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Texts subject to final editing

Committee on the Human Rights of Parliamentarians

146th session
(Geneva, 24 - 27 January 20145)

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Burundi

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BDI06 - Gérard Gahungu
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BDI60 - Jean Bosco Rutagengwa

Decision adopted by the Committee on the Human Rights of Parliamentarians at its 146th session (Geneva, 24 - 27 January 20145)

The Committee,

Referring to its examination of the cases of the above-mentioned Burundian parliamentarians and to the resolution it adopted at its 193rd session (October 2013),

Referring to the letter from the Speaker of the National Assembly of 7 January 2015 and to the information provided by the complainants,

Recalling that the cases, which the Committee has been examining for many years, concern the assassinations of seven members of the National Assembly between 1994 and 2002, namely Mr. Sylvestre Mfayokurera (September 1994), Mr. Innocent Ndikumana (January 1996), Ms. Liliane Ntamutumba and Mr. Gérard Gahungu (July 1996), Mr. Paul Sirahenda (September 1997), Mr. Gabriel Gisabwamana (January 2000) and Mr. Jean Bosco Rutagengwa (2002), and two assassination attempts on Mr. Norbert Ndihokubwayo (September 1994 and December 1995), all of which remain unpunished to date,

Recalling that the Arusha peace and reconciliation agreements signed in 2000 provided for the establishment of three transitional justice mechanisms in Burundi, namely an international commission of judicial inquiry, a national truth and reconciliation commission (TRC) and an international criminal tribunal,

Recalling that the Burundian authorities have been saying for many years that they consider that the cases of the assassinated parliamentarians should be dealt with by the Truth and Reconciliation Committee (TRC), given their complexity and political nature,

Considering that a law establishing the TRC was finally adopted by the Burundi Parliament and promulgated on 15 May 2014, and that the 11 TRC commissioners were appointed in early December 2014 following a selection process undertaken by the National Assembly,

Considering that the TRC will have jurisdiction to investigate and establish the truth about the serious human rights violations committed during the period from Burundi's independence in 1962 to 4 December 2008, and that field investigations and the gathering of evidence from victims will only start once legislation has been enacted on victim and witness protection,

Considering that the Speaker of the National Assembly stated that the law adopted had been the outcome of a process, all stages of which had been participative, inclusive and transparent; that the commissioners appointed to the TRC benefited without exception from indisputable legitimacy and the Commission would be assisted in its functions by an international advisory board; that all the concerns raised by the people had been taken into account; that the crises experienced by Burundi were essentially political in nature and that any solution therefore also had to be essentially political rather than judicial; that, pursuant to the law adopted, the final TRC report would be submitted "for all intents and purposes" to the Government, the National Assembly, the Senate and the United Nations

at the end of its term, which implied that judicial proceedings could be instigated on that basis in accordance with modalities that remained to be defined; that the law on the TRC empowered the Commission to draw up its own rules of procedure, which would in all likelihood comprise provisions on the protection of witnesses and victims,

Considering also that, according to information provided by various sources of information, there are outstanding concerns over the protection of victims and witnesses; that the United Nations and civil society regretted that the process to draft and adopt the law had not been wholly transparent and inclusive and that certain provisions of the law did not conform to applicable international standards; that the political opposition boycotted the adoption of the law and the election of the commissioners on the grounds that the TRC, as it was configured in the law as adopted, would be the product of the party in power alone and would therefore not promote effective reconciliation; that, as a result, there is still fear that the TRC may be used for political ends and would not act independently, and would therefore not be legitimate and credible in the eyes of the people of Burundi, in particular given the political and security tensions with the approach of the 2015 elections; and that, 14 years after the Arusha agreements, no action has been taken by the Burundi courts to punish the perpetrators of war crimes and no judicial mechanism has been put in place for that purpose,

1. *Thanks* the Speaker of the National Assembly for the information provided;

2. *Welcomes* the adoption of the law and the appointment of the TRC commissioners, and *notes with particular satisfaction* the positive contribution to this process by the National Assembly;

3. *Is aware* of the importance and complexity of the task before the TRC given its mandate under the law, and *hopes* that it can include a focus in its work on the political violence during the 1990s and 2000s, including against the many parliamentarians murdered during that period;

4. *Calls on* the National Assembly to formally refer the cases of the assassinated parliamentarians to the TRC through an official referral and *requests* it to keep it informed of the latter's response and progress made in its work, especially regarding the cases of the assassinated parliamentarians; *also wishes* to receive information from the National Assembly on the timetable for the adoption of a law on the protection of victims and witnesses, given that the TRC field investigations cannot start before its adoption;

5. *Strongly believes* that the search for and establishment of the truth are prerequisites for enabling all segments of the Burundian population without distinction to move towards reconciliation; *considers* that the success of the TRC's work will depend largely on the ability of the latter to convince the general public of its independence and impartiality; *also believes* that, beyond the establishment of the truth, justice is an essential step towards reconciliation; and *continues to hope* that a judicial mechanism will be put in place in the future to punish the perpetrators of the serious violations of human rights committed in the past, and thus enable victims who so wish to seek justice;

6. *Requests* the Secretary General to forward this decision to the parliamentary authorities, the complainants and any third party who is likely to be in a position to provide relevant information;

7. *Decides* to continue examination of these cases.

Burundi

BDI/26 - Nephtali Ndikumana
BDI/36 - Mathias Basabose
BDI/37 - Léonard Nyangoma
BDI/40 - Frédérique Gahigi
BDI/42 - Pasteur Mpawenayo
BDI/43 - Jean Marie Nduwabike
BDI/45 - Alice Nzomukunda
BDI/46 - Zaituni Radjabu

Decision adopted by the Committee on the Human Rights of Parliamentarians at its 146th session (Geneva, 24 - 27 January 20145)

The Committee,

Referring to the cases of the above-mentioned Burundian parliamentarians and to the resolution adopted by the Governing Council at its 193rd session (October 2013),

Referring also to the letters of 28 November 2013, 11 March 2014 and 7 January 2015 from the Speaker of the National Assembly and to the information conveyed by the complainants,

Bearing in mind the report (CL/193/11(b)-R.1) on its President's on-site mission to Burundi, which took place from 17 to 20 June 2013,

Recalling that these cases, which have been before it for many years, concern grenade attacks carried out on 19 August 2007 and on 6 March 2008 against eight deputies sitting in the previous legislature belonging to the breakaway arm of the National Council for the Defence of Democracy- Forces for the Defence of Democracy (CNDD-FDD), which had caused material damage but left no casualties,

Recalling also the following information on file: the attacks were never punished; most of the investigations were closed after having been mishandled from the outset, the investigators having worked on the hypothesis that the victims had themselves organized the attacks; according to the authorities, it then became difficult to reconstruct the circumstances and identify the perpetrators; in the cases of Ms. Nzomukunda and Mr. Basabose, the investigations had led to the arrest of suspects who were later released, a decision appealed by the prosecutor on the grounds that the suspects had acted on the orders of other people who remained to be identified by pursuing the investigation,

Recalling finally that, during his visit to Burundi in June 2013, the Committee President was unable to ascertain what action had been taken on the prosecutor's appeal or the status of the judicial files concerning Ms. Nzomukunda and Mr. Basabose, but had met with some of the victims, who said that they were discouraged by the suspects' release and the absence of judicial action on their files by the prosecution, that they had never been notified of the reasons for the suspects' release and that they had finally stopped keeping track of developments in their cases as it seemed pointless to do so in the absence of any investigation of their complaints,

Considering that, in November 2013, the National Assembly stated that it continued to devote attention to the grenade attacks, but that there was little it could do given the lack of new information in the relevant investigations, that the victims were not actively following developments in their cases and that the Speaker of the National Assembly had written to the victims in September 2013 with a view to reactivating the file, but had never received a response,

Considering also that, in January 2015, one of the complainants said that the victims were doubtful that a judicial solution would be forthcoming in the case and that there was no longer any point in having the Committee continue its examination thereof,

Bearing in mind Article 25(a) and (b) of its Procedure for the examination and treatment of complaints, on the closure of cases,

1. *Observes* that the victims of the grenade attacks do not believe that a satisfactory solution will be found in the case and consider that there is no point in having the Committee continue its examination thereof; *also observes* that the National Assembly and the complainants have confirmed that the victims stopped keeping track of judicial developments in their cases several years ago;

2. *Considers,* therefore, that it is no longer in a position to examine the case to any effect and therefore *decides* to close it, but *deplores* the fact that the perpetrators of the attacks have gone unpunished despite the evidence brought to light by the judicial investigations and the prosecution's conclusions in the cases of Ms. Nzomukunda and Mr. Basabose;

3. *Requests* the Secretary General to convey this decision to the Speaker of the National Assembly and to the complainants.

