



Inter-Parliamentary Union

For democracy. For everyone.

# 132<sup>nd</sup> IPU Assembly

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Governing Council  
Item 12(b)

CL/196/12(b)-R.2  
1<sup>st</sup> April 2015

## Committee on the Human Rights of Parliamentarians

### CONTENTS

Page

#### Africa

- **Kenya**

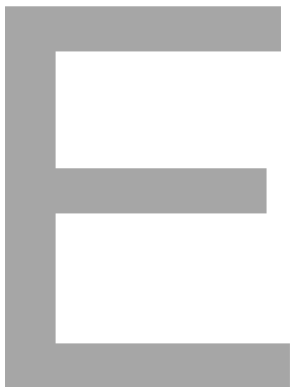
KEN55 Melitus Mugabe Were Draft decision.....	1
--	---

- **Rwanda**

RW06 Léonard Hitimana Draft decision.....	3
--	---

- **Zambia**

ZM01 Michael Kaingu	
ZM02 Jack Mwiimbu	
ZM03 Garry Nkombo	
ZM04 Request Muntanga	
ZM05 Boyd Hamusonde	
ZM06 Moono Lubezhi	
ZM07 Dora Siliya (Ms.)	
ZM08 Mwalimu Simfukwe	
ZM09 Sarah Sayifwanda (Ms.)	
ZM10 Lt. General Ronnie Shikapwasha	
ZM11 Maxwell Mwale	
ZM12 Kenneth Konga	
ZM13 Annie Munshya Chungu (Ms.)	
ZM14 Howard Kunda	
ZM15 Michael Katambo	
ZM16 James Chishiba	
ZM17 Hastings Sililo	
ZM18 Lucky Mulusa	
ZM19 Patrick Mucheleka	
ZM20 Eustacio Kazonga	
Draft decision.....	6



## Asia

### ● Malaysia

MAL21	N. Surendran	
MAL22	Teresa Kok (Ms.)	
MAL23	Khalid Samad	
MAL24	Rafizi Ramli	
MAL25	Chua Tian Chang	
MAL26	Ng Wei Aik	
MAL27	Teo Kok Seong	
Draft decision.....		9

MAL28	Nurul Izzah Anwar (Ms.)	
Draft decision.....		12

### ● Maldives

MLD16	Mariya Didi (Ms.)	
MLD28	Ahmed Easa	
MLD29	Eva Abdulla (Ms.)	
MLD30	Moosa Manik	
MLD31	Ibrahim Rasheed	
MLD32	Mohamed Shifaz	
MLD33	Imthiyaz Fahmy	
MLD34	Mohamed Gasam	
MLD35	Ahmed Rasheed	
MLD36	Mohamed Rasheed	
MLD37	Ali Riza	
MLD38	Hamid Abdul Ghafoor	
MLD39	Ilyas Labeeb	
MLD40	Rugiyya Mohamed (Ms.)	
MLD41	Mohamed Thoriq	
MLD42	Mohamed Aslam	
MLD43	Mohammed Rasheed	
MLD44	Ali Waheed	
MLD45	Ahmed Sameer	
MLD46	Afrasheem Ali	
MLD47	Abdulla Jabir	
MLD48	Ali Azim	
MLD49	Alhan Fahmy	
MLD50	Abdulla Shahid	
MLD51	Rozeyna Adam (Ms.)	
MLD52	Ibrahim Mohamed Solih	
MLD53	Mohamed Nashiz	
MLD54	Ibrahim Shareef	
MLD55	Ahmed Mahloof	
MLD56	Fayyaz Ismail	
Draft decision.....		15

### ● Mongolia

MON01	Zorig Sanjaasuren	
Draft decision.....		19

### ● Pakistan

PAK23	Riaz Fatyana	
Draft decision.....		21

● **Philippines**

PHI02	Saturnino Ocampo	
PHI04	Teodoro Casiño	
PHI05	Liza Maza (Ms.)	
PHI06	Rafael Mariano	
Draft decision.....		23

## Europe

● **Belarus**

BSL05	Victor Gonchar	
Draft decision.....		26

## MENA

● **Palestine / Israel**

PAL18	Yaser Mansour	
PAL21	Emad Nofal	
PAL28	Muhammad Abu-Teir	
PAL29	Ahmad Attoun	
PAL30	Muhammad Totah	
PAL32	Basim Al-Zarrer	
PAL35	Mohamed Ismail Al-Tal	
PAL47	Hatem Qfeisheh	
PAL48	Mahmoud Al-Ramahi	
PAL57	Hasan Yousef	
PAL60	Ahmad Mubarak	
PAL61	Mohd. Jamal Natsheh	
PAL62	Abdul Jaber Fuqaha	
PAL63	Nizar Ramadan	
PAL64	Mohd. Maher Bader	
PAL65	Azzam Salhab	
PAL66	Ayman Daraghmeh	
PAL67	Ibrahim Abu Salem	
PAL68	Mohammed Musleh	
PAL69	Omar Abd Al Razaq	
PAL70	Daoud Abo Seer	
PAL71	Khaled Saeed	
PAL72	Ibrahim Dahbour	
PAL73	Fadhel Hamdan	
PAL74	Mohd. Mutalaq Abu Jihaisheh	
PAL75	Nayef Rjoub	
PAL76	Sameer Al Qadi	
PAL77	Khalil Al Rabee	
PAL78	Husni Al Borini	
PAL79	Riyadgh Radad	
PAL80	Abdul Rahman Zaidan	
PAL81	Fathi Qaraa'wi	
PAL82	Khalida Jarrar (Ms.)	
Draft decision.....		29
PAL83	Aziz Dweik	
Draft decision.....		32



## Kenya

### KEN/55 - Melitus Mugabe Were

The Committee,

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

The Governing Council of the Inter-Parliamentary Union,

*Having before it* the case of Mr. Melitus Mugabe Were, a member of parliament of Kenya who was assassinated in January 2008, which has been examined by the Committee on the Human Rights of Parliamentarians pursuant to the Procedure for the examination and treatment of complaints (Annex I of the revised rules and practices of the Committee) since its 121<sup>st</sup> session (April 2008),

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

*Considering* the following information on file:

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

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

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

- The High Court of Kenya concluded the first instance proceedings against the suspected murderers of Mr. Were on 10 February 2015, convicting three of the suspects to the death penalty and acquitting a fourth person. Mr. Were's widow has reportedly expressed her satisfaction. The persons convicted have not appealed the conviction to date, but may still do so as the time period to file a notice of appeal has not yet expired;
- It is not contested that the trial took a very long time to complete. The delays were caused by procedural requirements, as the proceedings had to be restarted afresh whenever a new judge took over the hearing of the case upon the request of the defence lawyers, in compliance with the rights of the accused pursuant to the criminal procedure and the Constitution of Kenya;
- The Court established beyond any reasonable doubt that Mr. Were had been fatally shot in the course of an attempted robbery, on the basis of witness statements and forensic evidence (including fingerprints, DNA and ballistic expert examinations) adduced by the prosecution. The Court expressed its deep appreciation for the utmost professionalism and diligence shown by the police in the investigation and the subsequent quality of the evidence produced;

- The Court has considered that it was clear that the motive for the assault on the newly elected parliamentarian was robbery, but it also noted in its ruling (without drawing further conclusions in that respect) that Mr. Were's election had been unexpected and had been challenged, as it had been assumed that the candidate from the Party of National Unity (PNU) would win the Embakasi constituency. A prosecution witness testified that Mr. Were had told some of his supporters that his life was in danger and had requested Parliament to provide him with a bodyguard. His request could not be granted, however, because he had not yet been sworn in as a member of parliament due to persisting tensions in the country,
  
- 1. *Thanks* the parliamentary authorities of Kenya for the information provided;
- 2. *Notes with satisfaction* that the High Court of Kenya finally completed the trial proceedings and sentenced the culprits for the murder of Mr. Were; *regrets nevertheless* the delays in the proceedings, which have taken more than seven years to reach a first-instance ruling;
- 3. *Is pleased* that the Parliament of Kenya has continued monitoring the proceedings to date in line with its overall commitment to ensuring that the crimes committed in the aftermath of the 2007 presidential elections would not go unpunished; *trusts* that it will continue doing so, should an appeal take place;
- 4. *Awaits further details* on the status of the proceedings at this stage and *wishes to be kept informed* should an appeal be filed, or should the conviction become definitive; in the event of an appeal, *would appreciate receiving information* on the process and to know whether the Court of Appeals upholds the ruling, including with regard to the motives of the crime;
- 5. *Requests* the Secretary General to convey this decision to the parliamentary authorities and any third party likely to be in a position to supply relevant information;
- 6. *Requests* the Committee to continue examining this case.

## Rwanda

### RW/06 - Léonard Hitimana

The Committee,

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

The Governing Council of the Inter-Parliamentary Union,

*Referring* to the case of Mr. Léonard Hitimana, who disappeared 12 years ago, on 7 April 2003, while he was a member of the Transitional National Assembly of Rwanda, which was dissolved on 22 August 2003, and to the resolution it adopted at its 192<sup>nd</sup> session (March 2013); *referring also* to the report of the on-site mission carried out by the Committee on the Human Rights of Parliamentarians in June 2011 (CL/189/11(b)-R.3),

*Recalling* the following information on file:

- Mr. Hitimana disappeared on the evening of 7 April 2003, the day before he was to have refuted accusations in Parliament that his party, the Republican Democratic Movement (MDR), was fomenting ethnic strife and division; the MDR was to be banned and dissolved on the basis of those accusations;
- The authorities have always maintained that Mr. Hitimana fled to a neighbouring country, that an Interpol yellow notice for missing persons was issued, with special emphasis on neighbouring countries where the authorities believed Mr. Hitimana might be living, and that they were optimistic that he would soon be located; Mr. Hitimana nevertheless is still missing 12 years after his disappearance; the authorities have stated on various occasions that Mr. Hitimana was not a key political figure and that it was therefore highly unlikely that he would have been the target of a forced disappearance; according to them, Mr. Hitimana's disappearance had nothing to do with his imminent statement in Parliament; in past letters, the Speakers of both Houses of Parliament stated that both the police and the National Human Rights Commission had looked into the complainants' allegations and concluded that they were unfounded, and that they were unaware of any new evidence having emerged since the IPU mission carried out in June 2011;
- The following picture has emerged from the information provided by various complainants and sources of information over the years of the alleged circumstances of Mr. Hitimana's disappearance:
  - o According to eyewitness accounts, Mr. Hitimana's car was intercepted late in the afternoon of 7 April 2003 by Rwandan Directorate of Military Intelligence (DMI) agents; the agents are alleged to have taken Mr. Hitimana to Kami military camp, where, on the orders of superiors, he was tortured and killed in May 2003 by Mr. John Karangwa, who was Deputy Director of Counter-intelligence at the time; Mr. Hitimana's remains were then removed to an unknown destination; persons making their rounds at the Kaniga border post say that they saw Mr. Hitimana's car and that of the military; Mr. Hitimana's car was allegedly moved by police or intelligence officers to Byumba, where it was apparently kept for a month; Mr. Hitimana's representatives subsequently retrieved the car and were told by the police that it was in the condition in which they had found it close to the border with Uganda; according to the representatives, the car's electrical cables had been cut, the key was no longer in the ignition and there were bloodstains on the front seat;
  - o The suspected perpetrator, DMI officer John Karangwa, has been accused by non-governmental sources not only of having killed Mr. Hitimana, but also of having abducted and executed, in April 2003, Mr. Augustin Cyiza, the Vice-President of Rwanda's Supreme Court, the President of Rwanda's Cassation Court and a founding member of two Rwandan human rights organizations;

- The sources believe that Mr. Hitimana was abducted by the DMI in order to silence any opposition to the dissolution of his party;
- In 2003, the United Nations Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment sent urgent appeals to the Rwandan Government regarding the arbitrary detention and alleged torture of detainees at Kami and other military camps; the United Nations Working Group on Enforced or Involuntary Disappearances has been examining the case of Mr. Hitimana's disappearance since 2 July 2003; the United Nations Human Rights Committee, in its concluding observations of 31 March 2009 (CCPR/C/RWA/CO/3), expressed "concern about reported cases of enforced disappearances and summary or arbitrary executions in Rwanda and about the impunity apparently enjoyed by the police forces responsible for such violations" and about "the lack of information from the State party regarding the disappearance of Mr. Léonard Hitimana",

*Recalling* that the Speakers of both Houses of Parliament, in their letter of 19 October 2012, stated that the investigations were ongoing, but had achieved no results to date, that the Rwandan judicial system respects the rights of witnesses and ensures their protection and that videoconferencing is used in Rwanda when required for the purposes of an investigation,

*Considering* that, according to information provided by one of the complainants in March 2015, Mr. Hitimana's disappearance had still not been seriously investigated,

*Considering* that, in 2011, the UN Human Rights Council adopted a series of recommendations for Rwanda during the first cycle of the Universal Periodic Review, that among those which the authorities considered to be in the process of being implemented, and which enjoyed their support, feature the following: (1) ratify the International Convention for the Protection of All Persons from Enforced Disappearance; (2) respond effectively to the request for information by the Human Rights Committee in 2009 regarding the follow-up given to the recommendations related to forced disappearances; and (3) respond to all the cases submitted by the Working Group on Enforced or Involuntary Disappearances; *noting* however that, as at March 2015, the aforesaid convention has not been ratified and that there is no indication that steps have been taken to implement recommendations 2 and 3,

1. *Is extremely concerned* about Mr. Hitimana's continued disappearance, 12 years after he was last seen;
2. *Deplores* the continued silence in recent years of the Rwandan Parliament in response to its calls for effective parliamentary oversight to ensure that light is finally shed on his fate;
3. *Considers* this state of affairs to be all the more regrettable, as the lack of a serious investigation can only support the long-standing accusation that Mr. Hitimana was the victim of an enforced disappearance; *stresses* that Mr. Hitimana was not a junior politician, but played an important role in his party, and the fact that he was slated for intending to speak in Parliament the following day against the party's dissolution, in a pre-electoral context in which the party was considered a serious contender, constitutes a serious motive for the crime;
4. *Recalls* that enforced disappearances are a serious human rights violation and that the enforced disappearance of a member of parliament, if the perpetrators are not brought to justice and punished, stands as a threat to Parliament as such, to all its members and, in the final analysis, to the people Parliament represents, as it can only encourage the repetition of such acts;
5. *Again urges* the authorities to carry out an independent, prompt and effective investigation, examining all lines of enquiry, including by questioning Mr. John Karangwa, Deputy Director of Counter-intelligence at the time of Mr. Hitimana's disappearance; *recalls* in this regard that the Minister of Justice pledged, during the Committee's 2011 mission, that he would ensure that the investigation would also examine the possibility that Mr. Hitimana had been assassinated in Rwanda; *is convinced* that, if new lines of inquiry are effectively followed, new evidence will soon emerge and *eagerly awaits* to receive information to this effect;



6. *Calls on* Parliament to do everything possible to help ensure that these steps are indeed taken, and to expedite the implementation of the longstanding recommendation to ratify the International Convention for the Protection of All Persons from Enforced Disappearance to which the Rwandan authorities agreed; *wishes* to be kept informed of any action taken in this regard;
7. *Recalls* that witness fear of reprisals and lack of effective protection were major obstacles encountered by the mission and affect the pursuit of justice; *remains anxious*, therefore, to know whether the planned witness protection law has been adopted and what practical steps have been taken as a result, and whether other initiatives have been taken to reassure potential witnesses in Rwanda that their safety will be fully guaranteed if they come forward; *reaffirms* its belief that the investigation would benefit from hearing any witnesses living abroad in their countries of residence, in particular by means of videoconferencing; *repeats* that it wishes to know whether the authorities have explored this possibility;
8. *Requests* the Secretary General to convey this decision to the relevant authorities, the complainants, and any third party likely to be in a position to supply relevant information;
9. *Requests* the Committee to continue examining this case and to report back to it in due course.

## Zambia

ZM01 - Michael Kaingu	ZM11 - Maxwell Mwale
ZM02 - Jack Mwiambu	ZM12 - Kenneth Konga
ZM03 - Garry Nkombo	ZM13 - Annie Munshya Chungu (Ms)
ZM04 - Request Muntanga	ZM14 - Howard Kunda
ZM05 - Boyd Hamusonde	ZM15 - Michael Katambo
ZM06 - Moono Lubezhi (Ms.)	ZM16 - James Chishiba
ZM07 - Dora Siliya (Ms.)	ZM17 - Hastings Sililo
ZM08 - Mwalimu Simfukwe	ZM18 - Lucky Mulusa
ZM09 - Sarah Sayifwanda (Ms.)	ZM19 - Patrick Mucheleka
ZM10 - Lt. Gen. Ronnie Shikapwasha	ZM20 - Eustacio Kazonga

The Committee,

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

The Governing Council of the Inter-Parliamentary Union,

*Referring* to the case of the above-mentioned individuals, all elected in the September 2011 parliamentary elections as members of political parties that are now in the opposition, and the decision which it adopted at its 195<sup>th</sup> session (October 2014); *referring also* to the report of the on-site mission carried out by the Committee on the Human Rights of Parliamentarians in September 2014 (CL/196/12(b)-R.1),

*Considering* the report of the on-site mission that the then president and current member of the Committee on the Human Rights of Parliamentarians, Senator Juan Pablo Letelier, conducted to Zambia from 22 to 25 September 2014 at the invitation of the Speaker of the National Assembly, *considering also* the information provided by the Speaker of the National Assembly at the hearing with the Committee on 27 March 2015,

*Considering* that the mission report underscores that the following issues provide the essential backdrop for understanding the cases of the individual members of parliament before the Committee:

- The results of the 2011 legislative elections  
The September 2011 legislative elections produced a hung parliament with sixty seats for the Patriotic Front (PF), 55 for the Movement for Multiparty Democracy (MMD) and 28 for the United Party for National Development (UPND). As a result of several successful court petitions asking for the disqualification of opposition seats, party switching and the acceptance of offers of ministerial and deputy ministerial posts by members of MMD and UPND while remaining members of their original parties, the balance of power in Parliament was altered;
- The existence and application of the Public Order Act  
The contents, use and interpretation of the Public Order Act, including with regard to the role and discretion of the police, have given rise to controversy. According to the opposition parliamentarians, the act was being used discriminately as a tool to intimidate and harass them. The authorities acknowledged that there were challenges, but stated that everything was being done to administer the act fairly;
- The fight against corruption  
Although the government and judicial officials underscored the need to show zero tolerance for corruption, the opposition stressed that most, if not all, of the corruption-related cases brought against political opponents were not based on any evidence, but were politically motivated. In this respect, it should be noted that it was often mentioned during the mission that clear and comprehensive rules governing the financing of political parties and political campaigns were absent;

- Constitutional reform

Discussions have been ongoing about the need for a new Constitution that would provide *inter alia* a different blueprint for Zambia's state structures, including with regard to the powers of the President, which the opposition held were too excessive,

*Considering* that the original complaint made reference to allegedly politically motivated legal proceedings against several opposition parliamentarians and that, taking into account as well the information provided by the Speaker of the National Assembly at the hearing with the Committee, the current situation for those listed below appears to be as follows:

- Mr. Konga is not subject to any legal proceedings and all restrictions on his property have been lifted;
- The petition challenging Ms. Sayifwanda's election was dismissed and she was declared validly elected;
- Mr. Simfukwe was acquitted on a charge of abuse of authority in February 2013;
- Mr. Hamusonde is not subject to any legal action;
- Mr. Mwale was sentenced on 25 February 2015 at first instance to a 12-month prison term on the charge of abuse of authority; he was acquitted on the charge of possession of property suspected of being the proceeds of crime; Mr. Mwale and the prosecution have appealed the verdict on the first and second charge respectively,

*Considering* that Mr. Mulusa, Ms. Siliya and Lt. Gen. Shikapwasha, the latter two being allegedly subjected to politically motivated proceedings on charges of abuse of authority, were not available at the time of the mission and that no information has been forthcoming from the complainants on their situation since the mission,

*Considering* that Mr. Kaingu and Mr. Chishiba have switched political parties and are now members of the ruling Patriotic Front, with Mr. Kaingu having been appointed Minister of Education, Science and Technology by the new President of Zambia, Mr. Edgar Lungu, who was elected in the by-election held on 20 January 2015,

*Considering* that, according to the Speaker, the appointment by the current President and subsequent ratification by the National Assembly of the Chief Justice in February 2015 should help accelerate the treatment of the petitions requesting the Supreme Court to allow Mr. Mwale, Mr. Siliilo and Ms. Siliya to re-contest their seats in Parliament,

