individual situations:

- **Regarding Mr. Balbay**

  Mr. Balbay was arrested on 6 March 2009 and prosecuted on charges of being a member of a terrorist organization, Ergenekon, and conspiring to destabilize and overthrow the ruling Justice and Development Party. The source affirms that he was the Ankara correspondent for *Cumhuriyet*, a long-running Turkish daily, that he was a well-known critic of the government, and that he had been briefly detained in July 2008. The source affirms that, although he stopped working at the newspaper, Mr. Balbay continued to criticize the government and was again arrested in 2009 on the grounds that the police had recovered previously deleted data in the computer seized during his first arrest. According to the source, the information obtained is merely journalistic notes that Mr. Balbay had already published in his books.

- **Regarding Mr. Haberal**

  Mr. Haberal was arrested on 17 April 2009 and prosecuted for being a member and leader of the terrorist organization Ergenekon. According to the source, Mr. Haberal, a physician who is well-known for his social work, was accused by the prosecutor of using his meetings to discuss plans to overthrow the government. According to the source, these meetings were merely brain-storming exercises attended by politicians, including two members of parliament from the governing party, and civil servants.

- **Regarding Mr. Alan**

  Mr. Alan was prosecuted as part of the "Sledgehammer case", which is the name of an alleged Turkish secularist military coup plan reportedly dating back to 2003. A judgement was handed down in this case on 21 September 2012. Mr. Alan was convicted and sentenced to a prison term of 18 years.

- **Regarding Ms. Yildirim, Mr. Ayhan, Mr. Aktas, Ms. Irmak and Mr. Sariyildiz**

  The five parliamentarians are all being prosecuted for crimes against the constitutional order, specifically for being members of the terrorist organization Kurdish Communities Union (KCK), said to be the urban wing of the Kurdistan Workers Party (PKK). They were arrested between April 2009 and October 2010.

- **Regarding Mr. Dicle**

  Mr. Dicle has been in custody since December 2009 on charges of membership in the KCK. He was convicted and sentenced in 2009 at first instance to a prison sentence of one year and eight months, pursuant to Article 7/2 of the Anti-Terror Law, in connection with a statement he made to the ANKA news agency in October 2007 with respect to the unilateral ceasefire declared by the PKK in 2006 and to subsequent reports of intensified attacks by the army. Mr. Dicle reportedly stated, "… this ceasefire has become invalid. The PKK will use its legitimate right of defence unless the army stops the operations."

  The Supreme Court of Appeals upheld the judgement on 22 March 2011. After registering the criminal record, the ruling was submitted to the YSK on 9 June 2011. The President of the Turkish IPU Group affirms that, at that point, under the Electoral Law, the YSK was no longer in a position to make any changes to the final list of candidates for the elections, which explains why it was possible for Mr. Dicle to stand but for his election to be subsequently invalidated.

  Mr. Dicle, whose seat has been attributed to a member of the ruling party, has submitted a petition to the European Court of Human Rights alleging that his rights under the European Convention on Human Rights have been violated,

Recalling the serious concerns raised by the sources with respect to all nine cases about the length of the proceedings, the length of pre-trial detention, the lack of evidence to support the judicial decisions to keep elected members of parliament in pre-trial detention, serious violations of the rights of the defence and other procedural flaws; *further recalling* the sources' affirmation that some of the evidence against the accused had been fabricated by the investigators, that most of the accused had been detained on the basis of unsigned anonymous letters and their computers tampered with, that the prosecution had relied largely on the testimony of secret witnesses during the trial, that all the accused were known to be in opposition to the present government, that the government fully controlled the Supreme Board for Judges and Prosecutors, which was in charge of the judicial system, and that there had been direct political interference in the cases,

Noting the extensive background information on the Sledgehammer, Ergenekon and KCK trials provided by the President of the Turkish IPU Group during a hearing with the Committee at the 127th IPU Assembly (Quebec, October 2012) and in a letter dated 18 March 2013, including the following:

- The Ergenekon and Sledgehammer cases have to be seen against the background of repeated interference, including coups d'état, by the military in national politics in the recent history of Turkey; the parliamentarians concerned were/have been indicted in extremely complex criminal cases concerning multiple suspects;
- The parliamentary human rights committee has visited the parliamentarians in prison, concluded that their conditions are appropriate, and adopted a report to this effect which can be made available;
- As part of its third judicial reform package, the Grand National Assembly of Turkey recently amended the criminal code of procedure with a view to expediting legal proceedings and facilitating the release of those accused in cases such as the ones at hand; however, the courts have refused to grant the parliamentarians provisional release on the grounds that the crimes of which they are accused are very serious and their release may jeopardize the collection of evidence,