Burundi

BDI/42 - Pasteur Mpawenayo
BDI/44 - Hussein Radjabu
BDI/57 - Gérard Nkurunziza
BDI/59 - Deo Nshimirimana

Decision adopted by the Committee on the Human Rights of Parliamentarians at its 146th session (Geneva, 24 - 27 January 20145)

The Committee,

Referring to its examination of the cases of the four above-mentioned former Burundian parliamentarians and to the resolution adopted by the Governing Council at its 194th session (March 2014),

Referring to the letter from the Speaker of the National Assembly of 7 January 2015 and to the information provided by the complainants,

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

Recalling that the cases, which have been before the Committee for many years, concern criminal proceedings brought against Mr. Hussein Radjabu, Mr. Pasteur Mpawenayo, Mr. Gérard Nkurunziza and Mr. Deo Nshimirimana since 2007-2008, all of which have been characterized by excessive delays and marred by serious flaws,

Recalling also that the status of the judicial proceedings is currently as follows:

- Regarding Mr. Radjabu
  - Mr. Radjabu was sentenced at final instance to 13 years in prison and stripped of his civil and political rights for endangering State security;
  - In August 2013, the Minister of Justice rejected Mr. Radjabu's application for a retrial;
  - Having served nearly half of his sentence, Mr. Radjabu is eligible under the law for release on parole, but the competent authorities have not responded to his requests; Mr. Radjabu continues to serve his sentence in Bujumbura prison,
- Regarding Mr. Mpawenayo
  - Mr. Mpawenayo was arrested in July 2008 and charged with being Mr. Radjabu's accomplice and with having co-chaired a meeting at which the acts of which he and Mr. Radjabu stand accused were reportedly committed; Mr. Mpawenayo was acquitted at first instance in May 2012 and released after four years in remand custody; in the acquittal judgment, the Supreme Court held that the State prosecution service had failed to prove the charges against him;
  - The State prosecution service has appealed,
- Regarding Mr. Nshimirimana
  - Mr. Nshimirimana was arrested in October 2010 by State intelligence agents and charged with plotting against the State and incitement to disobedience; he was acquitted by the Supreme Court on 26 November 2012 and released after having spent almost as much time in prison as he would have had he been convicted;
  - According to the parliamentary authorities and the complainant, the State prosecution service had appealed the acquittal, but Mr. Nshimirimana was currently at liberty,

- Regarding Mr. Nkurunziza

  - Mr. Nkurunziza was arrested in July 2008 and charged with having distributed weapons in his home province of Kirundo in order to foment rebellion against the State; the proceedings against him suffered numerous delays and the lawfulness of his detention was never examined by a judge in over five years of proceedings; Mr. Nkurunziza was finally acquitted by the Supreme Court on 31 January 2014 and released on 3 February 2014,

Considering the new information provided by the parliamentary authorities and the complainants, to wit:

- In early January 2015, the National Assembly Bureau organized a meeting with Mr. Mpawenayo, Mr. Nshimirimana and Mr. Nkurunziza to discuss their respective situations;
- According to the complainant, Mr. Mpawenayo had received no information on the appeal proceedings against him since 2013 when suddenly, in November 2014, he received a phone call from the Supreme Court summoning him to appear; having received no official written summons and no explanation of the purpose of the summons, Mr. Mpawenayo did not appear; the complainant fears that the proceedings have suddenly been accelerated is order to prevent Mr. Mpawenayo from standing in the May 2015 legislative elections; according to the Speaker of the National Assembly, the appeal proceedings against Mr. Mpawenayo cannot go forward until he appears before the Supreme Court, and he is therefore responsible for any delays they suffer;

  The complainants have indicated on several occasions that they have received no information on the appeal proceedings against Mr. Nshimirimana and Mr. Nkurunziza; according to the Speaker of the National Assembly, after verification by the National Assembly, the State prosecution service did not appeal the acquittals, which were therefore final, irrevocable and unimpeachable; he added that it was up to Mr. Nshimirimana and Mr. Nkurunziza to ask the Supreme Court head clerk for a certificate of non-appeal and considered that they had been negligent in failing to do so and in not informing the Committee that the judicial proceedings were closed;

  According to the complainants, the three former members of parliament had been the target of threats and intimidation since their release and feared for their safety; apparently they had received countless anonymous and threatening telephone calls, were kept under surveillance and prevented from moving freely about the country, and were afraid they would be attacked by the *Imbonerakure* militia,

Bearing in mind that Burundi has ratified the 2013 Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, and that the United Nations Human Rights Committee expressed the following concerns inter alia in its concluding observations on the Second Periodic Report of Burundi (CCPR/C/BDI/CO/2, of 21 November 2014): (i) the high number of cases of torture, the fact that the courts admitted as evidence confessions that had been obtained by torture, and the impunity enjoyed by the persons responsible; (ii) the disproportionate use of pretrial detention and the frequent failure to respect detainees' basic legal guarantees; (iii) the numerous failures and shortcomings of the Burundian judicial system,

1. *Thanks* the Speaker of the National Assembly for his cooperation;

2. *Notes with satisfaction* that the judicial proceedings against Mr. Nshimirimana and Mr. Nkurunziza have drawn to a close, the prosecution having failed to appeal their acquittal; *decides,* therefore, to close their cases, but *deplores* the excessive length of their pretrial detention, a situation that could have been avoided if the courts had ruled on the lawfulness thereof within the legal deadlines;

3. Notes that the appeal proceedings against Mr. Mpawenayo cannot go forward until Mr. Mpawenayo responds to the Supreme Court summons; urges Mr. Mpawenayo to obey the summons as soon as possible, the purpose thereof having been clarified, so that the judicial proceedings can be completed; wishes to be kept informed in that respect;

4. *Is concerned* about the threats and intimidation targeting Mr. Mpawenayo, Mr. Nshimirimana and Mr. Nkurunziza and *urges* the competent authorities to take the measures required to ensure their safety; *considers,* nonetheless, that it is not competent to pursue its examination of the case on those grounds alone, given that the three men are no longer members of parliament;

5. *Repeats* its long-standing concerns about the judicial process that resulted in Mr. Radjabu's conviction and *urges* the competent authorities and Mr. Radjabu to pursue all possible judicial and political remedies, including release on parole – the conditions for which it believes are met – and a presidential pardon, and to keep it informed of any progress made to that end;

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

7. *Decides* to continue examining the cases of Mr. Radjabu and Mr. Mpawenayo.