*Considering* the allegations contained in the mission report about specific incidents of violations under the Public Order Act, namely the arbitrary arrests in December 2012 of Ms. Chungu, Mr. Katambo, Mr. Kunda and Mr. Chishiba, the arbitrary arrest of Mr. Mucheleka in June 2013, and the arbitrary obstructions by police of rallies, including one organized with the participation of Mr. Mwiimbu and Mr. Nkombo and with the authorization of the High Court in Lusaka's Kanyama compound in September 2012, one in Mongu in October 2012, which involved Mr. Kaingu, and one in Namwala constituency in December 2012 involving Ms. Lubezhi; *considering* also that since the mission there have not been any new reports of alleged violations of member of parliaments' rights to freedom of assembly and to liberty under the Public Order Act,

*Considering* that the Speaker of the National Assembly stated that the current President of Zambia was taking steps to promote several legislative reforms and had proposed a two-prong approach to the adoption of a new Constitution, the draft of which had been released to the public in October 2014; with the exception of the bill of rights, which adoption would require a referendum to be simultaneously held with the general elections in 2016, the current authorities considered that all other matters covered by the draft Constitution, in which several of the issues at stake in the cases at hand had found their way, could be taken up as early as June 2015 when the National Assembly reconvened,

*Considering* also that the Speaker stated that he was committed to promoting discussion and agreement on a new version of the Public Order Act, that he had spoken to the President of Zambia for this purpose and that discussions on a modernized version of the latter act should start soon and hopefully lead to a concrete outcome by 2016,

1. *Thanks* the Speaker and the other Zambian authorities for the full cooperation which they have extended to the mission, including the extensive documentation that they have provided;
2. *Endorses* the conclusions and recommendations contained in the mission report;
3. *Notes with concern* the report's references to specific incidents in 2012 and 2013 in which reliance on the Public Order Act appears to have run counter to member of parliaments' rights to freedom of assembly and to liberty;
4. *Is pleased* therefore at the prospect that effective action will be taken to modernize the Public Order Act; *trusts* that the authorities will put in place for this purpose a national consultative process involving all political parties, the police, the National Human Rights Commission, as well as other interested parties, with a view to ensuring that the concerns and challenges that have arisen in the cases at hand are properly addressed, including by giving due consideration to the recommendations made to this end in the mission report; *assures* that the IPU stands ready to assist in those efforts, including by sharing relevant experiences from other countries, should that be requested;
5. *Trusts* that, in the light of the announced revision of the Public Order Act and the absence of allegations of any new abuses in the last two years, there will be no repeat of the aforesaid incidents under the act; *requests* therefore Ms. Chungu, Mr. Katambo, Mr. Kunda, Mr. Mucheleka, Mr. Mwiimbu, Ms. Lubezhi and Mr. Kazonga to state whether they see any further need at this stage for the Committee to continue examining their case; also *requests* Mr. Muntanga to pronounce himself on this question with regard to his own situation;
6. *Is pleased* that progress is being made to promote a new Constitution for Zambia; *wishes* to be kept informed of developments in this regard, in particular inasmuch as the discussions concern the regulation of issues related to public funding of political parties, fundraising, campaign spending and financial disclosure;
7. *Considers* in light of the need to ensure proper and timely representation of all Zambian citizens in the National Assembly that it is absolutely essential that the Supreme Court adopt without further delay a ruling on the petitions regarding the possibility for Ms. Siliya, Mr. Sililo and Mr. Mwale to re-contest their seats; *trusts* that the renewed impetus given to this matter will bring about a swift ruling; *wishes* to be kept informed in this regard;
8. *Is concerned* that the alleged attacker of Mr. Nkombo during the incident at a police station in February 2013 was not held to account, despite the existence of a report detailing his complaint and injury; *considers* that, even though Mr. Nkombo could have availed himself of legal avenues to pursue his claim civilly, his account of the incident and the medical report should have pushed the relevant authorities to establish full accountability for what occurred at the police station; *wishes* to know whether any further steps remain possible in this regard;
9. *Decides* to close the examination of the cases where legal proceedings against parliamentarians are not or no longer pending, including with regard to Mr. Konga, Ms. Sayifwanda, Mr. Simfukwe and Mr. Hamusonde; *decides* also to close the cases of Mr. Kaingu and Mr. Chishiba in the absence of any updated information on their part;
10. *Appreciates* the commitment expressed by the Speaker to make available a copy of the ruling in the case against Mr. Mwale; *requests* Ms. Siliya and Lt. Gen. Shikapwasha to indicate to the Committee whether they wish it to continue the examination of their case and, if so, on what grounds; also *requests* Mr. Mulusa, who was also not available to meet the mission in September 2014, to state whether or not he would like to see further examination of his case by the Committee;
11. *Requests* the Secretary General to convey this decision to the relevant authorities, the complainant, the parliamentarians directly concerned, and any third party likely to be in a position to supply relevant information;
12. *Requests* the Committee to continue examining this case and to report back to it in due course.

## Malaysia

MAL21 - N. Surendran  
MAL22 - Teresa Kok (Ms.)  
MAL23 - Khalid Samad  
MAL24 - Rafizi Ramli  
MAL25 - Chua Tian Chang  
MAL26 - Ng Wei Aik  
MAL27 - Teo Kok Seong

The Committee,

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

The Governing Council of the Inter-Parliamentary Union,

*Referring* to the cases of Mr. N. Surendran, Ms. Teresa Kok, Mr. Khalid Samad, Mr. Rafizi Ramli and Mr. Chua Tian Chang, members of the House of Representatives of Malaysia, and to the decision it adopted at its 194<sup>th</sup> session (October 2014),

*Having before it* the cases of Mr. Ng Wei Aik and Mr. Teo Kok Seong, which have been examined by the Committee on the Human Rights of Parliamentarians pursuant to the Procedure for the examination and treatment of complaints (Annex I of the revised rules and practices),

*Taking into account* the information provided by the Malaysian delegation to the 132<sup>nd</sup> IPU Assembly (Hanoi, March 2015) on the occasion of the hearing held with the Committee on the Human Rights of Parliamentarians; *recalling also* the information provided to the Committee by the Malaysian delegation to the 131<sup>st</sup> IPU Assembly (October 2014); *taking into account* also the information regularly provided by the complainants,

*Recalling* that the following parliamentarians have been charged since May 2013 with sedition, or are being investigated under (a), (b) and (c) of Section 4(1) of the Sedition Act of 1948:

- Ms. Teresa Kok, an opposition member of parliament for Seputeh in the Federal Territory of Kuala Lumpur, was charged on 5 May 2014 for making a satirical video called "Onederful Malaysia" which was published on YouTube on 27 January 2014. The Malaysian delegation emphasized in October 2014 that, according to the charges, the video raised, inter alia, sensitive security issues in Sabah, contained insults and promoted disaffection against the judiciary;
- Mr. Khalid Samad, a member of parliament for Shah Alam in the State of Selangor, was charged on 26 August 2014, under Section 4(1)(b) of the Sedition Act, for suggesting during a press conference in the parliamentary lobby, held on 26 June 2014, that an enactment allowing the Selangor Islamic Religious Council (MAIS) to control the State's religious authorities should be reviewed. The Malaysian delegation emphasized in October 2014 that, according to the charges, his remarks included, inter alia, calls for the return to a constitutional monarchy and questioned the powers of the rulers;
- Mr. N. Surendran, an opposition member of parliament for Padang Serai in the State of Kedah and lawyer for opposition leader Mr. Anwar Ibrahim, was charged twice within two weeks. His first charge, under Section 4(1)(c) of the Sedition Act, was for a press statement he released on 18 April 2014 entitled "Court of Appeal's Fitnah 2 written judgement is flawed, defensive and insupportable", in which he criticized the decision of the appellate court against the appeal of his client, Mr. Anwar Ibrahim, for a second sodomy conviction. The second charge, under Section 4(1)(b) of the Sedition Act, on 28 August 2014, was for a video on YouTube dated 8 August 2014 in which he stated that Mr. Anwar Ibrahim's second sodomy trial and conviction was part of a political conspiracy;

- Mr. Rafizi Ramli, an opposition member of parliament for Pandan in the Federal Territory of Kuala Lumpur, is currently under three separate sedition investigations. One is for providing the media with a letter allegedly written to Bank Rakyat from the Domestic Trade, Cooperatives and Consumerism Minister, Datuk Seri Hasan Malek. Another is for remarks he made against right-wing groups in the country in which he criticized their call to protest outside churches. The third is for writing a book called "Reformasi 2.0: Fakta Kes Anwar Ibrahim" (translated as "Reforms 2.0: The Facts of Anwar Ibrahim's Case");
- Mr. Chua Tian Chang, an opposition member of parliament for Batu, is also being charged with sedition over speeches he made at the Kuala Lumpur and Selangor Chinese Assembly Hall in Jalan Maharajalela, allegedly claiming that the United Malays National Organization staged the Sulu invasion into Sabah,

*Recalling* that the complainants affirm that the Sedition Act aims to stifle the opposition; they consider that the act is drafted so broadly so as to criminalize democratic speech, including criticism against the Government, its leaders, and ruling political parties,

*Considering* that, according to the complainants, the sedition charges and investigations have been put on hold pending a ruling by the Federal Court on the petition challenging the constitutionality of the Sedition Act 1948; on 24 March 2015, the Federal Court reserved judgement on the matter,

*Recalling* that the late member of parliament Mr. Karpal Singh was convicted on 21 February 2014 of sedition and sentenced to pay a fine of 4,000 ringgit; persons who are convicted of a crime for which the punishment is imprisonment of one year or more or a fine of 2,000 ringgit cannot be members of parliament; if convicted, parliamentarians charged with sedition face a maximum prison sentence of three years and a maximum fine of 5,000 ringgit,

*Recalling* that, according to the Malaysian delegation in October 2014, freedom of expression was fully respected in Malaysia, that the Sedition Act was nothing new and had been inherited from the former British rulers, that the existence of the Sedition Act had to be seen in the context of complex racial and religious relations in Malaysia and that parliamentarians charged with sedition were not targeted because of their opposition to the Government, but because they had allegedly violated the laws of Malaysia; the delegation also emphasized that the Attorney-General, in deciding whether or not to bring or pursue a case, placed great importance on whether or not it was in the public interest to do so; according to the Malaysian delegation, the Government has been actively exploring, through the establishment of a dedicated team, four different options to review the Sedition Act, namely: (i) maintaining the act with minor changes; (ii) abolishing it; (iii) replacing it with the National Harmony Act; or (iv) maintaining the Sedition Act along with the adoption of the National Harmony Act; the matter was now in the hands of the Attorney-General's Office, which was due to make a proposal on how to go forward,