Considering that the Turkish delegation to the 129th IPU Assembly (Geneva, October 2013) provided the following new information on the cases:

- In the Sledgehammer trial, the Court of Cassation is expected to deliver its ruling on the appeal in the coming days;
- In the Ergenekon trial, the decisions handed down on 5 August 2013 included a sentence of 34 years and 8 months for Mr. Balbay and 12 years and six months for Mr. Haberal; Mr. Haberal was released for time served and was subsequently sworn in as a member of parliament on 2 September 2013; the judicial decision is still in the process of being drafted;
- The KCK proceedings continue; a hearing took place on 16 September in the case of Ms. Irmak and hearings are scheduled on 8 October 2013 for Ms. Yildirim, 12 November 2013 for Mr. Sariyildiz and 14 November 2013 for Mr. Ayhan,

Considering that the Turkish delegation further stated that all the proceedings were extremely complex and involved a large number of defendants and events that took place over a significant period of time, that the judiciary did its utmost to respect all standards of due process and conducted the proceedings in a transparent manner, but that the proceedings may have been marred by a number of minor procedural flaws owing to the complexity of the cases,

Recalling that, in the resolution it adopted during the 127th IPU Assembly (Quebec, October 2012), it was pleased to note that the President of the Turkish IPU Group agreed that an on-site mission by the Committee on the Human Rights of Parliamentarians, which would meet with the parliamentary, executive and judicial authorities and the parliamentarians concerned, would be timely and help enhance understanding of the cases, including with regard to the particularly complex context in which they had to be seen,

Noting in this respect that the Committee has made three attempts in 2013 to conduct the agreed visit to Turkey but that the dates were not accepted by the Turkish authorities for reasons pertaining to the workload of the Grand National Assembly of Turkey and concerns that a visit might influence the ongoing judicial processes,

Considering that the Committee has written to the President of the Turkish IPU Group, stating that it finds the justification for the repeated postponements difficult to understand, especially since other international delegations have been permitted to travel to Turkey for very similar purposes during this time, reminding the authorities that the members of the Committee are aware that this is a delicate period for Turkey and that the mission covers sensitive issues, and assuring them that the delegation in no way intends to interfere with the ongoing legal proceedings but has only one purpose, and that is to obtain a better understanding of the criminal proceedings,

Taking into account that, at the hearing, the President of the Turkish IPU Group reaffirmed that the Grand National Assembly of Turkey was in favour of the mission and said that, while the previous parliamentary session had been extremely busy, the Grand National Assembly of Turkey now expects to be able to arrange the mission,

Bearing in mind that Turkey is party to the European Convention on Human Rights and the International Covenant on Civil and Political Rights, and is therefore bound to respect the right to freedom of expression, the right to liberty and the right to participate in political life,

1. *Thanks* the President of the Turkish IPU Group for her cooperation;

2. *Expresses its deep disappointment* that the Committee has not yet been able to conduct the on-site mission to Turkey and *trusts* that the Turkish authorities will do their utmost to ensure that the mission can take place as soon as the Committee delegation is available;

3. *Notes* the sentences delivered against Mr. Haberal and Mr. Balbay in the Ergenekon trial on 5 August 2013; *notes with interest* that Mr. Haberal was released for time served in pre-trial detention and was sworn in as a member of parliament on

2 October 2013; *wishes* to receive the relevant excerpts of the judicial decision so as to obtain a full understanding of the reasons for the conviction;

4. *Remains deeply concerned* about the sources' allegations that some of the evidence against Mr. Haberal and Mr. Balbay was fabricated and that the rights of the accused were not fully respected during the trial; *reiterates its concern* regarding the continued proceedings against six other members of parliament who remain in custody and continue to be prevented from exercising the mandate entrusted to them by their constituents; *wishes* to receive detailed information on the current status of these proceedings;

5. *Observes* that all nine members of parliament are being prosecuted on charges of being members of terrorist organizations; *wishes* to receive detailed information on the facts adduced to substantiate these charges in relation to each individual member, the evidence supporting the charges and the applicable legal provisions;

6. *Requests* the Secretary General to convey this resolution to the parliamentary authorities and the sources and to make new arrangements for an on-site visit to Turkey by a Committee delegation;

7. *Requests* the Committee to continue examining these cases.