Chad

CHD/01 - Ngarleji Yorongar

Decision adopted by the Committee on the Human Rights of Parliamentarians at its 146th session (Geneva, 24 - 27 January 20145)

The Committee,

Referring to the case of Mr. Ngarleji Yorongar, a member of the National Assembly of Chad, and to the resolution adopted by the Governing Council at its 192nd session (March 2013),

Referring to the letter from the Speaker of the National Assembly of 13 March 2014 and to the information provided by the authorities, the complainant and other sources met by the President of the Committee on the Human Rights of Parliamentarians during his visit to Chad from 28 February to 2 March 2013,

Recalling the following information on file:

- Mr. Yorongar and other members of the political opposition were abducted during a rebel attack on the capital city of Chad between 28 January and 8 February 2008;
- The National Commission of Inquiry established by the authorities to investigate those events established in its report, published in early September 2008, that Mr. Yorongar "was arrested at his home on Sunday, 3 February 2008, at about 5.45 p.m. by eight to 10 elements of the defence and security forces carrying weapons some of which were reminiscent of those of the presidential guard, led by a tall (1m 80) robust man travelling in a khaki Toyota pick-up, new and with no number plate";
- The Commission concluded that "abductions and arrests, together with acts of intimidation against opposition politicians, had occurred after the rebel withdrawal from N'Djamena; [which] clearly involves the responsibility of the defence and security forces", and specified that, insofar as "from 3 February 2008 onwards, public security was mainly provided by elements of the presidential guard, it can also be inferred that the Chadian State was responsible";
- The Commission recommended that the Government "pursue the police and judicial investigations with a view to determining the place of detention and the re-appearance of Mr. Yorongar in Cameroon […], that it compensate the victims or their families in an equitable and not merely symbolic manner […]" and that it set up a specialized committee entrusted with monitoring the effective implementation of its recommendations;
- That committee was established in late September 2008 and chaired by the Prime Minister; initially made up of a dozen ministers, it was expanded in January 2011 to include two international experts from the European Union and the Organisation internationale de la Francophonie; a technical subcommittee in charge of the follow-up, committee secretariat and a legal pool comprising State prosecutors, magistrates, judges and bailiffs and tasked with the management of ongoing judicial proceedings, were set up under the coordination of the Prosecutor General;
- The conclusions of the Commission of Inquiry were laid before the Prosecutor General, who opened judicial cases; owing to the 12-month deadline for the preliminary enquiry, the first trials were to start in 2010; to date, however, none of the judicial proceedings relating to the hundreds of cases of enforced disappearance that occurred during the attacks of February 2008, in particular that of Mr. Yorongar, has resulted in an indictment; only about thirty women victims of rape have received humanitarian compensation from the Government pending the judicial conclusions concerning the perpetrators of those crimes;
- In a communication dated 9 October 2012, the Minister of Justice stated that it would be premature to draw conclusions on the perpetrators at that point in time, that the only reason for the slowness of the investigation, which concerned thousands of cases, was

its complexity, which was related to the context in which the offences were perpetrated, and that Chad remained firmly committed to enabling the judicial system to investigate in full transparency and independence and to make available to it all the means it needed to establish the truth on the crimes and offences committed during the events of 2008,

Recalling the following: the ill-treatment inflicted on Mr. Yorongar during his arrest in February 2008 reportedly affected his health, which has since deteriorated; Mr. Yorongar remains under medical treatment and regularly undergoes medical treatment abroad; he has filed a number of financial claims concerning the reimbursement of medical expenses and the payment of parliamentary stipends that he claims are owed to him by the National Assembly; *bearing in mind* that the Speaker of the National Assembly has since carried out investigations and has repeated on several occasions that all of Mr. Yorongar's financial claims had been settled at National Assembly level,

Recalling also that the Committee President visited Chad in late February 2013 in order to meet all the competent authorities in the case, Mr. Yorongar and several representatives of the international community, that he also met with the Speaker of the National Assembly, the Minister of Justice, the Prosecutor General and the Chairman of the Technical Subcommittee, and that he learned the following:

- The National Assembly was able to obtain information on progress made in the judicial proceedings, in the discharge of its role of government oversight and in strict compliance with the principles of separation of powers and the independence of the judiciary;
- Given the absence of progress in the investigations, a new examining magistrate was appointed at the end of 2011; a single examining magistrate was then assigned to the legal pool in charge of examining the 1,050 cases relating to the events of February 2008, including that of Mr. Yorongar; the legal pool was experiencing numerous logistical and financial difficulties that were hampering its effectiveness; the investigations had made no progress and had yet to identify any suspects;
- The Technical Subcommittee, for its part, was focusing on implementation of the Commission of Inquiry's recommendations regarding the legislative and regulatory framework, in particular with a view to empowering the judicial authorities to oversee all places of detention;
- As concerns Mr. Yorongar's case, the Minister of Justice and the Prosecutor General had said that the judicial proceedings were stalled because Mr. Yorongar refused to be heard by the examining magistrate and had said that he opposed any judicial use of his statement to the Commission of Inquiry, which was apparently the only item in his file available to the examining magistrate; the Minister of Justice had guaranteed that the investigations would start if Mr. Yorongar agreed to appear before the examining magistrate or gave written consent for the investigation to be continued on the basis of his statement to the Commission of Inquiry;
- Mr. Yorongar had confirmed that he had refused to cooperate with the judicial authorities; he had said that the Chadian judicial system was well known for its lack of independence and impartiality and that he no longer trusted it and preferred compensation to criminal proceedings; he had been a long-standing member of the political opposition, and as such his fundamental rights had been violated on multiple occasions in the past and the numerous complaints he had filed before the courts had never been to any avail, the perpetrators going unpunished; consequently, and in view of the time that had elapsed since the events and the absence of any progress whatsoever in the investigation of the cases relating to the events of 2008, he did not believe that criminal proceedings would lead anywhere and did not wish to lend credibility to the process by participating in them,

Considering that, in his letter of 13 March 2014, the Speaker of the National Assembly said that the examining magistrate had concluded that it was impossible to identify the guilty parties and had ordered that the case be dismissed on 22 July 2013; the magistrate had nevertheless considered that the State could be held liable for compensation for the damages suffered by the various victims and that Mr. Yorongar could therefore file suit in a civil court to obtain compensation,

Considering that the complainant has never responded to the requests for information made to him since May 2013, even though he has been repeatedly asked to do so; that he has never provided his comments on the latest developments in the proceedings, or on whether he intends to file a claim for compensation,

Considering Article 25 (a) and (b) of its procedure for reviewing and handling complaints relating to the closing of cases,

1. *Thanks* the Speaker of the National Assembly for the information provided;

2. *Notes with interest* that, following the decision handed down in July 2013 by the examining magistrate, the possibility of filing a claim for compensation – for which Mr. Yorongar had expressed a preference – is now open to him should he wish to pursue that route in the future;

3. *Notes with regret* that the complainant has never responded to the communications sent to him over the past few years, despite repeated requests and even though he was in a position to do so; *also regrets* that Mr. Yorongar refused to cooperate with the judicial authorities on the criminal proceedings and *considers* that this attitude is not conducive to establishing the truth;

4. *Considers*, therefore, that it cannot effectively continue its examination of the case, and for this reason *decides* to close it, while deploring that, seven years after the serious human rights violations committed during the rebel attack on the Chadian capital, the perpetrators of the offences committed, in particular against Mr. Yorongar, remain unpunished, despite the significant leads uncovered by the National Commission of Inquiry pointing to the involvement of the defence and security forces, and in particular the presidential guard;

5. *Requests* the Secretary General to forward this decision to the Speaker of the National Assembly and to the complainant.

Democratic Republic of the Congo

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DRC/78 - Emmanuel Ngoy Mulunda
DRC/79 - Eliane Kabare Nsimire (Ms.)