*Considering* that the Malaysian delegation to the 132<sup>nd</sup> IPU Assembly (Hanoi, March 2015) stated that the intention of the Government had now become to amend the Sedition Act and that specific legislation would be proposed to Parliament in the coming weeks; the Malaysian delegation stated that the new legislation would have to strike the right balance between protecting stability and social harmony on the one hand and freedom of expression on the other; one of the proposed amendments would entail the crime of sedition now also covering topics related to the territorial integrity of Malaysia as well as religion,

*Considering* that the complainants affirm that the amendments aim to further limit freedom of speech in Malaysia; they recall in this regard that the Prime Minister, after first announcing in 2012 that he intended to promote a comprehensive review of the Sedition Act with a view to abolishing it, made a U-turn at the end of November 2014 by publicly announcing the intention not to repeal but to bolster the act instead,

*Considering* that Mr. Chua Tian Chang was arrested on 20 March 2015 and held overnight in connection with his involvement in the allegedly unlawful Kita Lawan rally that took place on 7 March 2015 in protest against the conviction on 10 February 2015 of opposition leader Mr. Anwar Ibrahim on a sodomy charge and his sentence to a five-year prison term. Mr. Teo Kok Seong and Mr. Rafizi Ramli are also being investigated with regard to their involvement in the same rally. According to one of the complainants, the arrest and investigation infringe the member of parliaments' rights to freedom of

expression and freedom of assembly. The complainants point out that the police have disregarded the Court of Appeal's ruling on Section 9(5) of the Peaceful Assembly Act, which held that the 10-day notice requirement is unconstitutional and that what is "fundamentally lawful cannot be criminalized". It appears that the basis for the investigation was subsequently changed to an alleged violation of Section 143 of the Criminal Code, which states that, "whoever is a member of an unlawful assembly shall be punished with imprisonment for a term that may extend to six months, or with a fine, or with both",

*Considering* that the Malaysian delegation to the 132<sup>nd</sup> IPU Assembly reiterated its invitation for a delegation of the Committee to come to Malaysia so as to gain a better understanding of the complex issues at hand,

1. *Thanks* the Malaysian delegation for their cooperation and the information provided;
2. *Is concerned* about what appears to be a wave of criminal proceedings limiting the rights to freedom of expression and assembly, respect for which is essential for members of parliament to effectively carry out their functions; *considers* in this regard that the conviction of the late Mr. Karpal Singh bears out that the application of the Sedition Act can have the effect of punishing remarks that seem to fall squarely within the exercise of the right to freedom of expression, easily leading to the loss of the parliamentary mandate, as would have been the case had his sentence been upheld on appeal;
3. *Decides* therefore to monitor closely the legal proceedings regarding the parliamentarians under the Sedition Act, the Peaceful Assembly Act and/or Criminal Code; *would appreciate receiving* further details on the precise facts that have led to charges or to investigations as well as clarification as to whether or not the legal proceedings under the Sedition Act are currently on hold pending the challenge of constitutionality of the act; *also wishes* to understand the exact legal basis for the steps taken against three parliamentarians in connection with the Kita Lawan rally;
4. *Is concerned* that, from the four options to review the Sedition Act, the authorities have chosen the one of keeping the act with amendments; *is particularly concerned* at reports that the amendments, rather than raising, may further limit standards for free speech; *calls on* the Malaysian Parliament to do everything possible to ensure that, at this critical juncture, the new legislation fully complies with relevant international standards and fully guarantees that citizens and parliamentarians alike can speak out freely without fear of undue legal action; *wishes* to receive a copy of the amendments as soon as they become available; *assures* that the IPU stands ready to assist Parliament in its legislative work, including by sharing relevant experiences from other countries, should that be requested;
5. *Welcomes* the invitation extended by the Malaysian delegation for a Committee delegation to travel to Malaysia; *considers* that such a mission would be a good opportunity to enhance the Committee's understanding of the review of the Sedition Act and of Malaysian legislation governing the right to freedom of assembly that investigators have relied on in proceedings against members of parliament, and to identify opportunities for sharing other countries' relevant legislative experiences;
6. *Requests* the Secretary General to make the necessary arrangements for the mission to take place in the near future;
7. *Requests* the Secretary General to convey this decision to the relevant authorities, the complainant and any third party likely to be in a position to supply relevant information;
8. *Requests* the Committee to continue examining this case and to report back to it in due course.

## Malaysia

### MAL28 - Nurul Izzah Anwar

The Committee,

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

The Governing Council of the Inter-Parliamentary Union,

*Having before it* the case of Ms. Nurul Izzah Anwar, a member of the House of Representative of Malaysia, which has been examined by the Committee on the Human Rights of Parliamentarians pursuant to the Procedure for the examination and treatment of complaints (Annex I of the revised rules and practices),,

*Taking into account* the information provided by the Malaysian delegation to the 132<sup>nd</sup> IPU Assembly (Hanoi, March 2015) on the occasion of the hearing held with the Committee on the Human Rights of Parliamentarians; *taking into account* the information provided by the complainant,

*Considering* that Ms. Nurul Izzah Anwar was arrested and detained overnight from 16 to 17 March 2015 under the Sedition Act 1948 for a speech she made in Parliament on 10 March 2015 in support of her father, Mr. Anwar Ibrahim, who had been sentenced at final instance on 10 February 2015 to a five-year prison term on a sodomy charge. In her intervention, Ms. Nurul Izzah said that, although Mr. Anwar Ibrahim would be in prison for five years, and even if other PR leaders were to be similarly punished, the people would not give up the struggle for reform. "I am certain Barisan Nasional's greed for power will not be able to extinguish the fire of the people's struggle," she said. She then read out portions of the speech that Mr. Anwar Ibrahim made at the close of his trial, including the parts in which he: (i) expressed grave disappointment over the injustice that continued to be perpetuated against him, even though he was already incarcerated; (ii) criticized those in power whom he accused of manipulating the Prisons Department and other government agencies in denying him his rights to attend Parliament as leader of the opposition; (iii) accused the judges of bowing to political masters and said that they were partners in a crime that contributed to the death of a free judiciary. Ms. Nurul Izzah stated, in her intervention, that she felt for those who were disappointed that Mr. Anwar Ibrahim was not able to personally deliver his speech and that he had accepted the sacrifice of going of prison for the country and the people. She also said that her father would never remain silent and would continue to fight for freedom and justice, adding that he would not surrender,

*Considering* that article 10 of the Constitution of Malaysia guarantees freedom of expression (subject to restrictions necessary in the interests of security of the Federation, friendly relations with other countries, public order or morality, to protect the privileges of Parliament, to provide against contempt of court, defamation or incitement to any offence) and in article 63(2) confers immunity from any proceedings in court for anything said by a member of parliament in Parliament; article 63(4) provides an exception to immunity under article 63(2) for words uttered by members of parliament that fall under the Sedition Act 1948; this exception under article 63(4) is, however, limited and specifies that action can only be taken against members of parliament for words uttered that fall under section 3(1)(f) of the Sedition Act 1948, i.e. on citizenship, the position of rulers, national language, or the special position of Malays,

*Considering* that the complainant considers that Ms. Nurul's intervention in Parliament was protected under her right to freedom of expression, as well as to parliamentary privilege, and that the exceptions under the Sedition Act limiting such privilege are not applicable in this case,

*Recalling* that the complainant affirms that the Sedition Act as it currently stands aims to stifle the opposition; it considers that the act is drafted so broadly so as to criminalize democratic speech, including criticism against the Government, its leaders, and ruling political parties,



*Considering* that, according to the information provided at the hearing with the Committee in October 2014 by the Malaysian delegation to the 131<sup>st</sup> IPU Assembly with respect to cases MAL21-27, the Government was actively exploring, through the establishment of a dedicated team, four different options to review the Sedition Act, namely: (i) maintaining the act with minor changes; (ii) abolishing it; (iii) replacing it with the National Harmony Act; or (iv) maintaining the Sedition Act along with the adoption of the National Harmony Act; the matter was now in the hands of the Attorney-General's Office which was due to make a proposal on how to go forward,

*Considering* that the Malaysian delegation to the 132<sup>nd</sup> IPU Assembly (Hanoi, March 2015) stated that the intention of the Government had now become to amend the Sedition Act and that specific legislation would be proposed to Parliament in the coming weeks; the Malaysian delegation stated that the new legislation would have to strike the right balance between protecting stability and social harmony on the one hand and freedom of expression on the other; one of the proposed amendments would entail the crime of sedition now also covering topics related to the territorial integrity of Malaysia as well as religion,

*Considering* that the complainant affirms that the amendments aim to further limit freedom of speech in Malaysia; it *recalls* in this regard that the Prime Minister, after first announcing in 2012 that he intended to promote a comprehensive review of the Sedition Act with a view to abolishing it, made a U-turn at the end of November 2014 by publicly announcing the intention not to repeal but to bolster the act instead,

*Considering* that the Malaysian delegation to the 132<sup>nd</sup> IPU Assembly reiterated its invitation for a delegation of the Committee to come to Malaysia so as to gain a better understanding of, amongst other things, the Sedition Act and its review,

1. *Thanks* the Malaysian delegation for its cooperation and the information provided;
2. *Is deeply concerned* that Ms. Nurul Izzah was arrested, briefly detained and might be the subject of an investigation on account of a statement she made in Parliament;
3. *Recalls* that freedom of expression is essential to the working of a democratic parliament, and that members of parliament must be entitled to raise questions of public interest, such as concerns about the functioning of the judiciary, all the more so when they refer to a case with immense national ramifications; *fails to understand* therefore how the statement which Ms. Nurul Izzah made would not be covered by parliamentary privilege and the right to freedom of expression; *considers* that Parliament, as the guardian of the rights and privileges of its members and therefore the protection of the institution as a whole, should take this incident extremely seriously; *wishes* to know what steps Parliament, through its committee of privileges, has taken to this end;
4. *Calls on* the authorities to discontinue any further investigation against Ms. Nurul Izzah in connection with her aforesaid statement in Parliament; *wishes* to receive official information and the views of the authorities on this matter;
5. *Is concerned* that, from the four options to review the Sedition Act, the authorities have chosen the one of keeping the act with amendments; *is particularly concerned* at reports that the amendments, rather than raising, may further limit standards for free speech; *calls on* the Malaysian Parliament to do everything possible to ensure that, at this critical juncture, the new legislation fully complies with relevant international standards and fully guarantees that citizens and parliamentarians alike can speak out freely without fear of undue legal action; *wishes* to receive a copy of the amendments as soon as they become available; *assures* that the IPU stands ready to assist Parliament in its legislative work, including by sharing relevant experiences from other countries, should that be requested;
6. *Welcomes* the invitation extended by the Malaysian delegation for a Committee delegation to travel to Malaysia; *considers* that such a mission would be a good opportunity to enhance the Committee's understanding of the review of the Sedition Act and to identify opportunities for sharing other countries' relevant legislative experiences;
7. *Requests* the Secretary General to make the necessary arrangements for the mission to take place in the near future;

