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Item 12(b)

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NON-EDITED VERSION

Decisions of the Committee on the Human Rights of Parliamentarians

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Decision adopted by consensus by the IPU Governing Council at its 198th session (Lusaka, 23 March 2016) [1]

The Governing Council of the Inter-Parliamentary Union,

Referring to five cases referred to the Committee on the Human Rights of Parliamentarians concerning the following 12 parliamentarians from the opposition Cambodian National Rescue Party (CNRP): (i) Mr. Chan Cheng; (ii) Ms. Mu Sochua, Mr. Keo Phirum, Mr. Ho Van, Mr. Long Ry, Mr. Nut Romdoul, Mr. Men Sothavarin and Mr. Real Khemarin; (iii) Mr. Sok Hour Hong (iv) Mr. Kong Sophea and Mr. Nhay Chamroeoun, and (v) Mr. Sam Rainsy, leader of the opposition; and which have been kept confidential pursuant to section 22(i) of the Rules and Practices of the Committee on the Human Rights of Parliamentarians and its Procedure for the examination and treatment of complaints, respectively since 2011 (i), 2014 (ii) and 2015 (iii, iv and v),

Considering the following information on file:

- Mr. Chan Cheng, a member of the National Assembly, was convicted to two years' imprisonment on 13 March 2015 after long-dormant proceedings, which were believed to have been dismissed in 2012, were suddenly re-activated in mid-2014 amid a tense political standoff between the ruling and opposition party. Mr. Chan Cheng has appealed the court ruling, which appeal is pending. He is free and able to exercise his parliamentary mandate;
- Ms. Mu Sochua, Mr. Keo Phirum, Mr. Ho Van, Mr. Long Ry, Mr. Nut Romdoul, Mr. Men Sothavarin and Mr. Real Khemarin, all members of the National Assembly, were arrested on 15 July 2014, with other opposition activists, after a demonstration calling for the reopening of the Phnom Penh protest site known as Freedom Park (or Democracy Plaza) had turned violent. They were charged as criminal instigators by a Phnom Penh court for leading an insurrectional movement, committing aggravated intentional violence and inciting others to commit an offence, and face up to 30 years in prison. They were released on bail on 22 July 2014, after the announcement of a political agreement between the Government and the opposition to end the political crisis. The investigation is still ongoing and no date has been set for the trial of the members of parliament concerned. They are free and able to exercise their parliamentary mandate;
- Mr. Sok Hour Hong, a senator, was arrested and charged after a video clip was posted on the Facebook page of the leader of the opposition, Mr. Sam Rainsy, on 12 August 2015. The video clip featured Mr. Hong discussing his views about the Vietnamese-

1 The delegation of Malaysia expressed its reservations regarding the decision.

Cambodian border, a controversial and sensitive issue in Cambodia, and showing a copy of an article of a 1979 Vietnam–Cambodia treaty, providing that the border would be dissolved and re-delineated, which proved to be incorrect. On 13 August 2015, the Prime Minister of Cambodia accused the senator of treason and ordered his arrest. The senator was subsequently detained on 15 August 2015 and charged with forging a public document, using a forged public document and inciting social disorder. He could incur up to 17 years of imprisonment. His immunity was not lifted because the authorities considered that he was arrested in *flagrante delicto*. He remains in detention, as his requests for pretrial release have been systematically rejected by the court. The trial started in October 2015 and has since been suspended on repeated occasions;

- Mr. Kong Sophea and Mr. Nhay Chamroeun, members of the National Assembly, were dragged from their cars and violently beaten as they were leaving the National Assembly on 26 October 2015. An anti-opposition protest organized by the ruling party was in progress in front of the National Assembly at that time. Neither security officers of the National Assembly, nor police officers present, took any action before, during or after the assault, as shown on video clips of the incident. The assault left both members of parliament with significant injuries. The attack was condemned by the National Assembly and an investigation was initiated, leading to the arrest of three suspects in November 2015 after they reportedly confessed to being involved in the violence. However, they have not yet been held accountable and no further action has been taken against the other assailants or the instigator(s), despite complaints lodged by the members of parliament concerned and clear video records of the assault showing the identity of the attackers and the fact that they were reporting to others through walkie-talkies;
- Mr. Sam Rainsy, the leader of the opposition and a member of the National Assembly, was targeted by four separate court cases between November 2015 and January 2016 (including one related to the case of Senator Sok Hour Hong for posting the video clip on his Facebook page). His immunity was not lifted, but his parliamentary mandate was revoked in connection with the first court case. He has been forced to go into exile to avoid imprisonment since November 2015,

Taking into account that the Committee decided at first to treat the cases confidentially in order to give an opportunity to the parties to find a solution through political dialogue, given that such dialogue resumed between the ruling Cambodian People's Party (CPP) and the CNRP following a July 2014 agreement. This agreement put an end to the 2013 post-election crisis and established a mechanism for dialogue between the two main political parties represented in parliament, known as the "culture of dialogue". While still new and fragile, the culture of dialogue has been seen by both parties as crucial to replace the past prevailing culture of violence. It has opened more space for political dialogue within the parliamentary institution and allowed the parties to achieve progress on some issues of national interest between July 2014 and mid-2015,

Considering that the Cambodian delegation to the 133rd IPU Assembly (Geneva, October 2015) welcomed the Committee's proposal to conduct a visit to Cambodia and that the visit was conducted from 15 to 17 February 2016 by its members, Mr. Ali A. Alaradi and Mr. Alioune Abatalib Gueye,

Considering that the visit had two main objectives: first, for the Committee to gain a better understanding of the cases of the 12 opposition parliamentarians concerned, and of the political and human rights context in which they occurred; second, to help promote satisfactory solutions in the cases at hand, in line with Cambodia's constitutional framework and international human rights law; that the Committee considered its visit as a "visit of last resort", after extensive time had repeatedly been given by the Committee to both parties to find negotiated solutions,

Taking into account that, during its visit, the delegation was able to hold most of the meetings it had requested, including with the parliamentary, executive and judicial authorities, the two main political parties, most of the parliamentarians concerned, as well as third parties such as the Cambodia Office of the United Nations High Commissioner for Human Rights (OHCHR). Foreign diplomats and key representatives of civil society; that the delegation's request to visit Senator Sok Hour Hong at Prey Sar detention centre was eventually granted on the last day of its visit; and that it was able to meet with the

Deputy Prime Minister and Minister of the Interior in the absence of the Prime Minister, who was abroad attending a US-ASEAN summit,

Considering that the final mission report will be presented to the Governing Council at its next session during the 135th IPU Assembly (October 2016), after being shared with all parties for their observations, but that the Committee wishes to share the following preliminary observations and recommendations of the delegation – to which it has subscribed - in the absence of progress in the cases, in light of its serious underlying human rights concerns and given the further deterioration of the political situation in Cambodia in recent months:

- Lack of progress in the cases and concerns about long-standing and serious underlying human rights violations

- The delegation found that no progress had been made in resolving any of the cases. It will report on its case-by-case specific findings in its mission report after reviewing the detailed information and documentation provided on each case and all applicable legal provisions;
- However, the delegation found that the cases and the recent action taken against the opposition follow a long-standing pattern in Cambodia on which the Committee and the Governing Council have repeatedly pronounced themselves over the last 20 years and raise serious concerns about the protection of the fundamental rights of parliamentarians irrespective of their political affiliation. The applicable Cambodian legal framework, its compatibility with international human rights standards, but also its effective implementation in practice, are at the heart of the following recurring issues of concern, which have been largely left unaddressed by the Cambodian authorities to date:
    - Systemic violations of the right to freedom of expression and peaceful assembly (abusive and disproportionate charges triggered in response to the public expression of dissenting political views, leading to trials that are unfair or left dangling for years; disruption, prohibition, repression or use of excessive force in relation to opposition protests);
    - Serious shortcomings in the conduct of judicial proceedings that often fall below international standards of due process and fair trial, particularly in relation to the right of defence, and concerns about the lack of independence of the judicial branch and the interference of the executive;
    - The lack of protection of the fundamental rights of members of parliament (irrespective of their political affiliation) by the institution of parliament and other relevant authorities, which has been particularly obvious in the long-standing procedure and practice followed in relation to the lifting of parliamentary immunity and the revocation of the parliamentary mandate of opposition members of parliament;
- The delegation found that these critical and long-standing concerns have not been addressed, despite the amendments made to some of the relevant laws and regulations in the recent past and repeated offers of technical assistance by the IPU to assist the Cambodian authorities to address these issues;

- Deterioration of the political situation and current status of the political dialogue

- The delegation was able to confirm that the “culture of dialogue” was first suspended in August 2015 after the arrest of Senator Sok Hour Hong and then abruptly interrupted in late October 2015, following what domestic and international observers have qualified as a “crackdown on the opposition”. A series of actions were taken against the opposition following demonstrations organized in France against Prime Minister Hun Sen during his official visit to Paris on 25 October 2015. Supporters of the Prime Minister and the CPP responded to the protests in France by organizing protests in Phnom Penh on 26 October 2015 calling for the immediate resignation of Mr. Kem Sokha, the deputy leader of the CNRP and the Vice-President of the National Assembly. The delegation was told that he had been threatened and that his residence had been attacked by protesters. The police allegedly failed to intervene, despite repeated calls for help. Shortly after, Mr. Kem Sokha

was removed from the position of Vice-President of the National Assembly in a vote that was boycotted by the opposition;

- The delegation also observed that a tense political and security situation prevailed in Phnom Penh during its visit. There were persistent rumours that the opposition would be attacked in reprisal should opposition protests be organized in the United States during a US-ASEAN Summit attended by the Prime Minister. Fearing violence, Mr. Kem Sokha had requested protection measures, but his request had remained unanswered. There were fears that there would be a repeat of the incidents of October 2015. The delegation therefore raised the issue with the Deputy Prime Minister and Minister of the Interior, who was responsible for granting adequate protection measures to opposition parliamentarians and politicians. The Deputy Minister informed the delegation that he had just instructed the police to follow up on the request and take all appropriate measures. Mr. Sokha confirmed that his request had been granted and no protests or incidents subsequently occurred;

- Given the tense political situation at the time of its visit, the delegation decided to focus largely on the need for the ruling party and the opposition to resume political dialogue urgently and to continue using this framework to resolve the cases at hand. The delegation encouraged the ruling party and the opposition to reactivate and strengthen the "culture of dialogue"; in view of the upcoming 2017 and 2018 elections. It observed that a stronger mechanism for political dialogue is generally needed in Cambodia, particularly to prevent the escalation of political disputes in times of tension and political dissention. Disagreements between the two main political parties, and their subsequent expression in public – be it through public statements, social media or the organization of protests – should not, in its opinion, systematically lead to renewed political crisis. A stronger and effective mechanism would contribute to creating more space for constructive political debate generally. Such debate should be inclusive, transparent and constructive. It would also prevent the parties from resorting back to old practices of issuing media statements accusing one another and initiating a repressive judicial response;