Decision adopted by the Committee on the Human Rights of Parliamentarians at its 146th session (Geneva, 24 - 27 January 20145)

The Committee,

Referring to the case of 29 former members of the National Assembly of the Democratic Republic of the Congo (DRC) disqualified by the Supreme Court decision of 25 April 2012, and to the decision adopted at its 143rd session (January 2014),

Bearing in mind the letter of 13 January 2015 from the Speaker of the National Assembly and the information provided by the complainants,

Bearing in mind also the report of the mission conducted to the DRC from 10 to 14 June 2013 (CL/193/11b)-R.2),

Recalling the following information on file: having heard the electoral dispute on the results of the legislative elections of 28 November 2011, the Supreme Court, sitting provisionally as the Constitutional Court, which has jurisdiction over electoral disputes, invalidated the elections of 32 members of parliament; 30 of those members contested the decisions and immediately filed applications for rectification of clerical errors, the only remedy available to them under Congolese legislation; on 4 May 2012, the National Assembly voted in plenary to execute the Supreme Court decisions even though those applications remained pending before the Court; the disqualified members of parliament were replaced by new members who were proclaimed elected by the Supreme Court after the vote in the National Assembly; the applications were denied by the Supreme Court in late August and early September 2012; given that they had exhausted all internal remedies and that the invalidation decisions remained arbitrary, the disqualified members of parliament requested compensation for the damages they had suffered and payment of the balance of their parliamentary allowances for the period in which they had sat in the National Assembly,

Recalling also that, in the resolution it adopted at its 191st session (October 2012), the Governing Council observed with deep concern that the Supreme Court decisions of 25 April 2012 invalidating the elections of 32 parliamentarians had been marred by serious procedural flaws and violations of the rights of defence, that the applications for rectification of clerical errors introduced by 30 of the disqualified parliamentarians had not allowed the cases to be re-examined on the merits, and that there was therefore in practice no remedy in Congolese law with respect to Supreme Court decisions on electoral disputes, which was tantamount to a denial of justice,

Considering that the National Assembly, acting to ease the political tension, agreed to the principle of an amicable settlement with the disqualified members of the National Assembly, that the disqualified members and the Speaker of the National Assembly met several times in 2013 with a view to negotiating a satisfactory solution, that the National Assembly agreed to pay part of the parliamentary allowances owed to the disqualified members of parliament and made partial payments in 2013, but refused to pay compensation for the damages suffered by the members concerned on the grounds that there existed no legal provisions recognizing their right to such compensation,

Recalling, moreover, that, in a letter to the Speaker of the National Assembly dated 15 June 2013, the President of the Senate had considered that the disqualified members of parliament should receive satisfactory compensation, as had those elected in 2006 and disqualified in the same conditions,

Recalling in that respect the following: after the first presidential and legislative elections in the DRC, in 2006, the Supreme Court had also invalidated the elections of parliamentarians while proclaiming the final outcome of the legislative elections; the disqualified members of parliament had brought the case before the Committee, claiming that the Court's decisions were arbitrary (Group of 18 case, DRC/30-45 Tshibundi et al.); in view of the numerous criticisms directed at the Court for the way in which it had ruled on the electoral disputes, the National Assembly had established a special committee tasked with examining the follow-up to be given to Supreme Court decisions on cases involving the election of national members of parliament; that committee had uncovered numerous procedural flaws in the Court's proceedings and the National Assembly had consequently adopted, on 17 July 2007, a resolution denouncing the Court's decisions as "marred by serious irregularities and abuse of rights"; the National Assembly had played a key role, pledging to reform the judicial system, to take the necessary measures to ensure that such cases did not recur and to find means of repairing the injustice suffered by the parliamentarians concerned,

Recalling also the following: the procedure applying to electoral disputes had been modified by the preceding legislature in 2011, which had replaced the previous oral and transparent adversarial system by a written, non-transparent inquisitorial system; after the 2011 elections, the European Union Election Observation Mission had recalled in its final report that, in a situation like that prevailing in the DRC, where some political players did not have confidence in the independence of the judicial branch and had already criticized its lack of transparency, the new procedure had come in for strong criticism, all the more so because the Supreme Court had not followed it, having failed to conduct all the investigations needed to verify the integrity and lawfulness of the provisional results,

Considering that, according to the Speaker of the National Assembly, Parliament had drawn a lesson from the challenges to the process by which the electoral disputes of 2006 and 2011 were managed and the concerns voiced at that time, and intended to amend the electoral law with a view to not only strengthening the eligibility conditions and improving the mechanisms for resolving electoral disputes, but also to ensuring that electoral disputes were dealt with before mandates were confirmed by one or the other house, and that the Speaker of the National Assembly confirmed in February 2014 that Parliament would examine draft legislation amending the electoral law to that end during the regular session in March 2014,

Taking into account that, pursuant to a favourable Supreme Court ruling, Mr. Kiluba Longo was reinstated to the Senate in November 2013 and, according to the letter from the Speaker of the National Assembly of 13 January 2015, three of the disqualified members of parliament were appointed to national or provincial public institutions, with a view to easing the political tension, and that a fourth appointment was anticipated in the near future,

Considering that, according to the complainants, the Speaker of the National Assembly systematically refused to meet with the disqualified members of parliament and pursue the dialogue with them in 2014, despite their repeated letters and requests for a hearing, that the balance of the allowances owed has yet to be paid and that no progress has been made on the question of compensation for the damages sustained almost three years after the disqualification,

Recalling that the DRC is party to the International Covenant on Civil and Political Rights, Articles 25 and 26 of which establish the right to vote and to be elected at elections guaranteeing the free expression of the will of the electors, and the right to equality before the law,

1. *Notes with regret* that the dialogue between the disqualified members of parliament and the National Assembly was not pursued in 2014 and *trusts* that it will be resumed as soon as possible;

2. *Remains convinced* that a negotiated political settlement is essential to repairing the damages sustained by the disqualified members of parliament and *wishes to be kept informed* by both parties about the progress made to that end;

3. *Wishes to know* whether the amended electoral law has met concerns relating to the procedure for electoral disputes and validation of parliamentary mandates, and if so, how;

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

5. *Decides* to continue examining this case.

Niger

RN 115 - Amadou Hama

Decision adopted by the Committee on the Human Rights of Parliamentarians at its 146th session (Geneva, 24 - 27 January 20145)

The Committee,

Having before it the case of Mr. Amadou Hama, former Speaker of the National Assembly of Niger, pursuant to the Procedure for the examination and treatment of complaints (Annex I of the revised rules and practices of the Committee),

Referring to the communications from the First and Fourth Deputy Speakers of the National Assembly, dated 10 October and 11 December 2014 respectively, and to the documentation enclosed therein, as well as to the information and documents provided by the complainant,

Considering the following information on file: on 27 August 2014, the Bureau of the National Assembly of Niger authorized the arrest of Mr. Amadou Hama, at the time the Speaker of the National Assembly, in response to a request made by the Prime Minister on 25 August 2014 in the context of judicial proceedings linked to trafficking in babies; Mr. Amadou Hama fled Niger on 28 August 2014 following the Bureau's decision and is currently abroad; a national arrest warrant was issued for him and he was formally charged on 4 December 2014, along with 30 other people, including his wife; the Niamey Criminal Court opened proceedings in the case on 2 January 2015, but suspended them until 30 January in order to examine procedural questions before considering the merits; under the law of Niger, Mr. Amadou Hama will be tried in absentia and will be unable to be represented by a lawyer; should he be convicted in absentia, he can oppose the verdict and ask for a retrial in his presence pursuant to the Code of Criminal Procedure; his wife, who is present in Niger, will benefit from the assistance of a lawyer; to date, the authorities of Niger have not requested an international arrest warrant for Mr. Amadou Hama or demanded that he be extradited,

Considering that, pursuant to the referral order of the examining magistrate dated 4 December 2014, all the persons charged are being prosecuted for “child substitution” (and aiding and abetting child substitution), forgery and use of forged documents, and criminal conspiracy, which are punishable by up to 10 years in prison and revocation of civic and political rights; that Mr. Amadou Hama's wife, along with other women, is accused of faking their pregnancies and purchasing newborn babies in Nigeria through a Nigerian woman healer involved in a subregional baby-trafficking network, and of obtaining false birth certificates on their return to Niger; and that Mr. Amadou Hama is accused of complicity for allegedly having known of his wife's conduct and having had false birth certificates issued,