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

## Maldives

MLD16 - Mariya Didi	MLD42 - Mohamed Aslam
MLD28 - Ahmed Easa	MLD43 - Mohammed Rasheed
MLD29 - Eva Abdulla	MLD44 - Ali Waheed
MLD30 - Moosa Manik	MLD45 - Ahmed Sameer
MLD31 - Ibrahim Rasheed	MLD46 - Afrasheem Ali
MLD32 - Mohamed Shifaz	MLD47 - Abdulla Jabir
MLD33 - Imthiyaz Fahmy	MLD48 - Ali Azim
MLD34 - Mohamed Gasam	MLD49 - Alhan Fahmy
MLD35 - Ahmed Rasheed	MLD50 - Abdulla Shahid
MLD36 - Mohamed Rasheed	MLD51 - Rozeyna Adam
MLD37 - Ali Riza	MLD52 - Ibrahim Mohamed Solih
MLD38 - Hamid Abdul Ghafoor	MLD53 - Mohamed Nashiz
MLD39 - Ilyas Labeeb	MLD54 - Ibrahim Shareef
MLD40 - Rugiyya Mohamed	MLD55 - Ahmed Mahloof
MLD41 - Mohamed Thoriq	MLD56 - Fayyaz Ismail

The Committee,

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

The Governing Council of the Inter-Parliamentary Union,

*Referring* to the cases of the first group of 28 parliamentarians above, all members of the People's Majlis of the Maldives at the time of the original complaint, 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 192<sup>nd</sup> session (March 2013); *noting* that a significant number of the persons concerned were not re-elected in the parliamentary elections held in March 2014,

*Having before it* the cases of Mr. Ahmed Mahloof and Mr. Fayyaz Ismail, which has been examined by the Committee on the Human Rights of Parliamentarians pursuant to the Procedure for the examination and treatment of complaints (Annex I of the revised rules and practices),

*Taking into account* the information that the Maldivian delegation to the 132<sup>nd</sup> IPU Assembly (Hanoi, March 2015) provided and the letter from the Deputy Secretary General of the People's Majlis, dated 24 March 2015; *taking into account* as well the information regularly provided by the complainant,

*Recalling* that the original cases have to be seen in the context of the transfer of power on 7 February 2012, when Vice-President Mohammed Waheed assumed the office of president following the disputed resignation of President Mohamed Nasheed; immediately thereafter, MDP supporters took to the streets in protest and were met with excessive use of force by the police, including against members of parliament, which has been corroborated, inter alia, by the Police Integrity Commission and the Commission of Inquiry in their reports of October and August 2012 respectively; the authorities have repeatedly stated that any police officers found to have acted unlawfully would be properly sanctioned,

*Considering* the following with regard to the concerns that have emerged since March 2014:

- The complainant insists that, in the aftermath of the March 2014 parliamentary elections, MDP parliamentarians have increasingly become the subject of violent death threats, causing them not only to fear for their lives, but also preventing them from carrying out their parliamentary mandate. Despite appeals from the members and the MDP party to the police, the Maldives National Defence Forces and the Government, calling for an investigation into the threats and for additional security protection, the complainant has reported that the measures that have been taken have been insufficient;

- The parliamentary authorities have repeatedly expressed a commitment to investigate the instances of threat and intimidation, which they claim have been sent to members from all parties. To this end, they have reported that all cases of threats received were forwarded to the appropriate authorities. However, no suspects have as yet been named. The authorities have also claimed to have taken measures to ensure that parliamentarians are provided with sufficient security from the Maldives National Defence Forces;
- The complainant has also reported a new wave of arrests and instances of ill-treatment of MDP members following the arrest of former president and current MDP leader Mohamed Nasheed on 22 February 2015, and his subsequent conviction on 13 March 2015; the complainant affirms the following in this regard:
  - (i) Mr. Ali Azim was arrested in February 2015 for peacefully protesting against the arrest of former President Nasheed. According to the authorities, Mr. Azim was arrested for obstructing police from performing their duty. On 5 March 2015, the complainant reported that Mr. Azim had been released from detention on the condition that he did not join or be seen in a demonstration for the following 60 days. No official documentation to this effect was provided, despite a request;
  - (ii) On 6 March 2015, the complainant reported that Mr. Fayyaz Ismail had been arrested during a protest the night before and had been denied access to a lawyer. The complainant added that Ms. Eva Abdullah had been beaten with a shield, and that she and Mr. Imthiyaz Fahmy had been sprayed with pepper spray. The complainant subsequently added that Mr. Fayyaz Ismail had his detention extended by 15 days – a length of time usually reserved for more serious offences – for refusing to agree not to join any protests for a period of 60 days; the letter from the parliamentary authorities of 24 March 2015 indicated that Mr. Ismail had since been released;
  - (iii) The same letter from the parliamentary authorities indicated that the Parliamentary Committee on Privileges had reviewed both cases and had recognized that the arrests were sufficiently justified and not politically motivated. Furthermore, the Majlis endorsed the findings in a formal vote; the complainant affirms that the MDP is being prevented from taking part in parliamentary work and that members have been told that they would face sanctions if they insist on putting forward their grievances in Parliament; the parliamentary authorities affirm that the MDP is obstructing Parliament with no other purpose than to prevent it from advancing with its work,

*Considering* the following with regard to ongoing, earlier concerns:

- On 2 October 2012, Mr. Afrasheem Ali, a member of the People's Majlis representing the Progressive Party of the Maldives, was killed; one individual was convicted and sentenced. A letter from the parliamentary authorities, dated 24 March 2015, indicated that a second individual had been acquitted; in this regard, the complainant affirms that Mr. Azlif, who was a member of the Maldives National Defence Forces, was released and that it has been alleged that he went to Syria to take part in training with the Islamic State. It is unclear why Mr. Azlif was allowed to leave the country; the complainant noted in this regard that there has been an alarming growth of links between the Islamic State and gangs in the Maldives;
- On 1 February 2014, Mr. Alhan Fahmy was stabbed in a coffee shop. On 22 January 2015, the complainant stated that there had been no investigation into the stabbing; the letter from the parliamentary authorities, dated 24 March 2015, indicated that the crime had been investigated and that the suspects were being prosecuted in the Criminal Court in Male;
- Since 2012, criminal action had been taken, often in connection with ongoing protests, against several MDP members of parliament for which, according to the complainant, there was no legal ground; according to the information provided by the complainant in March 2015, the case of Mr. Mohammed Rasheed (charged with terrorism) is pending in court; according to the information contained in the communication of the People's Majlis of 24 March 2015, this is the state of proceedings in the other cases:
  - (i) The cases against Mr. Ali Waheed for obstructing police duties and incitement to violence, against Mr. Ilyas Labeeb and Mr. Imthiyaz Fahmy for obstructing police duties, and against Mr. Moosa Manik for insulting the judiciary were withdrawn by the Prosecutor General's Office due to lack of sufficient evidence;

- (ii) The charges of drug and alcohol-related offences against Mr. Ghafoor and Mr. Jabir were dropped, due to lack of evidence by the prosecution; Mr. Jabir has been pardoned for his conviction for refusing to take a urine test; the complainant has confirmed this information;
- (iii) The case against Mr. Ibrahim Rasheed for obstructing police duties is still pending;
- (iv) The case against Mr. Mohamed Shifaz for producing pornographic cards was still with the Prosecutor General's Office,

*Bearing in mind* that the Republic of Maldives is a party to the International Covenant on Civil and Political Rights, and is thus bound to respect freedom of expression and assembly and the right to liberty and security,

1. *Thanks* the Maldivian parliamentary authorities and the delegation for their cooperation and the extensive information they have provided;
2. *Is deeply concerned* about the serious and repeated death threats since 2014 against MDP members of parliament; *considers* that these matters have to be taken very seriously through speedy and effective investigations and by putting in place, in agreement with the parliamentarians concerned, the security measures their situations warrant; *notes* in this respect that the authorities and the complainant have opposing views as to whether such steps are being taken;
3. *Expresses profound concern* at the climate of heightened confrontation and polarization outside and inside the Parliament of the Maldives since the arrest, trial and conviction of former President Nasheed, which has been the subject of criticism in the Maldives and abroad; *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 public protests; also *calls on* all political parties to move beyond political expediency and partisanship and to engage constructively in dialogue inside and outside Parliament to resolve their differences;
4. *Takes note* that the complainant contests the outcome of the deliberations of the Parliamentary Committee on Privileges with regard to the legality of the recent arrests of Mr. Ali Azim and Mr. Fayyaz Ismail; *would appreciate* receiving a copy of the committee's decision on this matter and official information on whether legal action is still pending against both members of parliament;
5. *Is pleased* that progress has been made in establishing accountability for the murder of Mr. Afrasheem Ali and the stabbing of Mr. Alhan Fahmy; *would appreciate* receiving a copy of the first-instance ruling in the murder case, including with regard to the motive for the crime, along with details of the acquittal of a second suspect and the allegations made in this regard by the complainant; *also wishes to know* whether the suspects in the case of Mr. Fahmy are in custody, the facts underpinning their prosecution and whether the police authorities have been able to establish the motive for the stabbing;
6. *Notes* that legal proceedings against several current and former parliamentarians have been discontinued; *decides* to close the cases of Mr. Ghafoor and Mr. Jabir, since these legal proceedings were the only matter under examination by the Committee, and to close any further examination of this same point with regard to Mr. Waheed, Mr. Labeeb and Mr. Imthiyaz Fahmy, and hence to focus only on the other pending concerns in their cases; *is eager to know* the precise legal basis and facts underpinning the cases that are still ongoing against Mr. Mohamed Rasheed, Mr. Ibrahim Rasheed and Mr. Mohamed Shifaz;
7. *Considers* that the complexity and seriousness of the concerns in the cases at hand, and the contradictory views that exist with regard to many of the facts, warrant 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; *is pleased*, therefore, that the Maldivian delegation welcomes a mission for

this purpose, which would meet with the parliamentary, executive and judicial authorities, the parliamentarians concerned and any third party likely to be in a position to assist the mission;

8. *Requests* the Secretary General to arrange for the mission to take place as early as possible and to pursue his contacts with the parliamentary authorities for this purpose;
9. *Requests* the Secretary General to convey this decision to the relevant authorities, the complainant, and any third party likely to be in a position to supply relevant information;
10. *Requests* the Committee to continue examining this case and to report back to it in due course.