- <u>General position of the Cambodian authorities</u>

- The Cambodian authorities have reaffirmed that they consider that there have been no violations of human rights in the cases at hand. They have clearly stated their views that the parliamentarians concerned are guilty of the offences for which they are being prosecuted and should therefore face the consequences of their acts pursuant to the Constitution of Cambodia and in order to protect the rule of law in Cambodia. They have further expressed strong views that repressive legal action was needed to preserve peace and stability in Cambodia whenever words were spoken, written or posted on social media, which, in their view, risked creating social disorder or inciting unrest. References to the civil war were made extensively to justify this position, particularly in connection with the upcoming elections and the need to maintain economic growth;

- According to the authorities, judicial procedures have been triggered and it is up to the judiciary to handle the cases in accordance with Cambodian laws. Parliament and the executive branch have asserted that the settlement of the cases is a purely judicial matter. They consider that they cannot interfere pursuant to the principle of separation of powers and the independence of the judiciary;

- The Cambodian authorities have also stated that they have difficulty in seeing how the cases could be resolved as part of the culture of dialogue, as they do not consider that they fall within the political issues of national interest covered by the July 2014 agreement between the CPP and the CNRP. They have asserted that political solutions could not be promoted because they would violate the Cambodian Constitution. On the other hand, they reaffirmed that they were supportive of the resumption of political dialogue and believed that it was an important, although difficult, process;

- The Cambodian authorities, particularly the parliamentary authorities, acknowledged that existing Cambodian laws and regulations could be further reviewed and improved as long as it would be considered beneficial to the Cambodian people. The human rights parliamentary committees of the National Assembly and the Senate expressed particular

interest in learning more from the experience of other countries and parliaments and about relevant international standards;

- The delegation observed that, at no point during the visit did any of the Cambodian authorities express clearly the will to resolve the cases at hand or to attempt to make progress towards a satisfactory settlement,

Further considering that the delegation left Cambodia with some optimism after both parties expressed their wish to resume the political dialogue, and the Deputy Prime Minister pledged to meet with the CNRP to that end; that a meeting did take place on 19 February 2016, although the cases at hand and their resolution were apparently not discussed; that, however, no further meetings were convened between the ruling and opposition party thereafter and the political dialogue remains stalled to date,

Taking into account that the Cambodian authorities have not shared any subsequent information or responded to the requests for updated information since the visit; that, according to recent information shared by the complainants and third parties, no further progress has been made on the cases – quite to the contrary as; (i) on 4 March 2016, the court rejected Senator Sok Hour Hong's latest appeal against his prolonged pretrial detention; the court did not address the medical issues and the concerns raised by the Senator in relation to his health; it denied him pretrial release on the grounds that it would create chaos and social disorder; and (ii) yet another series of charges were brought against Mr. Sam Rainsy in early March 2016,

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

- As a party to the International Covenant on Civil and Political Rights, Cambodia is bound to respect international human rights standards, including the fundamental rights to freedom of expression, freedom of assembly, equality before the law and to a fair trial conducted by an independent and impartial court;
- Following the 2nd cycle of the universal periodic review (UPR) of Cambodia, conducted by the United Nations Human Rights Council in 2014, the Cambodian authorities accepted, inter alia, recommendations to "promote a safe and favourable environment that allows individuals and groups to exercise the freedoms of expression, association and peaceful assembly and put an end to harassment, intimidation, arbitrary arrests and physical attacks, particularly in the context of peaceful demonstrations" and "take all necessary measures to guarantee the independence of justice without control or political interference" (Report of the Working Group on the UPR of Cambodia A/HRC/26/16);
- The United Nations Special Rapporteur on the human rights situation in Cambodia observed, following her visit to Cambodia in September 2015 and in her oral report to the United Nations Human Rights Council on 29 September 2015, that there was a general consensus among civil society actors in Cambodia that the space for the peaceful exercise of these freedoms was shrinking as the country moved towards the 2017 local elections and the 2018 National Assembly elections. She pointed out that, during her mission, she had noticed widely diverging interpretations of permissible restrictions of the rights to freedom of expression, assembly and association under international human rights law, and recalled that a balance between protecting these freedoms and maintaining public order needed to be struck fairly and in accordance with international human rights law, something that she would be paying close attention to during her mandate;

Also bearing in mind Chapter 3 of the Constitution of Cambodia on the rights and obligations of Khmer citizens, in particular article 31, which states that "The Kingdom of Cambodia recognizes and respects human rights as stipulated in the United Nations Charter, the Universal Declaration of Human rights and the covenants and conventions related to human rights (…)" as well as article 80 and 104 which provide that members of the National Assembly and the Senate shall enjoy parliamentary immunity and that "No Member of the National Assembly shall be prosecuted, detained or arrested because of opinions expressed in the exercise of his/her duties",

1. *Thanks* the Cambodian authorities for accepting the visit and for the assistance provided to the delegation; *considers* that the conduct of the visit and the discussions that took place were a positive first step; *regrets* nevertheless that no subsequent information has been shared since by the authorities;

2. *Takes note* of the preliminary observations of the Committee on the visit; and *eagerly awaits* the final mission report at the next IPU Assembly (October 2016);

3. *Notes with deep regret* that not only has no progress yet been achieved to resolve the cases of the 12 opposition parliamentarians concerned, but that the situation of some of them has further deteriorated recently, as has the general political situation in Cambodia given the interruption of the culture of dialogue since mid-2015;

4. *Expresses deep concern at* the serious human rights issues underlying the cases; and *urges* the Cambodian authorities, as well as all political actors in Cambodia, to find long-term solutions to these issues urgently in order to put an end to the continuous reoccurrence of similar cases in the future – not only in the interests of the institution of parliament and of individual parliamentarians – but first and foremost in the interest of the Cambodian nation as a whole; *is further convinced* that long-term solutions can only be sustainable and effective if they are in strict compliance with international human rights standards and best practices applicable in democratic parliaments;

5. *Calls on* all branches of power and all political parties to work hand in hand to ensure that:

   (i) There is full respect for parliamentary immunity and for the parliamentary mandate conferred upon members of parliament by the Cambodian population, as well as for their rights to freedom of expression and peaceful assembly, the right to an independent judiciary and to fair judicial proceedings – including by bringing relevant legislation and regulations in line with international standards and the practices of democratic parliaments;

   (ii) Persons who have instigated and perpetrated attacks, threats and intimidation against parliamentarians are held accountable and that, in the future, systematic protection measures are promptly granted and effectively put in place by the relevant authorities whenever parliamentarians feel under threat;

   (iii) Ongoing judicial processes against the parliamentarians concerned are completed without undue delay in a fair, independent, impartial and transparent manner, including – when warranted by exculpatory evidence and mitigating circumstances – by decisions to drop or requalify charges, discontinue proceedings or acquit the suspects, in line with the relevant provisions of the Code of Criminal Procedure and the Constitution of Cambodia, which require respect for the presumption of innocence and the rights of the accused;

6. *Considers* that it is critical that the ruling party and the opposition resume the political dialogue towards building a stable political environment in which there is sufficient space for dissent and for the peaceful exercise of freedoms of expression, association and peaceful assembly in the context of the fast-approaching elections; *is further confident* that the resumption of a political dialogue would help the parties to find satisfactory solutions to the cases at hand;

7. *Highly values* the efforts undertaken by the Cambodian Parliament as part of the culture of dialogue; *earnestly believes* that the parliamentary institution has a special duty in upholding the rights of all its members irrespective of their political affiliation and in ensuring that these rights are also duly upheld by the executive and judiciary at all times; *encourages* the Cambodian Parliament to play a proactive role in promoting satisfactory solutions in the cases at hand and in strengthening the protection of the fundamental rights of its members in the future;

8. *Renews* its offer of technical assistance to assist the Cambodian Parliament and other relevant authorities in addressing the above-mentioned issues of concern so as to

strengthen parliamentary democracy and the rule of law in Cambodia; w*ishes to be kept apprised* of the response of the Cambodian Parliament, as well as of future developments related to the cases of the 12 opposition parliamentarians under examination;

9. *Requests* the Secretary General to convey this decision to the competent authorities, the complainant and any third party likely to be in a position to supply relevant information;

10. *Requests* the Committee to continue examining this case and to report back to it in due course.

Malaysia

MAL/15 - Anwar Ibrahim

Decision adopted by consensus by the IPU Governing Council at its 198th session (Lusaka, 23 March 2016) [2]

The Governing Council of the Inter-Parliamentary Union,

Referring to the case of Dato Seri Anwar Ibrahim, a member of the Parliament of Malaysia, and to the decision adopted by the Governing Council at its 197th session (October 2015),

Taking into account the information provided by the leader of the Malaysian delegation to the 134th IPU Assembly (March 2016) and the information regularly provided by the complainants,

Recalling the following information on file:

- Mr. Anwar Ibrahim, Finance Minister from 1991 to 1998 and Deputy Prime Minister from December 1993 to September 1998, was dismissed from both posts in September 1998 and arrested on charges of abuse of power and sodomy. He was found guilty on both counts and sentenced, in 1999 and 2000 respectively, to a total of 15 years in prison. On 2 September 2004, the Federal Court quashed the conviction in the sodomy case and ordered Mr. Anwar Ibrahim's release, as he had already served his sentence in the abuse of power case. The IPU had arrived at the conclusion that the motives for Mr. Anwar Ibrahim's prosecution were not legal in nature and that the case had been built on a presumption of guilt;
- Mr. Anwar Ibrahim was re-elected in August 2008 and May 2013 and became the de facto leader of the opposition *Pakatan Rakyat* (The People's Alliance);
- On 28 June 2008, Mohammed Saiful Bukhari Azlan, a former male aide in Mr. Anwar Ibrahim's office, filed a complaint alleging that he had been forcibly sodomized by Mr. Anwar Ibrahim in a private condominium. The next day, when it was pointed out that Mr. Anwar Ibrahim, who was 61 at the time of the alleged rape and suffering from a bad back, was no physical match for a healthy 24-year-old, the complaint was revised to claim homosexual conduct by persuasion. Mr. Anwar Ibrahim was arrested on 16 July 2008 and released the next day. He was formally charged on 6 August 2008 under section 377B of the Malaysian Criminal Code, which punishes "carnal intercourse against the order of nature" with "imprisonment for a term which may extend to 20 years" and whipping. Mr. Anwar Ibrahim pleaded not guilty to the charge and, in addition to questioning the credibility of the evidence against him, pointed to several meetings and communications that took place between Mr. Saiful and senior politicians and police before and after the assault to show that he was the victim of a political conspiracy;
- On 9 January 2012, the first-instance judge acquitted Mr. Anwar Ibrahim, stating that there was no corroborating evidence to support Mr. Saiful's testimony, given that "it cannot be 100 per cent certain that the DNA presented as evidence was not contaminated". This left the court with nothing but the alleged victim's uncorroborated testimony and, as this was a sexual crime, it was reluctant to convict on that basis alone;
- On 7 March 2014, the Court of Appeal sentenced Mr. Anwar Ibrahim to a five-year prison term, ordered that the sentence be stayed pending appeal, and set bail at 10,000 ringgits;
- On 10 February 2015, the Federal Court upheld the conviction and sentence, which Mr. Anwar Ibrahim is currently serving in Sungai Buloh Prison in Selangor. As a result of the sentence, he will not be eligible to run for parliament for six years after he has completed his sentence, i.e. until July 2027,

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2 The delegation of Malaysia expressed its reservations regarding the decision.