Bearing in mind the complainant's allegations that the procedure followed by the National Assembly to authorize Mr. Amadou Hama's arrest took no account of his parliamentary immunity and rights of defence, that there is no evidence to back up the charges against him and that he is the victim of a campaign of political and legal harassment,

- <u>As concerns parliamentary immunity and the procedure followed by the National Assembly to authorize the arrest</u>

Considering that, according to the complainant, Mr. Amadou Hama's parliamentary immunity and rights of defence were disregarded, as follows:

- Mr. Amadou Hama was heard by neither the Bureau, of which he was the President at the time, nor a committee of the National Assembly; the file containing the charges against him was not made available to him and the requests filed by the judicial and executive authorities provided scant particulars in this respect;
- The presumption of innocence was violated, given that Mr. Amadou Hama's arrest was requested without him first being asked for his version of events and without considering

such alternatives as his voluntary appearance or release on bail, and even though the procedure did not have the prior authorization of the National Assembly;

- The Prime Minister's request did not contain sufficient information to enable the Bureau to deliberate on the request and to assess whether the prosecution was serious and not an abuse of process, in compliance with the jurisprudence of the Constitutional Court which required; namely, the information provided did not include information regarding the acts of which Mr. Amadou Hama is accused, the circumstances in which they occurred, the degree to which he was implicated, the criminal qualification of the acts and the measures requested, in particular, any deprivation of freedom; the Bureau did not ask for the missing information and reached a decision on the request within 48 hours, without waiting for the Constitutional Court to rule on Mr. Amadou Hama's application for interpretation of the constitutional provisions regarding parliamentary immunity;
- The executive authorities waited until the National Assembly was no longer in session to introduce the request, in order to ensure that it would be handled exclusively by the Bureau and not put to a vote in plenary, where it would require a qualified majority (according to the complainant, the vote would have gone against the government); the initial request from the judicial authorities is dated 16 July 2014, and the matter should therefore, according to the complainant, have been placed on the agenda of the extraordinary session of parliament held from 5 to 19 August 2014;
- The proceedings against Mr. Amadou Hama had not been authorized before his arrest was requested, and this constitutes disregard for his parliamentary immunity; according to Article 88(4) of the Constitution, when parliament is not in session, the Bureau may authorize the arrest of a parliamentarian but does not have jurisdiction to authorize judicial proceedings; consequently, in order for the Bureau to authorize an arrest when parliament is not in session, the judicial proceedings against the parliamentarian concerned must first have been authorized by the National Assembly meeting in plenary during the session, with due regard for the procedure for lifting parliamentary immunity, and this was not done in the present case;
- The National Assembly Standing Orders do not stipulate the practical modalities to be followed by the Bureau when authorizing an arrest; they contain no provisions on the Bureau's decision-making process or on the guarantees relating to the rights of defence;
- The Bureau's decision was not valid because the Bureau's composition at the time it made the decision did not conform to the Constitution; the decision was made only by the members of the Bureau from the majority, in the absence of those from the opposition; furthermore, on the date the decision was made, the Bureau's composition continued to infringe Article 89(1) of the Constitution, which provides that “[t]he composition of the Bureau must reflect the political configuration of the National Assembly”; this was confirmed by the Constitutional Court,

Considering also that, according to the parliamentary authorities, the procedure followed by the National Assembly was in conformity with the Constitution and did not disregard Mr. Amadou Hama's parliamentary immunity, in particular in view of the following:

- Contrary to what he alleged, Mr. Amadou Hama knew what the facts and evidence underlying the charges against him were (the authorities did not indicate how this information had been provided to him);
- The Bureau offered Mr. Amadou Hama the possibility to defend himself before authorizing his arrest, but Mr. Amadou Hama instead engaged in the following stalling tactics: (1) he did not convene a meeting of the Bureau on 26 August 2014 in response to the government request, even though seven members of the Bureau had requested such a meeting in writing; (2) he had preferred to reply to the Prime Minister in person (asking for additional information) on the same date, without first consulting the Bureau; (3) he had filed a petition with the Constitutional Court, asking it to interpret the constitutional provisions on parliamentary immunity with a view to contesting the Bureau's jurisdiction in that regard;
- The National Assembly could not refuse to respond to the government's request without valid grounds; the request having been made while it was not in session, the National

Assembly had no choice in terms of procedure and had simply applied Article 88(4) of the Constitution, which empowers the Bureau to act in such cases;

- Although neither the Constitution nor the National Assembly Standing Orders stipulate a specific procedure to be followed by the Bureau when it authorizes the arrest of a member of parliament, the members of the Bureau verified that the government's request was honest and sincere and considered that the proceedings were neither an abuse of process nor vexatious; the members of the Bureau reached that conclusion because the procedure did not target Mr. Amadou Hama alone and Mr. Amadou Hama was the only suspect still at large on the day of the Bureau meeting; the minutes of the meeting of the Bureau of 27 August 2014, forwarded by the authorities, say that "the matter was extensively discussed and considered in depth", but without further details;
- In its decisions of 4 and 9 September 2014, the Constitutional Court held that, when parliament was not in session, members of parliament benefit from a lower level of protection from criminal or vexatious proceedings instigated against them on matters unrelated to the exercise of their mandate; it held that a member of parliament could be prosecuted without authorization at such times, and that only the arrest of a member of parliament required prior authorization when parliament was not in session, such authorization falling under the jurisdiction of the Bureau;
- In the same decisions, the Court also stated that the National Assembly must assess the "serious, honest and sincere" character of legal proceedings instituted against a member of parliament when parliament was in session, but that determining the grounds for the arrest of a member of parliament when parliament was not in session was the sole responsibility of the Bureau; it did not consider that it was empowered to determine the lawfulness of the legal proceedings, and said that the procedure for lifting parliamentary immunity did not apply when it came to authorizing the arrest of a member of parliament when parliament was not in session, and that such authorization was equivalent in effect to lifting immunity;
- With regard to the conformity of the composition of the Bureau with the Constitution, the Constitutional Court ruled that a Bureau made up of 11 members did not reflect the configuration of the National Assembly and was not in conformity with the Constitution, but that the current composition of the Bureau of the National Assembly was the result of the decision made by the chairpersons of parliamentary groups to withdraw the applications submitted for the vacant posts and thereby to provisionally waive their right to occupy the two seats to which they were entitled under Article 89(1) of the Constitution; the Court therefore held that the other elected members of the Bureau had to ensure that the National Assembly functioned properly for as long as the vacancies remained unfilled,

- <u>As concerns the charges and respect for due-process guarantees in the judicial proceedings</u>

Considering that, according to the complainant: the charges are groundless and pure fabrications; they are further examples of the many acts of political and legal harassment directed against Mr. Amadou Hama, his relations and his party's leaders and activists since August 2013; the aim of the harassment is to remove Mr. Amadou Hama, an opposition leader, from the post of Speaker of the National Assembly and to prevent him from standing in the 2016 presidential elections; Mr. Amadou Hama therefore preferred to leave Niger and shield himself from political exploitation by Niger’s justice system,

Considering also that, according to the complainant: Mr. Amadou Hama's wife had finally managed to become pregnant thanks to the help of a Nigerian doctor who had been recommended by the second wife of the Head of State, and her pregnancy was known to the Head of State himself, who had offered her gifts, in keeping with the traditions of Niger; his wife's pregnancy was kept under observation in Nigeria, to which she travelled several times before giving birth on 1 September 2012; a baptism was organized in Niamey to celebrate the children's birth, and the Head of State himself had attended; all the documents attesting to the pregnancy and to the medical examinations performed in Nigeria had been placed in the file, at the request of the magistrate; the complainant does not consider that he can speak to the veracity of the charges against the other defendants in the case, but he does

consider that Mr. Amadou Hama and his wife have been shown no evidence of a link between them and any baby-trafficking network or the alleged "baby factory" or "clinic" run by the Nigerian healer; Mr. Amadou Hama's wife refused to have a DNA test for fear that the results would be falsified,