## Mongolia

### MON/01 - Zorig Sanjasuuren

The Committee,

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

The Governing Council of the Inter-Parliamentary Union,

*Referring* to the case of Mr. Zorig Sanjasuuren, a member of the State Great Hural of Mongolia, who was murdered on 2 October 1998, and to the resolution adopted at its 193<sup>rd</sup> session (October 2013),

*Considering* the information provided by a member of the delegation of Mongolia to the 132<sup>nd</sup> IPU Assembly (Hanoi, March 2015) on the occasion of the hearing held with the Committee on the Human Rights of Parliamentarians,

*Recalling* the following information on file:

- Mr. Zorig Sanjasuuren, a leader of the democracy movement in Mongolia in the 1990s, was assassinated in October 1998. The culprits have not been identified to date, despite uninterrupted investigations since his death;
- The failure of the initial investigation has been attributed largely to police inexperience in investigating contract killings, the failure to secure the crime scene and the decision to allow 40 to 50 people to contaminate it, together with a certain lack of political will on the part of the authorities in place at the time;
- The investigation team assigned to the case has repeatedly changed composition and leadership over the years. It was eventually established as a single investigative working group composed of members of the General Police Department and of the Central Intelligence Agency under the authority of the Deputy Prosecutor General;
- Foreign technical assistance in forensic matters was provided to the investigators on several instances in the past but, owing to the confidentiality of the investigation, no information has been made available to date as to whether or not the assistance provided and the results of the tests carried out shed more light on the murder and helped move the investigation forward;
- The State Great Hural has continued 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 the case in the hope of initiating a parliamentary debate, which, however, 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. The National Security Council has, however, not met again to review the investigation since that date;
- 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 investigative working group, which continued to work on the case and expressed the need for additional foreign forensic technical assistance to help the investigative working group run unidentified fingerprints found at the crime scene through the identification systems of foreign countries;
- Unconfirmed media reports of February 2013 indicated that two suspects of Mongolian nationality may have been arrested in the United States for the murder of Mr. Zorig;

- Ms. Oyun Sanjasuuren, the victim's sister and who is a member of parliament, has reaffirmed on several occasions that the investigation continued, although there had been no progress in the case to her knowledge. She observed that she had been unable to obtain detailed information on the progress of the investigation from the investigative working group or from the parliamentary oversight subcommittee for confidentiality reasons. She continued to believe that there was still hope that the case would be cleared up, as some of the officers in the working group were genuinely trying to solve it,

*Considering* that, despite repeated requests, no information has been forthcoming from the authorities of Mongolia to date on the concrete steps taken by the investigative working group since 2011 to pursue the investigation and their outcome, including whether progress has been made in the identification of the perpetrators and instigators of the murder, as well as on whether the foreign forensic assistance provided in the past had helped shed light on the murder and moved the investigation forward and, if so, how,

*Considering* that the member of the Mongolian delegation to the 132<sup>nd</sup> IPU Assembly who appeared before the Committee referred to a letter of the Chairman of the State Great Hural dated January 2015 and provided the following information: the State Great Hural had addressed a request for information on the status of the investigation to the Prosecutor General and the National Intelligence Agency, and had been informed that the investigative working group had recently been renewed; it continued to work actively under the supervision of the Deputy Prosecutor General; it was difficult for the State Great Hural to obtain detailed information on the investigation; the authorities of Mongolia had now appealed to 39 countries for assistance in running fingerprints found at the crime scene through their respective identification systems; a number of States had responded positively, but no matching fingerprints had yet been found; foreign forensics assistance continued to be needed to help advance the investigation and the State Great Hural would welcome IPU assistance in that regard; both the Speaker of the State Great Hural and Ms. Oyun Sanjasuuren would welcome a delegation of the Committee on the Human Rights of Parliamentarians on a mission to Mongolia; it would allow the delegation to obtain more detailed information on the investigation through meetings with the members of the investigative working group; it would be particularly useful if the delegation could include an international forensics expert,

1. *Thanks* the parliamentary authorities of Mongolia for their cooperation, and *wishes to receive* a copy of the letter of the Chairman of the State Great Hural sent in early 2015, which has not been received to date;
2. *Notes with appreciation* that the State Great Hural welcomes a mission of the Committee, and *trusts* that the mission will help shed further light on the current status of the investigation, including on the progress made to identify the culprits and on the challenges that the investigative group continues to face, including as regards forensics evidence; *recommends* therefore that the delegation of the Committee be accompanied by an international forensics expert;
3. *Remains concerned* that, after all these years, the investigation remains shrouded in secrecy, and *fails to understand* why the State Great Hural, as well as Mr. Zorig Sanjasuuren's sister, are not being provided with detailed updates on the investigation; *again invites* the National Security Council to authorize the investigative working group 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. *Reaffirms its view* 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 Mr. Zorig Sanjasuuren's murder, and *once again urges* the State Great Hural, in particular the special oversight subcommittee, to conduct an open parliamentary debate on the case and its non-confidential aspects;
5. *Requests* the Secretary General to make the necessary arrangements for the mission to take place and to convey this decision to the President of Mongolia, the Speaker of the State Great Hural and the Prosecutor General, as well as the complainant and any other third party likely to be in a position to supply relevant information;
6. *Requests* the Committee to continue examining this case and to report back to it in due course.



## Pakistan

### PAK/23 - Riaz Fatyana

The Committee,

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

The Governing Council of the Inter-Parliamentary Union,

*Referring* to the case of Mr. Riaz Fatyana, a former member of the National Assembly of Pakistan affiliated to the Pakistan Muslim League Q and a former substitute member of the IPU Standing Committee on Democracy and Human Rights, and to the resolution it adopted at its 194<sup>th</sup> session (March 2014),

*Taking into account* the updated information recently provided by the complainant,

*Recalling* that Mr. Fatyana was the victim of an attack during his parliamentary term that has remained unpunished to date,

*Recalling* the following information on file:

- On 19 June 2012, Mr. Fatyana's residence was attacked by a group of people protesting against repeated power shortages, allegedly at the instigation of the ruling political party in Punjab province, the Pakistan Muslim League-N (PML-N);
- Mr. Fatyana, who was expecting such protests would take place, had given prior notice to the police the day before to ensure that proper security measures would be put in place for his protection. The police did not, however, take any precautionary measures. Mr. Fatyana called for urgent protective measures again when the protesters started gathering in large numbers in front of his residence, but to no avail. The protests turned into violent confrontations and one person was killed as a result of the violence;
- The police, when they finally arrived, allegedly abstained from protecting the member of parliament and instead allowed the attackers free access to his house and arbitrarily arrested and detained Mr. Fatyana for three days. They also detained 13 employees present in the house at the time;
- While in detention, Mr. Fatyana and the 13 employees were charged with murder by the police. The complainant alleged that these charges were fabricated and were not supported by any evidence. After a long investigation, the charges against Mr. Fatyana were dismissed, but the proceedings continued against the 13 detained employees until the court finally acquitted and released them almost a year later in March 2013;
- Mr. Fatyana immediately lodged a criminal complaint against his attackers. The police initially refused to register it, but eventually did so on 22 June 2012, following the intervention of the Provincial Police Office. Reports of the Commissioner and the District Coordinator Officer on the incident appear to have confirmed the names of the alleged attackers and exposed a personal vendetta of the local police against Mr. Fatyana;
- According to the complainant, the police have not undertaken any effective investigation on the complaint lodged by Mr. Fatyana and none of the attackers or instigators have been arrested and held to account to date, almost three years after the incident. Furthermore, no sanction has been taken against the police officers responsible for Mr. Fatyana's arbitrary arrest and for bringing trumped-up charges against him;
- Following the attack, the complainant further alleged that the attackers had repeatedly threatened Mr. Fatyana with reprisals if he pursued the case against them. Mr. Fatyana has allegedly also been threatened on many instances by the police. 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. After these events, he was forced to flee

his constituency, together with his entire family. The complainant alleged that Mr. Fatyana was not able to run his electoral campaign properly, as the police had not provided him with the security he required to move around and campaign freely in his constituency. The complainant claimed that, due to this situation, together with allegations that the elections in Mr. Fatyana's constituency had been rigged in favour of his political opponent, Mr. Fatyana had not been re-elected in the May 2013 general elections;

- The complainant alleges 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 complainant indicated that the local police, the lower ranks of the judiciary and the local administration of Punjab were completely controlled by the officials who had allegedly instigated the attack;
- The complainant further points out 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* that the members of the delegation of Pakistan to the 127<sup>th</sup> Assembly (Quebec, October 2012) and to the 129<sup>th</sup> Assembly (Geneva, October 2013) confirmed that the National Assembly was fully informed of the case and that the Speaker had strongly condemned the attack against Mr. Fatyana, but that 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,

*Further recalling* that, during the hearing held at the 130<sup>th</sup> IPU Assembly (Geneva, March 2014), the member of the delegation of Pakistan confirmed that neither the alleged attackers, nor the complicit police officers had yet been held to account for arbitrarily arresting and detaining a member of parliament, but that judicial proceedings were ongoing before the High Court of Kamalia and that their outcome was awaited,

*Considering* that the complainant has repeatedly expressed the fear that justice would not be done, that, according to complainant, the judicial proceedings have remained at a standstill since 2012 and the Trial Court has recently taken the decision to put an end to the ongoing proceedings without giving prior notice to Mr. Fatyana or any explanation as to the grounds for such decision,

1. *Regrets* that no recent information has been forthcoming from the authorities of Pakistan;
2. *Remains deeply concerned* that, almost three years after the attack against Mr. Fatyana, no serious attempt appears to have been made to arrest the attackers and the complicit police officers and bring them to justice; *is particularly alarmed* that the judicial proceedings initiated against Mr. Fatyana's attackers were discontinued; *wishes* to know why and whether there are any avenues of appeal available to reopen the judicial inquiry and provide prompt and appropriate redress to Mr. Fatyana;
3. *Recalls* that impunity presents a serious threat both to members of parliament and to those they represent and that, accordingly, physical attacks against members of parliament, if left unpunished, not only violate the fundamental rights of individual parliamentarians, but also affect the ability of Parliament to fulfill its role as an institution; *emphasizes* that Parliament has a duty to ensure that every effort is made to hold the culprits accountable;
4. *Urges therefore* the Parliament of Pakistan and all relevant Pakistani authorities, particularly the Minister of Justice and the Attorney General, to take urgent action to ensure that this attack does not remain unpunished; *wishes* to be kept informed of the measures taken by the authorities to that end and of any new developments in the case;
5. *Requests* the Secretary General to convey this decision to the relevant authorities, to the complainant and any third party likely to be in a position to supply relevant information;
6. *Requests* the Committee to continue examining this case and to report back to it in due course.