Recalling the report of the IPU observer, Mr. Mark Trowell, QC, (CL/197/11(b)-R.2), who attended most of the hearings in the case in 2013 and 2014 and the final hearing on 10 February 2015; the rebuttal of his report by the authorities and the response to the rebuttal by Mr. Trowell; *recalling also* the report of the Committee delegation (CL/197/11(b)-R.1) which went to Malaysia (29 June – 1 July 2015),

Recalling that the complainants affirm that the case against Mr. Anwar Ibrahim has to be seen against the backdrop of the uninterrupted rule of Malaysia by the same political party, UMNO, and the fact that in the 2013 general elections that monopoly was shaken by a united opposition, which managed to obtain 52 per cent of the popular vote, although – according to the complainant, due to widespread gerrymandering and fraud – this did not translate into a majority of seats for the opposition. The complainants also point out that the alliance that Mr. Anwar Ibrahim was able to set up and keep together fell apart after he was incarcerated,

Recalling that the Malaysian authorities have repeatedly stated that Malaysia's courts were fully independent and that due process had been fully respected in the course of the proceedings against Mr. Anwar Ibrahim, including by offering the counsel for defence many opportunities to present their arguments,

Considering the following avenues of legal redress that are still pending:

- Judicial review of the sentence

- On 30 April 2015, Mr. Anwar Ibrahim applied for a fresh judicial review of his conviction, under Rule 137 of the Federal Court rules, on grounds of unfairness, with the applicant asking for the adverse judgement to be set aside and a new bench constituted to rehear the appeal; in his affidavit, Mr. Anwar Ibrahim alleged, among other things, that the extraordinary swiftness, timing and content of the statement made by the Prime Minister's Office (PMO) on the day of his conviction gave the impression that it knew of the result of the case even before the court's ruling, which is normally subject to secrecy. The affidavit also points out that it is not the practice of the PMO to issue such a statement in any other criminal appeal. The affidavit also criticized the conduct of lead prosecutor, Mr. Muhammad Shafee Abdullah, who, according to Mr. Anwar Ibrahim, had conducted a "road show" following his conviction, thereby lending weight to his claim that his trial was backed by UMNO and that he was the victim of a political conspiracy;
- On 10 June 2015, Mr. Anwar Ibrahim's lawyers applied to the Federal Court to call former Commercial Crimes Investigation Department chief Datuk Ramli Yusuff to testify at the review hearing. In an unrelated court hearing following Mr. Anwar Ibrahim's conviction in February 2015, Mr. Yusuff provided a sworn statement saying that he had been asked in 1998 to fabricate evidence against Anwar Ibrahim to cover up his claim that police chief, Mr. Rahim Noor, assaulted him while he was in custody. It became known as the notorious "black-eye incident". Mr. Yusuff claimed that he was asked to fabricate evidence against Anwar Ibrahim by the then Attorney General Mr. Mohtar Abdullah, Mr. Abdul Gani Patail and Mr. Musa Hassan. In 1998, Mr. Patail was a senior deputy public prosecutor prosecuting the first sodomy case against Mr. Anwar Ibrahim. He later became Attorney General. Mr. Hassan was the investigation officer in the first sodomy case. He later became the Inspector General of Police (IGP), who met with the complainant Mr. Mohd Saiful prior to the alleged incident in June 2008. According to Mr. Yusuff, he was asked to arrange for a doctor to give a false medical report to the effect that Mr. Anwar Ibrahim's eye injury had been self-inflicted. "I refused," Mr. Yusuff had testified, adding that, as a result, he was seen as being "disloyal" by Mr. Hassan and Mr. Patail. Mr. Anwar Ibrahim contended in his affidavit that all the main characters in the first sodomy case were also key players in the second sodomy case, lending credence to his belief that he was a "victim of political conspiracy and fabricated evidence";
- The Federal Court heard the request made by Mr. Anwar Ibrahim's lawyers on 26 November 2015, in the presence of the IPU observer, and decided to reserve judgment;

- Pardon's petition

- On 24 February 2015, Mr. Anwar Ibrahim's family submitted an application for a royal Pardon. On 16 March 2015, the Pardons Board rejected the application unofficially through an affidavit in reply. On 24 June 2015, Mr. Anwar Ibrahim and his family filed an

application for judicial review to seek permission from the High Court in Kuala Lumpur to review the Pardons Board's decision. The basis of their application was the presence on the Board of the then Attorney General, Mr. Patail, who has shown personal hostility against Mr. Anwar Ibrahim in the past, which fact they claimed was unacceptable, particularly since the then Prime Minister, Mr. Abdullah Ahmad Badawi, had reportedly promised that Mr. Patail would have no further involvement in the case. The application moreover stated that the Board's decision had been made following an affidavit produced by the Attorney General's chambers of 27 March 2015, whereby the application under Rule 113 was rejected. Mr. Anwar Ibrahim and his family stated that no such application had been made by the family under Rule 113 of the Prisons Regulations 2000. The defence counsel also invoked the "black-eye incident" and the testimony of Mr. Yusuff, and the fact that Mr. Patail had failed to disclose to the Board and the King that an order to investigate had been produced against the lead prosecutor, Mr. Muhammad Shafee Abdullah, following the false affidavit that the top lawyer had allegedly filed;

- The application to compel the Pardons Board to reconsider the pardon petition filed by Mr. Anwar Ibrahim's family is listed for hearing in the High Court on 28 March 2016. The IPU trial observer will attend and report on this proceeding,

Considering that the United Nations Working Group on Arbitrary Detention, with regard the submission of a complaint about Mr. Anwar Ibrahim's situation, concluded on 1 September 2015 that, "The deprivation of liberty of Mr. Ibrahim is arbitrary, being in contravention of articles 10, 11, 19 and 21 of the Universal Declaration of Human Rights (UDHR), and falls within categories II and III of the categories applicable to the consideration of cases submitted to the Working Group." The Working Group "requests the Government to take the necessary steps to remedy the situation of Mr. Ibrahim without delay and bring it into conformity with the standards and principles in the UDHR"; "Taking into account all the circumstances of the case, the Working Group considers that the adequate remedy would be to release Mr. Ibrahim immediately, and ensure that his political rights that were removed based on his arbitrary detention be reinstated",

Considering also the following with regard to Mr. Anwar Ibrahim's health:

- Since his imprisonment on 10 February 2015, Mr. Anwar Ibrahim has been examined by Dr. Jeyaindran Tan Sri Sinnadurai, who is also the Deputy Director General of Health. Mr. Anwar Ibrahim had been complaining to Dr. Jeyaindran about the pain in his right shoulder since early March 2015. However, according to his family, he was only sent to hospital in Kuala Lumpur after four months, namely on 2 June 2015. Although the physician who examined him recommended intensive physiotherapy, this recommendation has not been properly implemented, despite the constant pain. Mr. Anwar Ibrahim's medical report had been referred to Prof. Dr. Ng Wuey Min, Associate Professor at the University Malaya Medical Centre, an orthopaedic shoulder specialist who had treated him before. He concluded that the problem affecting Mr. Anwar Ibrahim's right shoulder was serious and might require arthroscopic surgery to ensure long-term healing. Mr. Anwar Ibrahim's family affirms that, on 21 August 2015, it was informed that, on that very same day, the orthopaedics specialist, Dr. Fadhil, had met Mr. Anwar Ibrahim in prison and merely prescribed strong painkillers to manage the pain, the dose subsequently being doubled by Dr. Jeyaindran;
- Mr. Anwar Ibrahim's family considers that Dr. Jeyaindran should not be in charge of Mr. Anwar Ibrahim's health treatment for the following reasons: (i) he was a witness who testified during the trial against Mr. Anwar Ibrahim; (ii) he is also the personal physician to the current Prime Minister of Malaysia; (iii) he has failed to implement any necessary treatment, which he personally recommended, namely intensive physiotherapy; (iv) he lacks the expertise in the area of Mr. Anwar Ibrahim's health problems; (v) the family affirms that Dr. Jeyaindran took three months to allow Mr. Anwar Ibrahim to be examined and for an MRI of his right shoulder to be taken, which has contributed to the pain becoming chronic and affecting his left shoulder;
- On 25 February, and reportedly again on 15 March 2016, Mr. Anwar Ibrahim was hospitalized for three nights for medical check-ups. During the first check-up, Mr. Anwar Ibrahim recorded high blood pressure of 170/102, but was sent back to prison without finding out the cause of the high blood pressure;

- According to the leader of the Malaysian delegation, at the hearing held with the Committee on 18 March 2016, the authorities are going out of their way to allow Mr. Anwar Ibrahim to see any doctor of his choice, including, if that is his wish, by allowing him to fly in medical experts from abroad to treat him in Malaysia, but that he was not allowed to go abroad to undergo such treatment;
- According to the complainants, Mr. Anwar Ibrahim is still not receiving the recommended medical care and is still not being cared for by an independent doctor specialized in the health issues he is facing,

1 *Thanks* the leader of the Malaysian delegation for the information provided and for his continued cooperation;

2. *Considers* that, in light of the procedural irregularities, the serious doubts about the credibility of the evidence presented against Mr. Anwar Ibrahim, the dubious circumstances surrounding the alleged sodomy and the new information that has since come to light in support of the affirmation that his trial was based on other-than-legal considerations, his conviction and continued detention are untenable;

3. *Calls therefore on* the authorities to release Mr. Anwar Ibrahim forthwith and to take the necessary measures to enable him to return to parliamentary life; *eagerly awaits* in this regard the outcome of the judicial decisions on the applications for a review of his sentence and for the reconsideration of his pardon petition;

4. *Is pleased* that, for as long as Mr. Anwar Ibrahim remains in detention, he is allowed, as the leader of the Malaysian delegation pointed out, to be cared for by a doctor of his own choice and fully benefit from the medical expertise he wishes and the treatment he requires, including through, if needed, extensive care in hospital; *wishes* to be kept informed of the next steps in Mr. Anwar Ibrahim's medical treatment;

5. *Requests* the Secretary General to convey this decision to the competent authorities, the complainants and any third party likely to be in a position to supply relevant information;

6. *Requests* the Committee to continue examining this case and to report back to it in due course.

Malaysia

MAL/21 - N. Surendran
MAL/22 - Teresa Kok (Ms.)
MAL/23 - Khalid Samad
MAL/24 - Rafizi Ramli
MAL/25 - Chua Tian Chang
MAL/26 - Ng Wei Aik
MAL/27 - Teo Kok Seong
MAL/28 - Nurul Izzah Anwar (Ms.)
MAL/29 - Sivarasa Rasiah
MAL/30 - Sim Tze Sin
MAL/31 - Tony Pua
MAL/32 - Chong Chien Jen
MAL/33 - Julian Tan Kok Peng
MAL/34 - Anthony Loke
MAL/35 - Shamsul Iskandar
MAL/36 - Hatta Ramli
MAL/37 - Michael Jeyakumar Devaraj
MAL/38 - Nga Kor Ming
MAL/39 - Teo Nie Ching

Decision adopted by consensus by the IPU Governing Council at its 198th session (Lusaka, 23 March 2016) [3]

The Governing Council of the Inter-Parliamentary Union,

Referring to the aforesaid cases of nineteen opposition members of the Malaysian House of Representatives and to the decision it adopted at its 197th session (October 2015),

Taking into account the information provided by the leader of the Malaysian delegation to the 134th IPU Assembly (March 2016) and the information regularly provided by the complainants,

Having before it the cases of Mr. Chong Chien Jen, Mr. Julian Tan Kok Peng, Mr. Anthony Loke, Mr. Shamsul Iskandar, Mr. Hatta Ramli, Mr. Michael Jeyakumar Devaraj, Mr. Nga Kor Ming and Mr. Teo Nie Ching, 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),

Recalling the report of the Committee delegation (CL/197/11(b)-R.1) that went to Malaysia (29 June – 1 July 2015),

Considering the following information with regard to the legal proceedings to which the parliamentarians have been subjected under the Sedition Act and information with regard to the act itself:

- Ms. Teresa Kok, Mr. N. Surendran, Mr. Ng Wei Aik and Mr. Sivarasa Rasiah were charged under (a), (b) and (c) of Section 4(1) of the Sedition Act of 1948, while four other opposition members of parliament, namely Mr. Rafizi Ramli, Ms. Nurul Izzah Anwar, Mr. Nga Kor Ming and Mr. Teo Nie Ching, are being investigated under this act. With regard to seven of these parliamentarians, the action taken against them under the Sedition Act is wholly or partly related to criticism they voiced about the trial against Mr. Anwar Ibrahim;

3 The delegation of Malaysia expressed its reservations regarding the decision.

- According to the complainants, Mr. Khalid Samad was also charged under the Sedition Act. According to the leader of the Malaysian delegation, Mr. Samad was being investigated on a charge of unlawful assembly, not sedition. According to the complainants, Mr. Tony Pua was investigated (in or since March 2014) under the Sedition Act for a tweet after Ms. Nurul Izzah Anwar was arrested overnight by the police for investigations. According to the leader of the Malaysian delegation, however, Mr. Tony Pua was subject to a legal suit brought by current Prime Minister Najib Razak;
- On 20 November 2015, the Attorney General withdrew the sedition charge against Ms. Teresa Kok;
- The Sedition Act dates from colonial times (1948) and originally sought to suppress dissent against the British rulers. It was seldom used in the past and was never invoked between 1948 and Malaysia's independence in 1957. Only a handful of cases were pursued between 1957 and 2012. Since then, however, hundreds of cases have been initiated under the Sedition Act;
- In 2012, the current Prime Minister announced publicly that the Sedition Act would be repealed. The Government then decided not to repeal it, but to amend it in the belief that the Sedition Act remained necessary to promote national harmony and tolerance. In April 2015, the House of Representatives and Senate passed most of the proposed amendments, notably the following: (i) criticism of the Government or the administration of justice is no longer considered seditious; (ii) promoting hatred between different religions is now seditious; (iii) sedition is no longer punishable with a fine but carries a mandatory minimum three-year prison term; (iv) sedition is punishable with up to 20 years' imprisonment if the seditious acts or statements lead to bodily harm and/or damage to property; (v) The act empowers the court to order the removal of seditious material on the Internet;
- The authorities have by and large affirmed that the new legislation struck the right balance between protecting stability and social harmony on the one hand and freedom of expression on the other. Members of the opposition, however, provided the following explanation to the Committee delegation that went to Malaysia for the Government's decision to keep and further tighten the Sedition Act: In the general elections in 2008, UMNO (United Malays National Organisation), which had been ruling Malaysia since independence in 1957, lost its two-thirds majority in parliament for the first time; in 2013 the opposition won the popular vote in the general elections, although it obtained only a minority number of seats in parliament; the opposition considered that those in power, in particular the radical elements, made their case for keeping the Sedition Act as a useful tool to ensure that UMNO's dominance would not be challenged in the future;
- Well before the passing of the amendments to the Sedition Act, the sedition charges and investigations against the aforesaid parliamentarians had been put on hold pending a ruling by the Federal Court on the petition by Mr. Azmi Sharom challenging the constitutionality of the original Sedition Act (1948). After reserving judgement on the matter on 24 March 2015, the Federal Court ruled on 7 October 2015 that the Sedition Act was constitutional. The complainants fear that the investigations and charges against the members of parliament will be reactivated as the amendments will not be retrospective, even though under the current Sedition Act criticism of the judiciary and the Government is no longer punishable. Another constitutionality challenge, brought by Mr. N. Surendran, is, however, still before the Federal Court, which is due to rule on the matter on 14 April 2016;
- According to the leader of the Malaysian delegation, the matter of discontinuing previous legal action initiated under the original Sedition Act with regard to criticism of the Government or the administration of justice is entirely in the hands of the Attorney General, as he had the power to discontinue the proceedings at any time. He also stated that the reasons why the Attorney General had not yet taken a decision with regard to pending files could be that he preferred to wait for the outcome of the constitutionality challenge and that the amendments had still not yet come into effect,

Considering the following information with regard to the legal proceedings to which the parliamentarians have been subjected under the Peaceful Assembly Act:

- Five parliamentarians, namely Mr. Chong Chien Jen, Mr. Julian Tan Kok Peng, Mr. Anthony Loke, Mr. Shamsul Iskandar and Mr. Sim Tze Sin, have reportedly been charged under Section 4(2)(c) of the Peaceful Assembly Act (PAA) in connection with their participation in demonstrations. Three others, namely Mr. Chua Tian Chang, Mr. Hatta Ramli and Mr. Michael Jeyakumar Devaraj, were reportedly briefly arrested in connection with such involvement. It appears that an investigation is ongoing. Mr. Teo Kok Seong and Mr. Rafizi Ramli are also reportedly being investigated for their role in demonstrations. All the parliamentarians concerned affirm that the legal action taken against them runs counter to their right to freedom of assembly, which the leader of the Malaysian delegation denies,

Considering that the complainants fear that, following the serious allegations which surfaced in 2015 about the abuse of the 1Malaysia Development Berhad (1MDB) and mounting calls for the Prime Minister to resign, the authorities are tightening the screws on the opposition,

Considering, with regard to the recommendation made by the Committee delegation that travelled to the country that Malaysia ratify the International Covenant on Civil and Political Rights, to which 168 countries are State Parties, the leader of the Malaysian delegation stated that Malaysia subscribed to the principles and ideas contained in the Covenant, but that challenges remained, including with regard to religious matters, which made it difficult to ratify the treaty at this point in time,

1. *Thanks* the leader of the Malaysian delegation for the information provided and for his continued cooperation;

2. *Is pleased*, in the belief that Ms. Teresa Kok was only exercising her right to freedom of expression, that the Attorney General decided to discontinue the charge filed against her under the Sedition Act; *decides* therefore to close her case;

3. *Fails to understand*, however, why the Attorney General has not yet used his discretionary powers to take the same action in the other cases, which amount to no more than criticism of the Government and the administration of justice, which conduct would also no longer be punishable under the amended Sedition Act*; sincerely hopes* therefore that such action will soon be taken; *wishes* to be kept informed of developments in this regard;

4. *Remains concerned* that the provisions of the Sedition Act as amended remain excessively vague and broad, thus leaving the door open to abuse and setting a very low threshold for the type of criticism, remarks and acts that are criminalized, and that it includes a mandatory minimum three-year prison sentence for sedition;

5. *Sincerely hopes*, therefore, that the authorities will undertake soon, as some of them intimated during the mission, another review of the amended Sedition Act and that this will result in legislation that is fully compliant with international human rights standards; *wishes* to be kept informed of any steps taken in this regard;

6. *Eagerly awaits* the outcome of the Federal Court's deliberations on the remaining pending constitutionality challenge to the Sedition Act; *wishes* to receive a copy of its ruling once it is available;

7. *Is deeply concerned* about the reports of arbitrary arrests, investigations and charges against opposition members under the Peaceful Assembly Act; *wishes* to receive detailed information from the authorities about the legal justification and facts for the legal action taken under this act with regard to each parliamentarian;

8. *Wishes to understand*, in light of the conflicting information on file, to what legal action Mr. Khalid Samad and Mr. Tony Pua are subjected and the facts on which such action is based;

9. *Sincerely hopes* that the authorities will soon decide to join the overwhelming majority of nations that have ratified the International Covenant on Civil and Political Rights; *points*

out in this regard that, if absolutely necessary, Malaysia can make reservations, understandings and declarations upon becoming a party to the Covenant, as long as they do not contravene the object and purpose of the treaty;

10. *Calls on* the authorities to make use of the expertise of the United Nations special procedures, in particular the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the rights to freedom of peaceful assembly and of association, to ensure that existing legislation is amended or repealed so as to comply with relevant international human rights standards;

11. *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;

12. *Requests* the Committee to continue examining this case and to report back to it in due course.

Mongolia

MON/01 - Zorig Sanjasuuren

Decision adopted unanimously by the IPU Governing Council at its 198th session (Lusaka, 23 March 2016)

The Governing Council of the Inter-Parliamentary Union,

Referring to the case of Mr. Zorig Sanjasuuren, a member of the State Great Hural of Mongolia, and acting Minister of Infrastructure Development – regarded as the father of the democracy movement in Mongolia in the 1990s – who was assassinated on 2 October 1998, and to the decision adopted at its 197th session (Geneva, October 2015),

Referring to the full mission report to Mongolia (CL/198/12(b)-R.1) led by Ms. Margaret Kiener-Nellen, current Vice-President of the IPU Committee on the Human Rights of Parliamentarians, from 16 to 19 September 2015, and the updated information recently shared by the complainants and by third parties,

Considering that the mission report fully confirms the preliminary findings of the delegation and that its main conclusions are the following:

- Despite uninterrupted investigations for almost 18 years, no one has been held accountable and the investigation has remained shrouded in secrecy. The murder is still widely believed to have been a political assassination that was covered up;
- The excessive secrecy surrounding the investigation and the lack of progress has strongly eroded the trust and confidence in the investigative process and in the existence of a real political will to establish the truth. The renewed commitments to shed light on Mr. Zorig's assassination are widely seen today as empty political promises;
- It cannot be excluded that political interference is one of many combined factors that are likely to account for the lack of results in the investigation and include:
    - the initial investigative deficiencies (particularly the contamination of the crime scene);
    - issues related to the training and competence of the investigators, as well as forensic technologies available;
    - the endless replacement of the investigators;
    - the ongoing involvement of the central intelligence agency and excessive secrecy created by the classified status of the case;
    - the political dimension of the case and its subsequent political instrumentalization by political parties;
    - the time elapsed and its consequences;
    - the lack of accountability of the competent authorities, despite the absence of results in the investigation;
- Increasing transparency in and regular communication on the investigation, with the IPU and with Mr. Zorig's relatives, but also sharing public information with the Mongolian people on the results and challenges of the investigation, are essential to restore confidence in the investigative efforts undertaken. Only then will the Mongolian authorities be able to convince all relevant stakeholders and the Mongolian people that they are handling the case in an impartial, independent and effective manner;
- Serious concerns have been raised in relation to the involvement of the central intelligence agency in the criminal investigation. This involvement is the main reason for the "wall of secrecy" surrounding the case and its top secret classification under the State Secret Law. The wide scope and lasting role of the central intelligence agency in the criminal investigation is highly unusual. It raises concerns related to the independence and impartiality of the investigation, but also to respect for standards of due process and human

rights. These concerns stem in particular from serious allegations made about the dubious investigation and questioning methods used by the Mongolian intelligence services, which have reportedly included the mistreatment of suspects and the use of coerced confessions on several occasions in the past;