## Philippines

PHI/02 - Saturnino Ocampo

PHI/04 - Teodoro Casiño

PHI/05 - Liza Maza

PHI/06 - Rafael Mariano

The Committee,

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

The Governing Council of the Inter-Parliamentary Union,

*Referring* to the cases of Mr. Saturnino Ocampo, Mr. Teodoro Casiño, Ms. Liza Maza and Mr. Rafael Mariano (the so-called Batasan Four), former members of the House of Representatives of the Philippines, and to the resolution adopted by the IPU Governing Council at its 191<sup>st</sup> session (October 2012),

*Taking into account* the information provided by the Executive Director of the Inter-Parliamentary Relations and Special Affairs Bureau of the House of Representatives, in her letter dated 10 March 2014, the information provided by the Secretary of the Department of Justice, in her letter dated 27 February 2014, and the information provided by the complainants and other sources of information,

*Recalling* that the persons concerned were, along with others, prosecuted on a charge of rebellion that had been dismissed in June 2007 by the Supreme Court of the Philippines and judged as unfounded and politically motivated, and that, soon after, the following new charges – allegedly also unfounded and politically motivated - had been laid against them:

- Multiple Murder Charges in Nueva Ecija

Multiple murder charges were brought against the Batasan Four in 2007 in Nueva Ecija; one of these charges (of murder with kidnapping) was dismissed on account of inadmissible evidence (extrajudicially obtained confessions); the prosecutor proceeded with the other charges, although they were based on the same inadmissible evidence; and a petition brought by the Batasan Four on the grounds of grave abuse of discretion has been pending before the Supreme Court since March 2009,

*Considering* that, according to the complainants, the petition before the Supreme Court remains pending,

- First Multiple Murder Charge in Leyte

A multiple murder charge was brought against Mr. Ocampo in 2007 in Leyte concerning alleged offences already dealt with in the context of the rebellion case after the discovery of a mass grave in 2006; Mr. Ocampo's petition to have the case dismissed for this reason, as well as due to a lack of evidence, was submitted in April 2007 before the Supreme Court; Mr. Ocampo has also strongly refuted the accusations, stressing that at the time in question he was in detention, that the affidavits adduced by the prosecution were false and perturbed, and that the evidence was fabricated, in particular, that five of the skeletons reportedly discovered had already been discovered in 2000 in connection with another criminal case which had been subsequently dismissed,

*Considering* the following new developments with regard to the case:

- After almost seven years since Mr. Ocampo's petition was submitted, on 11 February 2014 the court ruled to dismiss it while permitting Mr. Ocampo to remain in provisional liberty by virtue of bail bonds; and Mr. Ocampo filed a motion seeking reconsideration of the decision;

- According to the complainants, despite the validity of the issues raised in his motion for reconsideration, on 1 April 2014 the Supreme Court rejected it in a short resolution. The case was then remanded to the Regional Trial Court of Manila Branch 32. Given that the original indictment was susceptible to annulment because it grouped several alleged victims into one indictment, the prosecution subsequently filed a Motion to Admit Amended Information and the 14 New Informations. In response, Mr. Ocampo filed an Omnibus Motion to Quash the Amended Information and the 14 New Informations and to Dismiss the Case, arguing that: (i) the amended information failed to specifically allege the circumstances or acts qualifying the crime as murder; (ii) the information referring to three victims must be dismissed on the grounds of *res judicata* and forum shopping, as the same victims were already included in a previously dismissed case filed in the Regional Trial Court of Baybay, Leyte; and (iii) two of the cases must be dismissed because the alleged offence with respect to two alleged victims had already been prescribed. On 30 September 2014, this motion was denied, as was Mr. Ocampo's Motion for Reconsideration. Mr. Ocampo subsequently launched a petition for *certiorari* to the Court of Appeals, which is currently pending. The Court of Appeals did not issue a restraining order or injunction, as requested by Mr. Ocampo, and his arraignment before the Regional Trial Court is set for 7 May 2015,
  - Second Multiple Murder Charge in Leyte

An additional multiple murder charge was brought against Mr. Ocampo in 2008 based on the same mass grave dealt with in the context of the 2007 Leyte case; the proceedings had been suspended pending the decision of the Supreme Court in the first Leyte case,

*Considering* that, according to the complainants and the parliamentary authorities, this case is related to, if not identical with, the first Leyte case; that according to the complainants, this case should be consolidated with the first case, but continues to be treated as separate and is currently pending before the Regional Trial Court of Hilongos,
  - Obstruction of Justice Case

A charge of obstruction of justice was brought against Mr. Casiño in May 2007 on the grounds that he had prevented an arrest; Mr. Casiño affirms that he prevented plainclothes armed policemen from arresting someone without an arrest warrant; according to information provided by the Department of Justice, the prosecution dismissed this case on 13 March 2012; Mr. Casiño and the parliamentary authorities have yet to be notified of the dismissal,

*Considering* that, according to the complainants, it could now be assumed that the case has been dismissed, despite Mr. Casiño having not received any official notification,
  - Writ of Amparo Abduction Case

A charge of abduction (following a petition for a writ of amparo) was filed against Mr. Ocampo in March 2008 before the Regional Trial Court of Basey, Western Samar; the case was pending and, according to the complainants, the charge was factually and legally baseless,

*Considering* that, according to the complainants, following repeated delays and the subsequent submission of a motion to dismiss the case for lack of evidence by Mr. Ocampo, on 28 February 2014 the court dismissed the case on the grounds that there was no government involvement – a precondition for this type of petition – in the alleged abduction, that the petitioner had not filed an appeal, and the dismissal has apparently become final,

*Recalling* that the Secretary of Justice of the Philippines consistently affirmed in her letters that, under the administration of President Benigno S. Aquino, due process would be respected and all actions and decisions based on the rule of law, and that the Speaker of the House of Representatives, in his letter of 8 August 2011, likewise affirmed that the rule of law and due process would prevail in the cases of the Batasan Four,
1. *Thanks* the Executive Director of the Inter-Parliamentary Relations and Special Affairs Bureau, and the Department of Justice for their information and cooperation;
  2. *Notes with satisfaction* that two of the cases can now be considered dismissed; however, *deeply regrets* that the Nueva Ecija case remains at a standstill; *recalls* that the right to be tried without undue delay is an element of the right to a fair trial enshrined in the International

Covenant on Political and Civil Rights, to which the Philippines is party, and that it is designed to ensure that people are not kept in a state of uncertainty about their fate for too long;

3. *Takes note* that Mr. Ocampo's petition before the Supreme Court was dismissed and that the judicial proceedings against him in connection with the multiple murder charges in Leyte are progressing; *wishes* to be kept informed of new developments in this case, as well as to receive a copy of the Supreme Court decision dismissing the petition; *trusts* that the courts will take due account of the concerns raised by the defence counsel with regard to the evidence submitted and the issues raised in Mr. Ocampo's petition for *certiorari* now before the Court of Appeals;
4. *Fails to understand* why the two Leyte cases have not been merged since the reactivation of the first Leyte case; *wishes* to receive clarification on this point;
5. *Requests* the Secretary General to convey this decision to the relevant authorities, the complainants, and any third party likely to be in a position to supply relevant information;
6. *Requests* the Committee to continue examining this case and to report back to it in due course.

## Belarus

### BLS/05 - Victor Gonchar

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 193<sup>rd</sup> session (October 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 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<sup>1</sup>. According to the complainants, 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, and traces of a murderer had been found in Germany”. The German authorities, however, denied this, and Ms. 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;

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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.

- 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 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 a new Investigative Committee, which was established on 1 January 2012 in order to conduct 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,

*Recalling* 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 Ms. Krasovsky and her daughter regarding the disappearance of Mr. Krasovsky. It 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 with an effective remedy, including a thorough and diligent investigation and prosecution and punishment of the perpetrators. The UN 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 Belarus was given 180 days by the Human Rights Committee to submit information about the measures taken pursuant to its decision,

*Considering* that, according to the complainant, no measures have been taken to date by the Belarusian authorities to implement the decision of the UN Human Rights Committee,

*Further considering* that the Parliament of Belarus has not supplied any updated information on the case since January 2013, or provided a response to its request of March 2013 that the Committee conduct a visit to Belarus,

1. *Is appalled* that impunity continues to prevail in the present case, almost 16 years after Mr. Gonchar's disappearance;
2. *Deeply regrets* that the parliamentary authorities have remained silent on the proposed visit of the Committee to Belarus and they have not supplied any updated information; *remains convinced* that a visit to Belarus by a delegation of the Committee would offer an opportunity to obtain first-hand information on the current state of the investigation and the prospects for progress in the case; and *urges* once again the authorities to respond positively to the request;
3. *Recalls* that the conclusions by the United Nations Human Rights Committee in the case of Mr. Krasovsky have confirmed 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; *further recalls* that impunity presents a serious threat both to members of parliament and to those they represent and that, accordingly, attacks against the life of members of parliament, if left unpunished, not only violate the fundamental rights of individual parliamentarians, but also affect the ability of Parliament to fulfil its role as an institution;
4. *Reaffirms its view* that the Parliament of Belarus has a direct responsibility to ensure that every effort is made by all relevant authorities to identify and punish those responsible for the enforced disappearance of one of its members, and that the grave conclusions reached by the United Nations Human Rights Committee should prompt the authorities of Belarus to investigate thoroughly and diligently the many leads and concerns that have emerged thus far, in particular in the report of the Parliamentary Assembly of the Council of Europe; *wishes* therefore to know how this has been addressed to date;

5. *Requests* the Secretary General to convey this decision to the relevant authorities and to any third party likely to be in a position to supply relevant information, as well as to continue seeking the authorities' agreement for a visit;
6. *Requests* the Committee to continue examining this case.