- The investigative working group would benefit from specialized assistance and training on investigation methodology related to contract killings. The expertise and impartiality of foreign experts would make an invaluable contribution to the existing investigative work and also help strengthen public confidence. The investigative team would also benefit from investing more time in examining witness statements, public records and open source materials, instead of exclusively focusing on forensic analysis which, in the view of the delegation, is unlikely to prove conclusive and will, in any case, not help establish the motives of the assassination or the identity of the instigators,

Further considering that the mission report calls on the Mongolian authorities to do their utmost to ensure that justice is done and seen to be done in the resolution of the assassination of Mr. Zorig, and to give urgent consideration to the following recommendations:

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

Considering that the mission report also invites IPU members of countries that have officially been approached by Mongolia to assist with the recent request for forensic assistance to encourage the relevant national authorities to respond positively to the request, in the hope that forensic analysis may advance the investigation,

Considering the recent developments in the investigation on which no official information has yet been provided:

- Two or three male suspects were reportedly arrested around August 2015 in connection with the murder of Mr. Zorig and confessed to the murder, possibly in relation to the "Erdenet scenario". That scenario is one of the possible motives for the assassination that has never been discarded. It was mentioned that Mr. Zorig had been informed of the embezzlement of funds from Erdenet (a major Mongolian mining company) and was ready to disclose the information or to take appropriate action to hold the culprits accountable, if and when appointed Prime Minister;
- Ms. Banzragch Bulgan, the widow of Mr. Zorig, was arrested on 13 November 2015 and has since been detained at the Tuv Aimag (central province) prison by the central intelligence agency. Reliable sources have indicated that her prolonged detention has not been reviewed and authorized by a judge and that no charges have been formally brought against her. Visits to Ms. Bulgan in detention are allegedly restricted and she has only been able to see her family once and her lawyer on two instances. She was kept

under surveillance during these visits and prevented from meeting freely with them. Her lawyer has also not been granted access to the evidence against her, on the grounds that the case is classified, and has been unable to prepare a proper defence. The sources stated that Ms. Bulgan is being held in solitary confinement and deprived of medical care, in a cell where artificial lighting is kept on 24 hours a day. According to them, she has been interrogated by intelligence officers and put under intense psychological pressure. Her situation has been raised with all the relevant Mongolian authorities, including the Head of State, the Chairman of the Parliamentary Human Rights Committee and other parliamentarians, and the National Human Rights Commission, but no response has been provided and Ms. Bulgan's conditions of detention remain unchanged. The sources allege that the presumption of innocence has not been respected and that Ms. Bulgan is being held in illegal detention and subjected to torture, in violation of the Constitution and laws of Mongolia and of international human rights standards. This is the second time that she has been placed in illegal detention since the start of the investigation,

Considering the fast-approaching parliamentary elections scheduled for June 2016 – which are the current priority for all political actors in Mongolia – and the fears expressed by the complainants and a number of third parties that the unresolved case of Mr. Zorig's assassination is once again being used as a political platform in the electoral campaign, despite the mission report recommendations and the likelihood that it will be detrimental to the investigation,

1. *Regrets* the lack of response from the Mongolian authorities; and *wishes to receive urgently* the requested information, as promised during the mission by the Chairman of the Parliamentary Oversight Subcommittee and the Deputy Prosecutor General; *further reiterates its wish* to be kept regularly apprised of all developments related to the case;

2. *Thanks* the mission delegation for the work undertaken and endorses its overall conclusions and recommendations;

3. *Expresses the hope* that the increased transparency and diligence of the Mongolian authorities, paired with strict respect for due process and the rights of defence, as well as with effective parliamentary oversight, will eventually restore confidence in the investigation and help shed light on the truth, as well as contribute to further strengthen democracy and the rule of law in Mongolia;

4. *Urges once more* all relevant Mongolian authorities – including the Prosecutor General and the Deputy Prosecutor General, but also the President, the Prime Minister and the Speaker of the State Great Hural, as members of the National Security Council – to do their utmost to ensure that justice is done and seen to be done in the resolution of the assassination of Mr. Zorig; *invites* them to give urgent consideration to implementing the recommendations of the mission report; and *wishes to be kept informed* of steps taken to that end;

5. *Is appalled* that the case appears once more to be being used for purely political gain in the electoral campaign; and *calls on* the authorities and all political parties to end this practice, which is detrimental to the search for the truth in the assassination of Mr. Zorig;

6. *Is shocked and deeply disturbed* at the serious allegations of illegal detention and torture of Mr. Zorig's widow and at the lack of information provided by the authorities in this respect; *calls for* her immediate release, in strict compliance with the applicable legal framework; *considers* that, should there be any new evidence pointing to her involvement as a suspect, standards of due process need to be fully respected at all times, including the right to be presumed innocent until proven guilty by a final court decision; *cannot fail to recall* the concerns it has already expressed on several occasions in the past in relation to the mistreatment of suspected persons in the investigation and the use of coerced confessions, including at the time when Ms. Bulgan was first arrested under similar circumstances at the very beginning of the investigation;

7. *Is surprised* to find out from third parties that other suspects have allegedly been detained since August 2015, whereas no information has been shared by the authorities in this

respect during or after the Committee's mission; *wishes* to receive urgent confirmation and further details on these arrests;

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.

Thailand

TH/83 - Jatuporn Prompan

Decision adopted by consensus by the IPU Governing Council at its 198th session (Lusaka, 23 March 2016) [4]

The Governing Council of the Inter-Parliamentary Union,

Referring to the case of Mr. Jatuporn Prompan, a former member of the House of Representatives of Thailand, and to the decision it adopted at its 192nd session (March 2013),

Taking into account the information provided by the Deputy Speaker of the National Legislative Assembly on 19 March 2016 in the hearing held with the Committee on the Human Rights of Parliamentarians,

Considering also that the IPU Secretary General conducted an official visit to Thailand between 29 February and 2 March,

Recalling the following:

- Mr. Jatuporn, then one of the leaders and now the leader of the United Front for Democracy against Dictatorship (UDD) and at the time a member of the House of Representatives, played a prominent role in the "Red Shirt" demonstrations that took place in central Bangkok between 12 March and 19 May 2010. In the weeks following the demonstrations, Mr. Jatuporn and his fellow UDD leaders were officially charged with participating in an illegal gathering that contravened the state of emergency declared by the Government and with terrorism in relation to arson attacks on several buildings that took place on 19 May 2010, when the UDD leaders had already been taken into police custody. Mr. Jatuporn was quickly released on bail thereafter;
- More specifically, he was charged under articles 116, 135/1, 135/2, 215 and 216 of the Thai Criminal Code. The charge under article 216 has since been withdrawn. The maximum penalty for these charges is life imprisonment or death. Mr. Jatuporn was also charged with violating article 9 of the Emergency Decree, the penalty for which is imprisonment of not more than two years and a fine of 20,000 THB;
- These charges arise from Mr. Jatuporn's speech at the rally, which was broadcast nationally on cable television. In his speech, Mr. Jatuporn demanded that the then Prime Minister Abhisit dissolve parliament and asked for justice for political prisoners. People had by then already died in the crackdown of 10 April 2010, which resulted in the death of 22 civilians and five soldiers;
- On the morning of 19 May 2010, armed soldiers smashed open the barricades erected by the demonstrators, but by then most had left the area after UDD leaders had declared the protest at an end. Red shirts claimed that it was after armed soldiers occupied the area that several buildings were torched and that they were the ones responsible for the arson;
- The complainant affirms that the charges against Mr. Jatuporn are entirely inappropriate, that the specific charge of participation in an illegal gathering stemmed from the previous government's unlawful use of emergency powers, and that the terrorism charges on which Mr. Jatuporn and other Red Shirt leaders were indicted in August 2010 are politically motivated, but that, while the Red Shirts were accused by the Government of committing various acts of violence, there exists no evidence that their leaders played a role in planning the attacks, or even knew about them,

Recalling the IPU's concerns that Mr. Jatuporn, who stood and was elected on behalf of the Pheu Thai in the legislative elections held on 3 July 2011, was subsequently disqualified by the

4 The delegation of Malaysia expressed its reservations regarding the decision.

Constitutional Court on 18 May 2012 on unjustifiable grounds which run counter to his right to take part in the conduct of public affairs,

Recalling further that Mr. Jatuporn was sentenced on 10 July and 27 September 2012 respectively in two criminal cases to two six-month prison sentences (with a two-year suspension) and fines of 50,000 baht on charges of defaming the then Prime Minister Abhisit, but that an appeal was filed in both cases; *considering* that, in January 2015, Mr. Jatuporn was reportedly sentenced, apparently in appeal in these same cases, to two years' imprisonment for defaming the former Prime Minister; *bearing in mind* that the United Nations Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression repeated in his report (A/HRC/17/27 of 16 May 2011) the call for all States to decriminalize defamation,

Considering that, in November 2015, the army reportedly briefly detained Mr. Jatuporn and another opposition leader as they were about to visit Rachabhakti Park, built on army property in the seaside town of Hua Hin, in connection with allegations that the authorities had misused funds for the park,

Considering the following political developments in Thailand since May 2014:

- Following half a year of political paralysis, on 22 May 2014, Army General Prayuth Chan O Cha announced that the military had taken control of the Government and established the National Council for Peace and Order (NCPO). On 30 May 2014, the NCPO announced a three-stage roadmap for restoring democracy within a year; on 31 July 2014, a 200-member National Legislative Assembly was appointed;
- According to the roadmap, a new constitution was expected to be promulgated by July 2015 and general elections would be held roughly three months after that (i.e. in October 2015). Although the Constitution Drafting Committee (CDC) completed the draft constitution in April 2015, the National Reform Council, composed of 250 members nominated by the NCPO and appointed by the King, rejected it on 6 September 2015;
- On 5 October 2015, the NCPO appointed Mr. Meechai Ruchupan – the President of the previous National Legislative Assembly – as Chairman of the second CDC. The following day, a new 21-member CDC held its first meeting with the aim of finalizing the draft constitution by April 2016,

Considering the following information provided by the Deputy Speaker of the National Legislative Assembly at the hearing with the Committee:

- The military intervention in May 2014 had been a measure of last resort and necessary because of continued political deadlock, strong divisions in society and the violence which had ensued as a result. The authorities were now actively working to bring democracy back to the country. The Thai authorities were keen to complete the roadmap through the adoption of a new constitution and the organization of general elections, implementation of reform to address social and economic inequality and division and the promotion of harmony and reconciliation;
- On 29 January 2016, the CDC unveiled a complete first draft of the constitution. On 8 and 9 February 2016, a 200-member National Reform Steering Assembly (appointed by the NCPO on 5 October 2015 to replace the National Reform Council) debated the draft constitution. The first draft of the constitution had been given to the public and extensive public fora had been organized throughout most of Thailand to seek input from citizens. The draft was going to be finalized before the end of March 2016 and put to a national referendum by July 2016. General elections were foreseen for the end of July 2017, but would be preceded by the adoption of 10 organic laws;
- Mr. Jatuporn Prompan's case dates back from before the military intervention. He is being tried in connection with his role in demonstrations that got out of hand and in which many people died. He was charged with terrorism, as was the then Prime Minister for the use of force against demonstrators. Both sides had been charged according to the law. The trial against Mr. Jatuporn required the hearing of some 100 witnesses and would continue until July 2017;

- The Deputy Speaker, who was unaware of Mr. Jatuporn's whereabouts, said that he and the movement which he represented were fully able to participate in the current political process, provided that he and his supporters respected law and order. He also pointed out that the National Reform Council comprised members of political parties on either side of the political divide and therefore helped ensure that their respective views were taken into account;
- The Deputy Speaker stated that persons could be summoned by the authorities so as to ensure that they would not incite to violence and further conflict. This action was necessary to ensure that Thailand did not return to the situation before. If the summoned persons had done nothing wrong, then they would be released without any charge,

Considering that there are several reliable international reports attesting to the regular use of NCPO Order 3/2015 which allows NCPO-appointed "Peace and Order Maintenance Officers" to detain people without charge or trial in unofficial places of detention for up to a week without any safeguards, such as access to lawyers, family or courts. Moreover, individuals face up to six months' imprisonment and a fine if they take part in "political" gatherings of five persons or more, which are criminalized. The Order is said to violate fair trial rights by granting jurisdiction to military courts to try civilians charged with offences against "internal security", "security of the monarchy", and infringements of NCPO orders. According to the reports, the reliance on NCPO Order 3/2015 appears designed to intimidate potential opponents. Many Red Shirts who were detained immediately after the coup are required to report to authorities weekly and give advance notification of travel outside the provinces in which they live,

Bearing in mind that Thailand is a party to the International Covenant on Civil and Political Rights and therefore obliged to protect the rights enshrined therein,

1. *Thanks* the Deputy Speaker of the National Legislative Assembly for the information provided and his cooperation;

2. *Is deeply concerned* that Mr. Jatuporn's trial has still not come to completion, almost six years after he was charged, and that a ruling is not expected before July 2017; *stresses* the important principle that "justice delayed is justice denied"; therefore *urges* the competent authorities to do everything possible to accelerate the proceedings;

3. *Takes note* of the authorities' assurances that Mr. Jatuporn is fully able to contribute to the political process*; is nevertheless concerned*, given the serious reports about restrictions to freedom of expression and assembly, to what extent he can effectively make a meaningful contribution; *wishes t*o receive further information from the authorities on this point;

4. *Is concerned* as well in this regard about Mr. Jatuporn's reportedly brief arbitrary arrest in November 2015 in connection with what appears to be the legitimate exercise of his rights to freedom of expression, movement and assembly; *wishes* to receive official information on the arrest and, if confirmed, details of the facts and legal grounds for the arrest;

5. *Is concerned* that Mr. Jatuporn was reportedly prosecuted, sentenced and convicted on appeal on charges of defamation; *wishes* to receive official information thereon and, if confirmed, to receive a copy of the rulings so as to understand the facts and reasoning underpinning the sentence; *concurs* with the recommendation made by the United Nations Special Rapporteur that defamation should not be considered an offence under criminal law; *wishes to ascertain,* therefore, whether the Thai authorities are contemplating reviewing the existing legislation with this in mind;

6. *Requests* the Secretary General to convey this decision to the competent authorities, the complainant and any third party likely to be in a position to supply relevant information;

7. *Requests* the Committee to continue examining this case and to report back to it in due course.

Fiji

FJI/01 - Ratu Naiqama Lalabalavu

Decision adopted unanimously by the IPU Governing Council at its 198th session (Lusaka, 23 March 2016)

The Governing Council of the Inter-Parliamentary Union,

Having before it the case of Mr. Ratu Lalabalavu, a member of the Parliament of Fiji and a Fijan paramount chief, which has been examined by the Committee on the Human Rights of Parliamentarians pursuant to the Procedure for the examination and treatment of complaints (Annex I of the revised rules and practices),

Considering the following detailed information provided in writing by the complainants and the parliamentary authorities, as well as orally by the Fijian delegation at the hearing held on 20 March 2016 with the Committee on the Human Rights of Parliamentarians:

- On 14 May 2015, the Social Democratic Liberal Party (SODELPA) held a public constituency meeting in Makoi. At the meeting, Mr. Lalabalavu allegedly made scurrilous and derogatory remarks in the iTaukei language about the Speaker of Parliament. Communications Fiji Limited, a news media organization, first covered the story and made audio recordings of the alleged incident;
- Following the constituency meeting, a matter of privilege was raised with the Speaker pursuant to Standing Order 134(1) on 18 May 2015. The Attorney General and Minister for Finance, Public Enterprises, Public Service and Communications moved a motion on the matter. The Speaker put the question to parliament for a vote. The motion was passed and the matter was subsequently referred to the Privileges Committee, which was given three days to report back on the matter to parliament. The Committee's proceedings, unlike those of the standing committees, were reportedly subsequently held in camera;
- On 19 May 2015, the Privileges Committee met briefly and called three of the ten witnesses on the list. The first two witnesses were from Communications Fiji Limited. The third witness was Mr. Lalabalavu. After concluding examination of the third witness, the Committee decided that it had sufficient evidence before it to deliberate and decided not to call the other witnesses. The Committee's Secretariat was requested to collate precedents from Fiji and other relevant jurisdictions to enable the Committee to consider the available options, including possible sanctions in the event the breach was substantiated;
- On 20 May 2015, the Committee met briefly to consider: (i) whether there was any breach and, if so, the severity; (ii) the available sanctions and appropriate sanction or penalty that should be recommended to parliament. The Committee, after deliberating at length, was not able to reach a consensus and resolved unanimously to make written submissions, which would be consolidated as the findings of the Committee. Opposition members reiterated that they had participated in the proceedings under protest: (i) because the Hon. Attorney General was part of the committee (notwithstanding the Speaker's ruling on the matter); and (ii) because of the Speaker's ruling (morning of 20 May 2015) regarding the matter of privilege raised by Mr. Draunidalo;
- On 21 May 2015, the Committee finalized and endorsed the report in which the majority held the following:
    - It is a well-established parliamentary principle that reflections on the Speaker inside or outside parliament are, inter alia, regarded as contempt of parliament;
    - It is undeniable from the audio recording that the scurrilous and derogatory statements were made by Mr. Lalabalavu;

- It is clear that he referred to the Speaker as “vutusona”, which is an iTaukei term that is extremely obscene and gravely offensive, as it literally means anal sex. Following that statement, Mr. Lalabalavu then referred to the Speaker as “cavuka”, which means mentally retarded or mentally challenged, when he had mocked her by saying that she stood up when the opposition side stood up during a particular sitting. In all these instances, his reflections on the Speaker drew laughter from the audience;
- Mr. Lalabalavu was unapologetic about the words and statements uttered against the Speaker;
- By making such statements Mr. Lalabalavu has failed to uphold his expected duties and demeanour as a member of parliament; no member of parliament must be allowed to attack the Office of the Hon. Speaker anywhere and at any time;
- Under section 20(h) of the Parliamentary Powers and Privileges Act [Cap. 5], any person who utters or publishes any false or scandalous slander or libel against parliament, or against any member in his or her capacity as such, commits an offence and such an offence warrants, inter alia, imprisonment for a maximum of two years. The Privileges Committee concluded that Mr. Lalabalavu’s remarks made a mockery of the institution of parliament and recommended that he be suspended from parliament for at least two years. During the period of suspension, it recommended that he should not be allowed to enter the parliamentary precinct and that he must issue a public apology in writing to the Speaker;

- The report of the Privileges Committee contains a separate chapter with the views of its members belonging to the opposition, who held the following:
  - On the morning of 20 May 2015, the Speaker made a Ruling on Privilege in which she ruled that all matters of privilege were confined to the parliamentary precinct and this did not include the members’ constituency visits;
  - The standard of proof of “beyond reasonable doubt” required for charges carrying penalties like breaches of parliamentary privilege was not met in the case at hand;
  - The quality and state of the recording raises doubts about its accuracy and/or veracity; it should therefore have been subjected to expert, forensic scrutiny;
  - The recording was made by Communications Fiji Limited and has not been made public;
  - If the recording is to be accepted as evidence, the opposition members state that it is clear that Mr. Lalabalavu never made reference to the Speaker or any one person in the allegedly incriminating part of his speech (but rather to several persons);
  - There were many questions during the constituency meeting about the Speaker, and Mr. Lalabalavu responded to placate the mood towards her from the audience. His remarks were therefore words of wise counsel of restraint and forbearance and understanding from a paramount chief;
  - The opposition members concluded that there had been no breach of privilege and that, due to the lack of consensus in the Committee, the House needed to hear the recording in question and read the minutes and verbatim of the Committee’s proceedings to pass judgement in their deliberations on the motion fairly;
  - If the House were to find a breach, the opposition members noted that the usual practice would be to ask the member to withdraw his/her comments, which would be the end of the matter. Standing Orders 75 and 76 contain the penalties that are available to members to deal with breaches of privilege;

- On 21 May 2015, the House decided, apparently without listening to the recording, to suspend Mr. Lalabalavu for two years;
- On 15 July 2015, Mr. Lalabalavu launched a constitutional challenge, heard by Chief Justice Anthony Gates, against the Speaker and the Attorney General for his suspension,

Considering the following relevant legal provisions in Fiji:

- "Article 75 of the Standing Orders of the Parliament of Fiji:

  Disorderly conduct

  (1) The Speaker may order any member whose conduct is highly disorderly or repeatedly violates the Standing Orders to withdraw immediately from Parliament or a period of time that the Speaker decides, being no more than the remainder of that sitting day.
  (2) A member ordered to withdraw before or during questions for oral answer may not return to the Chamber to ask or answer a question and no other member may ask a question on that member's behalf.
  (3) Any member ordered to withdraw from Parliament may not enter the Chamber and may not vote on any question put during the period of his or her withdrawal."

- "Article 76 of the Standing Orders of the Parliament of Fiji:

  Naming of member and suspension for grossly disorderly conduct

  (1) The Speaker may name any member whose conduct is grossly disorderly and call on Parliament to judge the conduct of the member by immediately putting the question "That [member] be suspended from the service of Parliament". There is no amendment or debate on the question.
  (2) If the naming occurs while Parliament is in committee, the committee must first resolve itself into Parliament before the question is put.
  (3) If the majority of all members vote in favour, the member is suspended, —
    (a) on the first occasion, for three days (excluding the day of suspension);
    (b) on the second occasion during the same session, for seven days (excluding the day of suspension); or
    (c) on the third or any subsequent occasion during the same session, for 28 days (excluding the day of suspension).
  (4) A member who is suspended who refuses to obey a direction of the Speaker to leave the Chamber is, without any further question being put, suspended from the service of Parliament for the remainder of the calendar year.
  (5) The fact that a member has been suspended under clause (3) or (4) does not prevent Parliament from also holding the member's conduct to be in contempt."

- "The Parliamentary Powers and Privileges Act:

  Article 20: (Notwithstanding the provisions of section 17, any person who […] (h) utters or publishes any false or scandalous slander or libel on *Parliament or upon any member in his capacity as such […] shall be guilty of an offence and liable on conviction to a fine not exceeding four hundred dollars or, in default of payment thereof, to imprisonment not exceeding two years or to such imprisonment without the option of a fine or to both such fine and imprisonment. […] * Amended by Order 8th October, 1970"

Considering, finally, that the complainants affirm that the exaggerated suspension imposed on Mr. Lalabalavu is the culmination of a long-running effort to silence indigenous voices in parliament and to leave it to the non-indigenous minority to run the country, which allegation the authorities fully deny,

1. *Thanks* the Fijian delegation and parliamentary authorities for their cooperation and the extensive information they provided;

2. *Unequivocally* denounces gender slander; and *recognizes* that Mr. Lalabalavu may have used words which were offensive and degrading and therefore totally unacceptable;

3. *Considers* nevertheless that the decision by parliament to suspend him for two years for remarks made outside of parliament at a local party meeting is both inappropriate, also in the absence of a clearly legal basis for the two-year suspension, and wholly disproportionate, as it not only deprives him of his right to exercise his parliamentary mandate, but also deprives his electorate from representation in parliament for a period

covering half the term of parliament; *considers* also in this regard that alternative, regular legal avenues could have been pursued instead to obtain redress for the slander or libel in the case at hand;

4 *Sincerely hopes* therefore, all the more so given that Mr. Lalabalavu has already been excluded from parliament for 10 months, that his suspension will soon be lifted, either through a new decision by parliament, or as a result of the outcome of the pending constitutional challenge; *eagerly awaits* to receive feedback on this prospect;

5. *Requests* the Secretary General to convey this decision to the competent authorities, the complainant and any third party likely to be in a position to supply relevant information;

6. *Requests* the Committee to continue examining this case and to report back to it in due course.

Democratic Republic of the Congo

DRC/32 - Pierre Jacques Chalupa

DRC/49 - Albert Bialufu Ngandu
DRC/50 - André Ndala Ngandu
DRC/51 - Justin Kiluba Longo
DRC/52 - Shadrack Mulunda Numbi Kabange
DRC/53 - Héritier Katandula Kawinisha
DRC/54 - Muamus Mwamba Mushikonke
DRC/55 - Jean Oscar Kiziamina Kibila
DRC/56 - Bonny-Serge Welo Omanyundu
DRC/57 - Jean Makambo Simol'imasa
DRC/58 - Alexis Luwundji Okitasumbo
DRC/59 - Charles Mbuta Muntu Lwanga
DRC/60 - Albert Ifefo Bombi
DRC/61 - Jacques Dome Mololia
DRC/62 - René Bofaya Botaka
DRC/63 - Jean de Dieu Moleka Liambi
DRC/64 - Edouard Kiaku Mbuta Kivuila
DRC/65 - Odette Mwamba Banza (Mme)
DRC/66 - Georges Kombo Ntonga Booke
DRC/67 - Mabuya Ramazani Masudi Kilele
DRC/68 - Célestin Bolili Mola
DRC/69 - Jérôme Kamate
DRC/70 - Colette Tshomba (Mme)
DRC/73 - Bobo Baramoto Maculo
DRC/74 - Anzuluni Bembe Isilonyonyi
DRC/75 - Isidore Kabwe Mwehu Longo
DRC/76 - Michel Kabeya Biaye
DRC/77 - Jean Jacques Mutuale
DRC/78 - Emmanuel Ngoy Mulunda
DRC/79 - Eliane Kabare Nsimire (Mme)

DRC/71 - Eugène Diomi Ndongala

DRC/72 - Dieudonné Bakungu Mythondeke

DRC/82 - Adrien Phoba Mbambi

DRC/85 - Martin Fayulu Madidi

Decision adopted unanimously by the IPU Governing Council at its 198th session (Lusaka, 23 March 2016)

The Governing Council of the Inter-Parliamentary Union,

Referring to the cases of former members of parliament Mr. Pierre Jacques Chalupa, Mr. Eugène Diomi Ndongala, Mr. Dieudonné Bakungu Mythondeke and 29 other parliamentarians who were removed from office, to the decisions it adopted at its 193rd and 194th sessions (October 2013 and March 2014), and to the decisions adopted by the Committee at its 143rd and 149th sessions (January 2015 and January 2016),

Having before it the cases of Mr. Adrien Phoba Mbambi and Mr. Martin Fayulu Madidi, members of the current opposition, which were considered by the Committee on the Human Rights of Parliamentarians pursuant to the Procedure for the examination and treatment of complaints (Annex 1 of the revised rules and practices),

Taking into account a letter from the Speaker of the National Assembly of 9 March 2016 and information provided by the complainants,

Referring to the hearing with the delegation of the Democratic Republic of the Congo (the DRC) during the 134th IPU Assembly (Lusaka, March 2016),

Recalling the conclusions and recommendations of the Committee on the Human Rights of Parliamentarians' report on the mission to the DRC in June 2013 (CL/193/11b)-R.2), as well as the additions made to the case files of the 34 members and former members of parliament listed above,

Recalling that the former members of parliament concerned were expelled from the National Assembly, and that some were even threatened, detained, prosecuted and sentenced to periods of imprisonment after having expressed political opinions that differed from those of the presidential majority and those of the Head of State himself, with the exception of Mr. Phoba and Mr. Fayulu, who are currently still serving their terms of office,

Recalling that the DRC currently has the highest number of cases before the Committee, with 34 members and former members of parliament subjected to serious violations of their fundamental rights; that a total of 50 cases relating to the DRC have been examined by the Committee since the country's 2006 legislative elections (36 since the last parliamentary elections of 2011, and 14 during the previous legislative term); that none of those cases have been fully resolved and the grounds for complaint, which have grown in number over the last few years, have displayed similar and recurring traits; that three cases were closed after it was found that the fundamental rights of the members of parliament concerned, namely Mr. Muhindo Nzangi (DRC/81), Mr. Jean Bertrand Ewanga (DRC/83) and Mr. Roger Lumbala (DRC/80), had been violated by the DRC authorities and that it had become impossible to find satisfactory solutions to their cases,

Considering that no progress has been made towards a satisfactory resolution of the cases currently under examination,

Considering that Mr. Phoba was subjected to an attack in February 2014, and that the perpetrators have not yet been brought to justice, even though a complaint against them was lodged with the judicial authorities immediately after the attack,

Considering that, according to the complainant, Mr. Fayulu, member of the opposition and leader of the political party *Engagement for Citizenship and Development* (ECIDE), was arbitrarily arrested in violation of his parliamentary immunity on 14 February 2016 by officers of the military intelligence services; that those officers allegedly ill-treated, threatened and insulted Mr. Fayulu; that the officers allegedly confiscated his vehicle and personal effects, including documents relating to the activities of his political party, considerable sums of money and his mobile telephone – the entire contents of which were also downloaded by the officers; that Mr. Fayulu lodged a complaint after that incident; that the Prosecutor General is reported to have opened prosecution proceedings against Mr. Fayulu and then reportedly submitted an application to the National Assembly requesting that Mr. Fayulu's parliamentary immunity be lifted; that, according to the complainant, Mr. Fayulu was not informed of the charges laid against him, nor was he informed that a request for his parliamentary immunity to be lifted had been made, nor of the reasons for that request; that the complainant alleges that the aim of arresting Mr. Fayulu was to prevent the staging of a day of opposition protests scheduled for 16 February ("Dead City Day") and formed part of an element of a wider campaign of repression of the opposition in the context of numerous attempts to impede Mr. Fayulu's political activities and weaken the opposition,

Considering that the cases under examination bear witness to the existence of general problems within the National Assembly, but also in the executive and the judiciary, all of which relate to the protection of the fundamental rights of parliamentarians in the DRC, irrespective of their political

affiliations, given the number of members and former members of parliament concerned, and the severity of the common concerns in the various cases, which relate to:

- **Violation of freedom of opinion and expression:** the parliamentarians and former parliamentarians concerned all voiced opinions criticizing the Head of State, government policy and the presidential majority before suffering violations of their rights;
- **Instrumentalizing of justice and absence of due process:** the independence of the judiciary and observance of international fair trial standards have been very much called into question in all the cases examined, given the conditions in which the trials took place and the lack of any legal remedy for the parliamentarians sentenced (and, in the case of Mr. Phoba, given the continuing impunity of those who attacked him);
- **Arbitrary revocation of the parliamentary mandate and violation of parliamentary immunity:** in several of the cases examined, the mandate of the deputies concerned was revoked on questionable grounds while they were in office. Those members of parliament were not informed or given the chance to argue their side of the case in advance. The prosecution used the *flagrante delicto* procedure to short-circuit the process of lifting parliamentary immunity. The parliamentary authorities never requested to see the evidence that proved that *flagrante delicto* applied, and neither discussed nor called into question the fact that provisions of the Constitution had been circumvented in this way in violation of the rights of the parliamentarians concerned. In addition, the provisions of the Code of Criminal Procedure regarding *flagrante delicto* cases and observance of the rights of defence have not been fully respected in the subsequent judicial process,

Also considering that serious concerns remain in the cases of Mr. Chalupa and Mr. Ndongala regarding their state of health and their inability to receive appropriate care because of the actions of the Congolese authorities; that the arbitrary stripping of Mr. Chalupa's Congolese nationality also raises a particularly serious problem for the former member of parliament and businessman, who has indisputable ties to the DRC and who was made stateless as a result of being found guilty of forgery and counterfeiting after a trial characterized by serious irregularities and which offered no legal remedy,

Considering that no legislative or constitutional reforms that had previously been recommended have since been implemented in order to bring Congolese law in line with relevant international standards, particularly with regard to: (i) strengthening the independence of the judiciary and respect for fair trial standards, particularly on the issue of introducing a two-stage judicial procedure with regard to parliamentarians, in order that their right to defence be fully guaranteed where prosecutions arise, as is the case with all Congolese citizens; (ii) amendments to legislation relating to attacks on national security and crimes relating to the Head of State, in conformity with international standards on freedom of expression; (iii) the overhaul of the procedure for settling electoral disputes designed to strengthen transparency and equality, including by clarifying the rules for the provision of evidence; (iv) amendments to the procedure for the validation of the parliamentary mandate to ensure that the final validation of newly elected parliamentarians is only declared at the conclusion of the final results of any electoral dispute, once all avenues of appeal have been exhausted, or at the very least to ensure that a mechanism be found to avoid situations in which, at each election, disqualifications systematically occur some months after newly elected members have taken up their seats,