## Palestine/Israel

PAL18 - Yaser Mansour *	PAL67 - Ibrahim Abu Salem *
PAL21 - Emad Nofal *	PAL68 - Mohammed Musleh *
PAL28 - Muhammad Abu-Teir	PAL69 - Omar Abd Al Razaq *
PAL29 - Ahmad 'Attoun	PAL70 - Daoud Abo Seer *
PAL30 - Muhammad Totah	PAL71 - Khaled Saeed *
PAL32 - Basim Al-Zarrer	PAL72 - Ibrahim Dahbour *
PAL35 - Mohamed Ismail Al-Tal *	PAL73 - Fadhel Hamdan *
PAL47 - Hatem Qfeisheh	PAL74 - Mohd. Mutalaq Abu Jihaisheh *
PAL48 - Mahmoud Al-Ramahi *	PAL75 - Nayef Rjoub
PAL57 - Hasan Yousef	PAL76 - Sameer Al Qadi *
PAL60 - Ahmad Mubarak *	PAL77 - Khalil Al Rabee *
PAL61 - Mohd. Jamal Natsheh	PAL78 - Husni Al Borini
PAL62 - Abdul Jaber Fuqaha	PAL79 - Riyadhgh Radad
PAL63 - Nizar Ramadan	PAL80 - Abdul Rahman Zaidan
PAL64 - Mohd. Maher Bader	PAL81 - Fathi Qaraa'wi *
PAL65 - Azzam Salhab	PAL82 - Khalida Jarrar (Ms.)
PAL66 - Ayman Daraghmeah *	

The Committee,

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

The Governing Council of the Inter-Parliamentary Union,

*Referring* to the case of the above-mentioned parliamentarians, all of whom were elected to the Palestinian Legislative Council (PLC) in January 2006, and to the decision it adopted at its 195<sup>th</sup> session (October 2014),

*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 of a terrorist organization (Hamas), holding a seat in Parliament on behalf of that organization, providing services to it by sitting on parliamentary committees, and supporting an illegal organization, and that they were sentenced to prison terms of up to 40 months,

*Noting* that, while most of the parliamentarians concerned were released upon having served their sentences, many were subsequently re-arrested, sometimes several times, and placed in administrative detention,

*Considering* that, although by September 2014 the number had reached 25 to 26 PLC members in administrative detention, according to information provided in March 2015 by one of the complainants, the number now stands at 10,

*Recalling* that, in the first half of 2014, one of the complainants referred to the hunger strike which started in April 2014 of 125 Palestinians in administrative detention in Israel. According to the complainant, PLC members Mr. Mahmoud Al-Ramahi, Mr. Hatem Qfeisheh, Mr. Mohammad Jamal Natsheh, Mr. Abdul Jaber Fuqaha, Mr. Nizar Ramadan and Mr. Mohammed Maher Bader were part of this group. The hunger strike ended on 25 June 2014, reportedly after minor concessions, but no major change of policy from Israel,

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\* According to information provided by one of the sources of information in March 2015, these parliamentarians are no longer in detention.

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

- The Supreme Court of Israel has ruled that the exceptional measure of administrative detention, which is usually ordered for six months, but may, in fact, be prolonged indefinitely, can only be applied if there is current and reliable information to show that the person poses a specific and concrete threat, or if the confidential nature of the intelligence and 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,

*Recalling* 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,

*Considering* that, according to one of the complainants, PLC member Mr. Husni Al Borini had been sentenced to a 12-month prison term and that Mr. Riyadhgh Radad and Mr. Abdul Rahman Zaidan, who had first been held in administrative detention, were now in detention subject to criminal charges,

*Recalling* that, on 20 August 2014, PLC member Ms. Khalida Jarrar was ordered, according to the complainant, based on secret information that she is a threat to the security of the area, to leave her home in Ramallah and to move to Jericho for the next six months. According to recent unofficial reports, following an appeal against the decision, the military court reduced the expulsion order from six months to one month,

*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 East 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 PLC; 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,

*Bearing in mind* that, in its concluding observations on the third periodic report of Israel under the International Covenant on Civil and Political Rights,<sup>2</sup> 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,

*Considering* that parliamentary elections were held in Israel on 17 March 2015,

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<sup>2</sup> CCPR/C/ISR/CO/3.

1. *Is concerned* that 10 PLC members are still being held in administrative detention; *deplores* this situation, which not only affects the parliamentarians directly, but also greatly impairs the right of the Palestinian people to be represented by persons of their choice;
2. *Regrets* the fact that, as the case history shows, even when PLC members are released, they remain subject to renewed arrest and can be placed in administrative detention again at any time, a practice which lends weight to claims that the use of such detention is arbitrary;
3. *Draws attention once again* 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; *sincerely hopes*, therefore, that, with the assistance of the authorities of the recently elected Knesset, invitations to attend judicial reviews of PLC members in administrative detention will materialize soon; and *requests* the Secretary General to make the necessary arrangements for a Committee member to attend at least one such hearing;
4. *Reiterates its wish* to receive official information regarding the reported conviction of and 12-month prison term for PLC member Mr. Husni Al Borini, and should he have indeed been sentenced, a copy of the ruling, as well as the criminal charges brought against detained PLC members Mr. Riyadgh Radad and Mr. Abdul Rahman Zaidan and, should charges exist, to receive details of their nature and the facts to support them;
5. *Remains eager* to receive the official views on Ms. Khalida Jarrar's one-month expulsion order from Ramallah, including any information that can be provided to explain the justification and legal grounds for the order;
6. *Remains deeply concerned* that Mr. Totah, Mr. Abu-Teir and Mr. Attoun were effectively removed from East Jerusalem; *reiterates its long-standing concerns* about the decision to revoke their residence permits 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;
7. *Requests* the Secretary General to convey this decision to the relevant authorities, the complainant and any third party likely to be in a position to supply relevant information;
8. *Invites* the Israeli delegation to the 133<sup>rd</sup> IPU Assembly (October 2015) to meet with the Committee on that occasion in order to discuss progress in the cases at hand;
9. *Requests* the Committee to continue examining the cases at its next session and to report back to it.

## Palestine/Israel

### PAL/83 - Aziz Dweik

The Committee,

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

The Governing Council of the Inter-Parliamentary Union,

*Referring* to the case of Mr. Aziz Dweik, Speaker of the Palestinian Legislative Council (PLC), and to the decision it adopted at its 195<sup>th</sup> session (October 2014),

*Recalling* that Mr. Dweik was elected to the PLC on the Electoral Platform for Change and Reform and arrested during the night of 15 to 16 June 2014, along with and followed by scores of other Palestinian leaders, following the abduction, which Israel blamed on Hamas, of three Israeli teenagers, who were subsequently found killed. According to the complainant, after first being placed in administrative detention, Mr. Dweik is now facing criminal charges,

*Recalling* that, on 4 September 2014, an indictment was reportedly handed down against a member of Hamas' Hebron branch, Mr. Hussam Qawasmeh, charging him with helping to plan the abduction of the three Israeli teenagers. The document, as described in Israeli news reports, spells out a detailed account of the crime's planning, execution and aftermath, but does not appear to contain any evidence that the leadership of Hamas – or anyone else outside of Mr. Qawasmeh's family, which reportedly controls the Hebron branch – had any knowledge of the crime before or after its commission,

*Recalling* that Mr. Dweik was previously arrested during the night of 5 to 6 August 2006 by the Israeli Defence Forces, and later charged with membership of a terrorist organization, namely Hamas, and leadership of that organization through his membership of the PLC and assuming the role of Speaker of the PLC. On 16 December 2008, the judge handed down her verdict, finding him guilty of membership of an unauthorized organization and leadership of that organization through his membership of the PLC and, on account of his poor health, sentenced him to 36 months' imprisonment, which he served until his release on 23 June 2009,

*Recalling* that since then, Mr. Dweik was re-arrested in 2012 and spent six months in administrative detention in Israel until his release on 19 July 2012,

*Recalling* that, in the face of escalating violence in the region, the United Nations Human Rights Council convened a special session on 23 July 2014 and adopted a resolution on the question of "Ensuring respect for international law in the Occupied Palestinian Territory, including East Jerusalem", in which it expressed "deep concern at the condition of Palestinian prisoners and detainees in Israeli jails and detention centres, in particular following the arrest by Israel of more than 1,000 Palestinians since 13 June 2014, and calls upon Israel, the occupying power, to immediately release all Palestinian prisoners whose detention is not in accordance with international law, including all children and all members of the Palestinian Legislative Council",

*Considering* that parliamentary elections were held in Israel on 17 March 2015,

1. *Is profoundly disturbed* at Mr. Dweik's continued detention, which is an affront to the authority of the Palestinian Legislative Council; *fears* that his arrest may not be based on formal charges of any specific criminal activity, but rather on his political affiliation, and that it was therefore carried out for non-judicial purposes;
2. *Recalls* in this regard its long-held view that, with regard to Mr. Dweik's previous arrest, detention and prosecution, that they were unrelated to any criminal activity on his part, but were linked to his election on the Change and Reform list in a free and fair election recognized as such by the international community;

3. *Regrets* therefore that no official information from the Israeli authorities has been forthcoming as to whether Mr. Dweik is currently the subject of recognizable charges of criminal activity against him; *remains extremely eager* to receive that information;
4. *Urges* the Israeli authorities, should such charges have been made, to try him in a fair and transparent legal process, guaranteeing the full right of defence, as required under international human rights law and international humanitarian law, or otherwise to release him forthwith; *requests* the Secretary General to look into the possibility of sending a trial observer should Mr. Dweik stand trial;
5. *Reiterates its wish* to receive official information on Mr. Dweik's current conditions of detention, in particular his family visiting rights, along with information on the extent to which he has access to medical care; *remains concerned* in this regard about the reported prison conditions in which Palestinian prisoners are held in Israel;
6. *Requests* the Secretary General to convey this decision to the relevant authorities, the complainant and any third party likely to be in a position to supply relevant information;
7. *Invites* the Israeli delegation to the 133<sup>rd</sup> IPU Assembly (October 2015) to meet with the Committee on that occasion in order to discuss progress in the case at hand;
8. *Requests* the Committee to continue examining this case at its next session and to report back to it.