Considering that, during the hearing that took place at the 134th IPU Assembly (Lusaka, March 2016), the delegation referred to correspondence that had previously been sent by the Speaker of the National Assembly, and reaffirmed its commitment to finding solutions to the cases submitted to the Committee, and highlighted once again that those cases did not fall within their competence at the present time because of the principle of the separation of powers. In relation to the recent arrest of Mr. Fayulu, the delegation noted that the Speaker of the National Assembly had issued a statement calling for his immediate release and confirming that, to date, no request for the lifting of Mr. Fayulu's parliamentary immunity had been sent from the Prosecutor General. The delegation also noted that the question of compensation for disqualified members had been passed to the Government, which had not yet responded,

Considering that the situation of the 34 members and former members of parliament in question forms part of a worrying political context in which the political space has continued to shrink,

while at the same time, fears have been expressed in relation to the Constitution and whether the presidential and legislative elections scheduled for November 2016 will be held; that in a report of December 2015, the United Nations Joint Human Rights Office in the DRC documented that restrictions on freedom of opinion and expression were on the rise with regard to opposition politicians, the media and civil society. The United Nations High Commissioner for Human Rights has called on the authorities to ensure that all its citizens, irrespective of their political opinions, are able to participate fully in open, democratic debate, and that civil society campaigners, media professionals and opposition politicians are able to conduct their work without fear, in order that the next elections are conducted credibly and peacefully,

Bearing in mind that the DRC is party to the International Covenant on Civil and Political Rights and, by virtue of articles 2, 9, 10, 14, 19, 25 and 26 in particular, has committed to the requirement to respect and guarantee the fundamental rights of its citizens, including members of parliament, notably the rights to liberty and security of the person, to freedom of expression, the right to vote and to be elected in elections that ensure the free expression of the will of the electorate, the right to participate freely in the management of public affairs, the right to equality before the law, the prohibition of all forms of discrimination and equitable and effective protection against all forms of discrimination, particularly with regard to political opinions; that the African Charter on Human and Peoples' Rights, to which the DRC is also a signatory, includes similar provisions,

Also bearing in mind that the preamble of the Constitution of the DRC reaffirms that the Congolese people support and are attached to international human rights standards, and that title II of the Constitution guarantees human rights and fundamental freedoms for Congolese citizens,

1. *Reiterates its profound concern* with regard to the situation of many members and former members of parliament, who have been subjected to serious violations of their fundamental rights, and to the concerning developments of the political situation in the DRC in relation to the upcoming elections;

2. *Urges* the authorities, once again, to take urgent measures to end those violations and resolve the situation of all the parliamentarians concerned using all possible means;

3. *Expresses the hope* that satisfactory solutions can be found quickly in the cases under consideration; and *believes* that a follow-up visit by the Committee to Kinshasa could contribute to speeding up the process; *hopes* that the delegation can meet with all the relevant authorities, with the complainants – including Mr. Ndongala in prison – and with any other persons it might deem useful to meet with for the successful fulfilment of its mission; *requests* the Secretary General to make contact with the authorities for that purpose;

4. *Reaffirms* that the cases are of a particularly political nature and that the authorities, and the parliamentary authorities above all, are both duty-bound and obliged to guarantee respect for and the protection of the fundamental rights of all parliamentarians, irrespective of their political affiliation; *recalls* that depriving a member of parliament of his mandate, his freedom and/or security because of a political opinion that he or she expressed constitutes a contravention of the provisions of article 19 of the International Covenant on Civil and Political Rights, to which the DRC is a signatory;

5. *Remains deeply preoccupied* by Mr. Chalupa's medical condition; and *renews its call to the authorities*, for humanitarian reasons, to issue as a matter of urgency travel documents that would allow him to travel abroad to receive medical care and then return to the DRC; *also considers* that the authorities should recognize as swiftly as possible that he has a right to Congolese nationality;

6. *Deeply regrets* Mr. Ndongola's continued detention; and *yet again urges* the DRC authorities to release him, in accordance with the recommendations made by the Head of State at the end of the national consultation exercise held in October 2013; and *reiterates* its concern over Mr. Ndongala's health; *highlights* the contradictory information provided by the complainants and the authorities with regard to the denial of medical care in

detention; and *renews its call to the authorities* to ensure that measures are taken as quickly as possible to enable him to receive proper medical care;

7. *Also expects* that, before the end of the next ordinary parliamentary session, the National Assembly should undertake to transfer the financial entitlements due to the 29 members of parliament whose mandates were declared invalid, as well as providing them with a symbolic amount of compensation; *fails to understand* why the National Assembly referred the case to the Government, since responsibility for the payment of parliamentary allowances falls under its jurisdiction; *wishes* to have clarification in this regard; and *reiterates its wish* to be kept informed of any progress made;

8. *Renews its invitation* to the authorities to undertake appropriate legislative and constitutional reforms to bring an end to these recurrent violations of the parliamentarians' fundamental rights; and *reaffirms* the availability of the IPU to provide technical assistance to the Parliament of the DRC in that regard;

9. *Requests* the Secretary General to convey this decision to the competent authorities, the complainants and any third party likely to be in a position to supply relevant information;

10. *Requests* the Committee to continue examining this case and to report back to it in due course.

Guatemala

GUA/10 - Amilcar de Jesus Pop

Decision adopted unanimously by the IPU Governing Council at its 198th session (Lusaka, 23 March 2016)

The Governing Council of the Inter-Parliamentary Union,

Referring to the case of Mr. Amilcar de Jesus Pop, a member of Guatemala's Congress, which has been examined by the Committee on the Human Rights of Parliamentarians pursuant to the Procedure for the examination and treatment of complaints (Annex I of the revised rules and practices),

Considering the following information on file as presented by the complainants:

- Mr. Pop was elected as a member of Guatemala's Congress in 2011 and re-elected in 2015 for a further term until 2020. According to the complainants, Mr. Pop is a human rights defender and lawyer. He is the co-founder, together with Nobel Peace laureate, Ms. Rigoberta Menchú, of the political party WINAQ created in 2009, which has one seat in parliament. Mr. Pop has occupied this seat since the elections in 2012 and is one of three members of parliament who advocate for respect for the rights of the Maya population;
- Mr. Pop has allegedly been the subject of repeated death threats and serious harassment in reprisal for his work as an opposition member of parliament, during which he has raised, in defence of the rights of the Maya indigenous population, numerous cases of abuse by public officials and private companies; that as part of his parliamentary activities, he launched investigations against more than 100 public officials, 26 mayors and six judges accused of corruption, money laundering and illegal enrichment; that he has been closely linked to the criminal cases against the former President and Vice-President of Guatemala; that he has also criticized public tender processes of the private sector, in particular with regard to the company *Cementos Progresos*, and the creation of the *planta hidroeléctrica* (hydroelectric power plant) *Hydro-Santa Cruz*, both of which have caused great damage to the environment where the Maya population lives; that Mr. Pop has been receiving death threats and been subjected to attacks for several years;
- The complainants state that, since the beginning of Mr. Pop's term as a member of parliament, his car has repeatedly been vandalized, he has been subjected to threats and telephone harassment, and documents such as diaries have been stolen from his vehicle; that he also noted that he is regularly followed by unknown vehicles with tinted windows;
- On 16 June 2015, Mr. Pop lodged a complaint with the International Commission Against Impunity in Guatemala (CICIG) and with the Human Rights Prosecutor's Office (File no. MP-001-60257-2015 – *Expediente único*), regarding the threats, the damage to his car and the theft of private documents related to his work as a parliamentarian. The complainants allege that the authorities are not investigating the case properly to bring the culprits to justice;
- The complainants fear for Mr. Pop's physical integrity and life in light of the powerful vested political and economic interests he is challenging,

Considering that, according to the complainants, threats and harassment suffered by Mr. Pop occurred against a complex and unstable political background. Tensions had been increasing since April 2015, when the Public Prosecutor and the CICIG uncovered a large-scale corruption scandal, which led to the resignation and arrest of the Vice-President and the President. According to the complainants, Mr. Pop was closely linked to these events and the denunciation of other highly politicized cases of corruption,

Bearing in mind that, in its concluding observations, during its examination of Guatemala's reports in 2012, the United Nations Human Rights Committee (HRC), which monitors implementation of the International Covenant on Civil and Political Rights (ICCPR) to which Guatemala is a State Party,

with regard to the protection of human rights activists whose lives and security are endangered by their professional activities, encouraged the State to take immediate measures to provide effective protection for defenders, facilitate the immediate, effective and impartial investigation of threats, attacks and assassinations of human rights defenders, and to prosecute and punish the perpetrators. The HRC considered that the State should give priority to the discussion and approval of legal reforms to the professional career system of the judiciary and the Public Prosecution Service, in order to eliminate any structural obstacle that may exist to the independence and impartiality of the courts,

Bearing in mind also that, according to the country report on the Situation of Human Rights in Guatemala of the Inter-American Commission on Human Rights (IACHR), published on 14 March 2016, Guatemala is one of the most violent and insecure countries in Latin America. This violence has reportedly had a much greater impact on certain population segments, including defenders of the rights of indigenous peoples and the environment and that, according to a report from the CICIG of November 2015, the impunity rate for the crime of homicide from 2008 to 2014 fluctuated between 99.1% and 98.4% with certain drops depending on the years and the subject,

Bearing in mind as well that articles 2 and 46 of the Constitution of Guatemala guarantee the rights to life, to justice and to security and establish the primacy of international human rights law over domestic law, and that Guatemala, in addition to the ICCPR, is also a State Party to the American Convention on Human Rights; that, as a result, Guatemala is obliged to respect without reservation the rights to life, physical integrity and freedom of expression and opinion,

Considering that, in a letter dated 26 January 2016, the Secretary General shared the summary of the complainants' allegations with the President of Congress and requested him to provide any information he considered might be useful with regard to the examination of the case, and that no response has been forthcoming to date,

1. *Is deeply concerned* at the alleged death threats and harassment targeting Mr. Amilcar de Jesus Pop, and the allegation that his complaints about these incidents have not been looked into; *considers* that these allegations have to be taken extremely seriously, all the more so in light of the high incidences of impunity that prevail for homicide in Guatemala;

2. *Urges* the competent authorities to make every effort, as is their duty, to identify the culprits and to bring them to justice, this being the only means of preventing the recurrence of such crimes, and putting an end to the vicious cycle of impunity, and to put in place the security arrangements that Mr. Pop's situation requires; and *wishes to know* what steps are being taken by the competent authorities to this end;

3 *Stresses* that threats to the life and security of members of parliament, if left unpunished, infringe their rights to life, security and freedom of expression and undermine their ability to exercise their parliamentary mandate, affecting the ability of parliament as an institution to fulfil its role;

4 *Considers,* therefore, that the Parliament of Guatemala has a vested interest in using its powers to the fullest to help ensure that effective investigations are being carried out and protection offered to Mr. Pop; *wishes* to receive official information from the parliamentary authorities on any action that parliament has taken to this effect;

5 *Requests* the Secretary General to convey this decision to the attention of the relevant authorities, the complainant and any third party likely to be in a position to supply relevant information;

6 *Requests* the Committee to continue examining this case and to report back to it in due course.