Taking into account that, according to the parliamentary authorities: the judicial proceedings were conducted in total independence and in compliance with the Constitution and the laws of Niger; they came in the wake of a judicial investigation of several months that had established that the purchase of newborn babies in Nigeria had become a widespread practice in Niger, particularly among affluent couples experiencing difficulties having children, and that this practice was part of a subregional human trafficking network; the judicial investigation had collected a substantial amount of evidence of child-trafficking and of the involvement of several high-profile citizens of Niger, including Mr. Amadou Hama and his wife, in particular through inquiries conducted in Nigeria and Benin in cooperation with the judicial authorities of those countries,

Taking into consideration that, in the referral order of 4 December 2014, the examining magistrate concluded that "all the wives simulated pregnancy, knowing full well that they were sterile or could not have children, and bought babies at an exorbitant price", that his conclusions are based, not on conclusive evidence, but rather on deductions made from a web of evidence establishing, according to him, that all the families implicated followed the same approach, and that all the women implicated denied having faked their pregnancy and having bought children and said they had delivered their own children,

Considering also that, according to the above-mentioned referral order, Mr. Amadou Hama's wife did not acknowledge the facts that were alleged against her; she stated that she had given birth to twins on 1 September 2012 following a traditional medicine treatment in Nigeria; several persons having accompanied her to Nigeria (including her gynaecologist) seem to confirm her version of the facts and were reportedly also charged with being accomplices; two of these persons had reportedly fled before being thoroughly interrogated by the investigators; according to the examining magistrate, she furthermore refused to give the name of the clinics and physicians who had attended to her during her pregnancy and to produce an ultrasound; she also admitted to having taken her children to a clinic in Cotonou whose name she had reportedly forgotten, only to retract her statement later; for these reasons, the examining magistrate concluded that these elements were not "such as to rule out the idea that she had given birth as other women" with the assistance of the Nigerian traditional healer and made a stronger case for her conviction and guilt,

Taking into consideration also that the parliamentary authorities have consistently stated that the case was not political in nature, that they acknowledged that Niger, and the National Assembly, were experiencing a period of political tension, but that the tension in question was due, not to the "imported babies" case, but rather to (i) the fact that Mr. Amadou Hama had left the majority and joined the opposition while continuing to occupy the post of Speaker of the National Assembly, and above all had conducted himself, not as a Speaker "above it all" but rather as an opposition leader, and (ii) the dispute relating to the renewal of the National Assembly Bureau in 2014, on which the Constitutional Court had ruled,

Bearing in mind the applicable constitutional, legislative and regulatory framework, in particular Articles 88 and 89 of the Constitution of Niger, Articles 9 to 13 of the Law on the status of parliamentarian, Articles 14 and 15 of the Law on the status of the opposition, and Orders 49 to 55 of the National Assembly Standing Orders,

1. *Notes with appreciation* the cooperation provided by the authorities and *thanks* them for the documents they have forwarded;

2. *Recalls* that the *raison d'être* of parliamentary immunity, in particular parliamentary inviolability, is to ensure that parliament functions smoothly and in complete independence, shielding its members from frivolous accusations, and that, consequently, lifting a member's immunity is a serious measure that must be taken in conformity with the applicable constitutional, legislative and regulatory provisions and with absolute respect for the rights of defence of the parliamentarian concerned;

3. *Is deeply disturbed,* therefore, by several aspects of the procedure in parliament, notably that (i) the government appears to have waited until the National Assembly was not in session to introduce its request, (ii) the Bureau reached a decision in under 48 hours on a government request containing no detailed information on the accusations against the Speaker of the National Assembly or the evidence collected by the judicial authorities against him, (iii) the Bureau reached its decision without asking for additional information, (iv) the Bureau reached its decision without first hearing the Speaker of the National Assembly (and there is nothing to indicate that the Speaker had received detailed information on what he was accused of and on what evidence), (v) the Bureau reached its decision without waiting for the Constitutional Court to rule on the request for an interpretation of the Constitution, (vi) the Bureau reached its decision in the absence of any representative of the opposition and at a time when its composition had not been in conformity with the Constitution for several months, (vii) the National Assembly plenary never examined the lawfulness of the proceedings, even though the Constitutional Court had ruled that it was up to the National Assembly, and not the Bureau, to assess the justification for proceedings and therefore the "serious, honest and sincere" character of legal proceedings instituted against a member of parliament;

4. *Notes with concern* that, unlike the procedure for lifting immunity, the procedure for authorizing the arrest of a member of parliament by the Bureau is currently governed by no legal provisions; w*ishes* to receive additional information on the common practice in this regard, notably for decision-making; *considers* that this legal vacuum is not conducive to ensuring due process and *invites* the National Assembly to amend its Standing Orders as soon as possible with a view to establishing an appropriate framework for the procedure, in particular by incorporating all guarantees relating to the rights of defence;

5. *Observes* that the parties have divergent views on the course of the judicial investigations; *notes* that the case has been referred to the Niamey Criminal Court and *wishes* to send an observer to the trial;

6. *Is nevertheless surprised* that Mr. Amadou Hama's wife should have refused to take a DNA test, given that such a test is an irrefutable means of ascertaining the parentage of her children; *wishes* to know in what circumstances the legislation of Niger authorizes the judge to order such tests and whether Mr. Amadou Hama's wife would be willing to have the test done by an independent expert; *offers* IPU assistance in identifying and facilitating the intervention of such an expert;

7. *Requests* the Secretary General to convey this decision to the parliamentary authorities, the complainant and any third party likely to be able to provide relevant information, and to take any necessary steps to follow up on the offer of assistance as soon as possible;

8. *Decides* to continue examining the case.

Togo

TG/05 - Ahli Komla A. Bruce
TG/06 - Manavi Isabelle Djigbodi Ameganvi
TG/07 - Boévi Pé Patrick Lawson
TG/08 - Jean-Pierre Fabre
TG/09 - Kodjo Thomas-Norbert Atakpamey
TG/10 - Tchagnaou Ouro-Akpo
TG/11 - Akakpo Attikpa
TG/12 - Kwami Manti
TG/13 - Yao Victor Ketoglo

Decision adopted by the Committee on the Human Rights of Parliamentarians at its 146th session (Geneva, 24 - 27 January 20145)

The Committee,

Referring to the cases of the nine former parliamentarians, and to the resolution adopted by Governing Council at its 192nd session (March 2013),

Referring to the letter of 21 January 2015 from the Speaker of the National Assembly and the communication of the complainants of 14 March 2014,

Recalling the following information on file:

- The above-mentioned former parliamentarians were all elected in 2010 on the ticket of the Union of Forces for Change (UFC), an opposition party led by Mr. Gilchrist Olympio; following the latter's association with the Togolese People's Rally (RPT), the ruling party, which gave the UFC seven ministerial portfolios soon after the elections of March 2010, 20 UFC members of the National Assembly stood down from their party and formed a new political party called the National Alliance for Change (ANC); they resigned from the UFC parliamentary group at the same time and formed an ANC parliamentary group;
- Before their election, the parliamentarians in question had been obliged, in accordance with a well-established practice among Togolese political parties, to sign and give to their party undated blank letters of resignation as a condition of inclusion in its electoral rolls;
- After the break-up of the UFC and the formation of the ANC, the letters of resignation of the nine parliamentarians concerned were transmitted by the Speaker of the National Assembly to the Constitutional Court, which took note of the undated resignations, declared the corresponding seats vacant and replaced the persons in question; the parliamentarians were not heard during the proceedings by either the National Assembly or the Constitutional Court, and clearly stated that they had not resigned from their seats; the parliamentary authorities and the Constitutional Court were aware of the nature of the letters of resignation and knew that the persons concerned had no intention of resigning their seats;
- The parliamentarians thus removed from office brought their case before the Community Court of Justice of the Economic Community of West African States (ECOWAS) with a view to obtaining their reinstatement to the National Assembly;
- On 7 October 2011, the ECOWAS Community Court of Justice handed down its judgement in the case and ruled that the State of Togo had violated "the plaintiffs' fundamental right to be heard as set out in Article 10 of the Universal Declaration of Human Rights and Article 7 of the African Charter on Human and Peoples' Rights" and, consequently, ordered Togo "to make reparation for the violation of the plaintiffs' human rights and pay each of them the amount of three million (3,000,000) CFA francs" [translated from the French]; in a decision of 13 March 2012 on a request for judicial review it also ruled that, given that it was not an appeal court or able to quash the

judgements of national courts, it was not competent, according to its well-established case-law, to overturn the decision of the Togolese Constitutional Court and order that the parliamentarians in question be reinstated;

- The Togolese State took note of the Community Court of Justice's ruling and, pursuant to a decision by the Council of Ministers of 2 November 2011, the Minister of Justice asked the Minister of Finance to ensure that the amount of 3 million CFA francs was made available to each of the plaintiffs in compensation for the injury caused; the parliamentarians concerned refused that compensation and continued to demand their reinstatement to the National Assembly;
- The exclusion of several opposition members of parliament had exacerbated the political tension in Togo between majority and opposition parties; the legislative elections scheduled for the autumn of 2012 had been postponed, but had eventually taken place in July 2013,

Bearing in mind the Constitution of the Republic of Togo, Article 52 of which stipulates that "… each deputy shall be the representative of the entire Nation. Any imperative mandate shall be nullified", and Article 50 of which stipulates that "the rights and duties set forth in the Universal Declaration of Human Rights and in the international human rights instruments ratified by Togo shall form an integral part of the present Constitution",

Recalling that during the Committee President's visit to Lomé from 2 to 5 March 2013 the nine parliamentarians concerned had expressed their wish to engage in renewed dialogue with the authorities and had said that they were prepared to accept financial compensation; that the Minister of Justice and the Minister of Planning had also said that the Togolese State was willing to engage in political dialogue with the former parliamentarians, with a view to finding a solution,

Considering that the complainants stated in March 2014 that, following the Committee President's visit, and based on his proposals, an agreement had been reached with the authorities on paying compensation to the parliamentarians removed from office and that some of the compensation had just been paid to them,

Considering also that the Speaker of the National Assembly stated on 21 January 2015 that, in order to ease political tensions, the Government had paid the former parliamentarians the damages owed to them, and that the National Assembly had amended its Standing Orders to prevent, in the future, adversely affecting elected members of parliament in the event they resign as a result of "fair weather politics"; Article 6 of the Standing Orders henceforth explicitly provides that the resignation letter of a member of parliament can only be taken into consideration if it emanates from and is handed in by the resigning member of parliament,

1. *Notes with satisfaction* that renewed dialogue between the parliamentarians removed from office and the National Assembly has led to a satisfactory solution being reached, by way of compensation for the injury caused to the parliamentarians removed from office and the amendment of the Standing Orders to prevent the repetition of similar situations in the future;

2. *Decides*, therefore, to close this case and *request*s the Secretary General to forward this decision to the Speaker of the National Assembly and to the complainants.

Venezuela

VEN/10 - Biagio Pilieri
VEN/11 - José Sánchez Montiel
VEN/12 - Hernán Claret Alemán
VEN/13 - Richard Blanco Cabrera

VEN/14 - Richard Mardo
VEN/15 - Gustavo Marcano
VEN/16 - Julio Borges
VEN/17 - Juan Carlos Caldera
VEN/18 - María Corina Machado (Ms.)
VEN/19 - Nora Bracho (Ms.)
VEN/20 - Ismael García
VEN/21 - Eduardo Gómez Sigala
VEN/22 - William Dávila
VEN/23 - María Mercedes Aranguren

Decision adopted by the Committee on the Human Rights of Parliamentarians at its 146th session (Geneva, 24 - 27 January 20145)

The Committee,

Referring to the case of the aforesaid members of the National Assembly of Venezuela and the decision adopted by the Governing Council at its 194th session (March 2014),

Considering the extensive information provided by the Venezuelan delegation during the 131st IPU Assembly (Geneva, October 2014) and the information regularly provided by the complainant,

Recalling the following information on file:

- With regard to Mr. Pilieri, Mr. Sánchez, Mr. Alemán and Mr. Blanco:
  - The four men are exercising their parliamentary mandate but remain subject to criminal proceedings; according to the complainant, the proceedings are baseless; they were instigated before the men's election to the National Assembly in September 2010, at which time Mr. Pilieri and Mr. Sánchez were detained; they were released in February and December 2011, respectively,

- With regard to Mr. Richard Mardo:
  - On 5 February 2013, Mr. Diosdado Cabello, Speaker of the National Assembly, reportedly displayed, in the course of an ordinary session, public documents and cheques to support the hypothesis that Mr. Mardo had benefited from third-party donations, arguing that this amounted to illicit enrichment; the complainant affirms that what the Speaker displayed were falsified cheques and forged receipts;
  - On 6 February 2013, Mr. Pedro Carreño, in his capacity as President of the Parliamentary Audit Committee, pressed criminal charges against Mr. Mardo and called for him to be placed under house arrest in view of the alleged *flagrante delicto* situation;
  - On 12 March 2013, the Prosecutor General's Office formally requested the Supreme Court to authorize proceedings against Mr. Mardo on charges of tax fraud and money laundering; the complainant affirms that only on that day was Mr. Mardo allowed access to the investigation records, which had been compiled without his involvement;

- In its ruling of 17 July 2013, the Supreme Court requested the National Assembly to lift Mr. Mardo's parliamentary immunity, “an action which, if taken, is fully in accordance with Article 380 of the Code of Criminal Procedure”, which stipulates that, “Once the required formalities for the prosecution have been duly completed, the official shall be suspended, or suspended and barred, or barred from holding any public office during the trial”; on 30 July 2013, the National Assembly decided to lift Mr. Mardo’s parliamentary immunity; according to the complainant, the authorities have not advanced with the criminal proceedings, which seem to have stalled,

• With regard to Ms. María Mercedes Aranguren:

- On 12 November 2013, the National Assembly lifted Ms. Aranguren's parliamentary immunity so as to allow charges of corruption and criminal association to be filed in court; the complainant points out that Ms. Aranguren had switched to the opposition in 2012 and that the lifting of her immunity and her subsequent suspension under Article 380 of the Code of Criminal Procedure meant that she would be replaced by her deputy, who remained loyal to the ruling party, thus giving the majority the 99 votes needed for the adoption of enabling legislation (*ley habilitante*) investing the President of Venezuela with special powers to rule by decree; the complainant affirms that the case against Ms. Aranguren is not only baseless, but had been dormant since 2008 and was only reactivated in 2013 in order to pass the enabling legislation; according to the complainant, the authorities have not advanced with the criminal proceedings, which seem to have stalled,

• With regard to Ms. María Corina Machado:

- On 24 March 2014, the Speaker of the National Assembly announced, without any discussion in plenary, that Ms. Machado had been stripped of her mandate after the Government of Panama had accredited her as an Alternate Representative at the March 2014 meeting of the Permanent Council of the Organization of American States (OAS) in Washington, DC, so as to allow her to present her account of the situation in Venezuela; according to the Speaker, Ms. Machado had contravened the Constitution by accepting the invitation to act as a Panamanian official at the meeting; the complainant affirms that the decision to revoke Ms. Machado's mandate was taken without respect for due process and was unfounded in law, first, because it was taken unilaterally by the Speaker of the National Assembly without any debate in plenary, and second, because Ms. Machado was accredited as a member of another country’s delegation merely so that she could take part in a single meeting, a step taken in the past in respect of other participants at OAS meetings, and she had in no way accepted or assumed any official post or responsibilities on behalf of the Panamanian Government;
- The matter was brought before the Constitutional Chamber of the Supreme Court, which, in its decision of 31 March 2014 concluded, relying primarily on Articles 130, 191, 197 and 201 of the Constitution, that Ms. Machado had automatically lost her parliamentary mandate by agreeing to act as an alternate representative for another country before an international body;
- According to the complainant, days before Ms. Machado was stripped of her parliamentary mandate the National Assembly had requested the Prosecutor General’s Office, in a document signed by 95 parliamentarians from the majority, to initiate pre-trial proceedings against her for, according to the Speaker, “the crimes, devastation and damage in the country” following the large demonstrations and violent clashes between protestors and government forces that took place in the early months of 2014;
- Ms. Machado is now under investigation on accusations of involvement in an alleged plot to carry out a coup d’état and assassination; she is subject to a travel ban following a charge of public incitement to violence under Article 285 of the Criminal Code in connection with her involvement in the events that took place on 12 February 2014 outside the Prosecutor General’s headquarters; Ms. Machado has denied the accusations and charge against her,

- With regard to Mr. Juan Carlos Caldera:

- On 26 November 2014, the Supreme Court authorized Mr. Caldera's prosecution, referring to Article 380 of the Code of Criminal Procedure; the complainant affirms that, contrary to the Court's ruling, the acts for which Mr. Caldera is to be investigated are not crimes; the complainant affirms that an illegal audio recording emerged showing several persons plotting to frame Mr. Caldera by making a lawful act – the receipt of private funds for a mayoral election campaign – appear criminal in the eyes of the public; the complainant points out that, in Venezuela, public funding of political parties and election campaigns is prohibited; faced with the imminent application of Article 380 of the Code of Criminal Procedure, since it is the majority in the National Assembly that instigated his prosecution and announced that it would lift his immunity, Mr. Caldera decided to resign from his functions before his parliamentary immunity was lifted,

- With regard to Mr. Ismael García:

- In November 2014, the Supreme Court admitted a request for pre-trial proceedings in the case brought against Mr. García by General Carvajal, who claims to have been defamed and is being currently held in Aruba at the request of the United States government on accusations of drug trafficking; the complainant points out that Mr. García had formally requested the Prosecutor General's Office to investigate General Carvajal for his alleged role in criminal activity; according to the complainant, none of these aspects was considered by the Supreme Court before admitting the request,

Considering that, according to the complainant, the lifting of parliamentary immunity, inasmuch as it has the effect of suspending the parliamentary mandate, requires a three-fifths majority vote in the National Assembly, whereas the parliamentary authorities affirm that a simple majority is sufficient; *considering also* that, according to the complainant, the fact of suspending a member of parliament for the duration of criminal proceedings under Article 380 of the Code of Criminal Procedure runs counter to Articles 42 and 49(2) of the Constitution, which circumscribe limitations to political rights and guarantee due process and the presumption of innocence, an affirmation denied by the authorities,

Recalling that an IPU mission was due to travel to Venezuela in June 2013 to address, among other things, the issues that had arisen in this case, but that the mission was postponed at the last minute in order to allow the parliamentary authorities more time to organize the meetings requested,

Bearing in mind that the IPU Secretary General will be travelling on an official visit to several countries in Latin America in February/March 2015,

1. *Notes* that the parliamentary authorities and the opposition have opposing views regarding the legal and factual basis for the action taken to suspend several opposition parliamentarians, lift their parliamentary immunity, subject them to criminal investigation and prosecution and strip them, in the case of Ms. Machado, of their parliamentary mandate;

2. *Believes* that the National Assembly should be the place in Venezuela where different views are expressed without fear of reprisal and charges of incitement to violence and where efforts are made to find common ground; *is concerned,* therefore, that the National Assembly itself, rather than the judicial authorities, took the initiative, at least in the case of Mr. Mardo, Ms. Machado and, allegedly, Mr. Caldera, to press criminal charges against members of the opposition, thereby lending weight to the allegation that the charges are politically rather than legally motivated; *is particularly concerned* about the way in which the National Assembly decided to strip Ms. Machado of her parliamentary mandate and about the facts and legal provisions cited in support of that decision;

3. *Is concerned also* that, as shown by the cases of Mr. Pilieri, Mr. Blanco and Mr. Alemán, who remain subject to criminal proceedings that have lasted years, a suspension from parliament for the duration of legal proceedings may in practice amount to the loss of the parliamentary mandate, thereby denying not only the individual his/her political rights but

also his/her electorate's right to be represented in parliament; *notes with concern,* therefore, that Mr. Mardo and Ms. Aranguren remain unable to exercise their parliamentary mandate, allegedly in the absence of any progress in the criminal proceedings pending against them;

4. *Is keen to* obtain a comprehensive understanding of the factual and legal basis for the investigations against Ms. Machado and for the restrictions placed on her freedom of movement; *wishes* to receive detailed information on these points;

5. *Is concerned* about the legal steps taken against Mr. García; *fails to understand* how, given his status as a parliamentarian entrusted with oversight of the State apparatus, including the State security sector, his comments and action can give rise to a defamation case; *wishes* to receive the official views on these matters;

6. *Is convinced,* all the more so in the light of the latest developments, that a visit by a Committee delegation to Venezuela would provide a useful and direct opportunity to gain a better understanding of the complex issues at hand;

7. *Requests* the Secretary General to use the opportunity of his planned visit to Latin America in February/March 2015 to meet with the Venezuelan parliamentary authorities in Caracas to discuss the organization of the Committee's visit; *expresses the hope*, therefore, that its visit can take place in the near future;

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

9. *Decides* to continue examining this case.

Afghanistan

AFG/05 - Fawzia Koofi

Decision adopted by the Committee on the Human Rights of Parliamentarians at its 146th session (Geneva, 24 - 27 January 20145)

The Committee,

Referring to the case of Ms. Fawzia Koofi, a member of the Wolesi Jirga (House of the People) of Afghanistan, and to the decision it adopted at its 141st session (March 2013),

Referring also to the information provided by members of the Afghan delegation to the 128th IPU Assembly (Quito, March 2013) and by the complainant,

Recalling that Ms. Koofi has been the target of death threats and assassination attempts since her election to parliament,

Considering that according to the complainant, no progress has been made towards holding the perpetrators of any of the death threats and attempted assassinations accountable,

Aware of the following instances of threats and attacks against Ms. Koofi:

- March 2010 assassination attempt:
  - On 8 March 2010, Ms. Koofi's convoy was attacked while she was on her way back from a celebration in the eastern city of Nangarhar (Jalalabad); two of Ms. Koofi's security guards were wounded during the attack, but she escaped unhurt;
  - According to the parliamentary authorities, the attack took place on a dangerous road where security incidents occur every day, a fact well known to Ms. Koofi, who had nonetheless not informed the security services of her travel itinerary; it was not established that Ms. Koofi undertook this trip to conduct parliamentary activities; when the Afghan parliament was informed about the attack, it sent a helicopter to the scene of the incident to bring her back to Kabul;
  - According to the complainant, the police – and only the police – had been informed of Ms. Koofi's travel itinerary; when she arrived at the road, the Taliban were lying in wait to ambush her; the complainant believes that the police leaked the information to the Taliban; Ms. Koofi has sought information from the Minister of the Interior on the matter but has received no response,

- Threats and attacks during the 2010 parliamentary elections:
  - According to the complainant, in 2010 Ms. Koofi was informed by the Department of Security that a former warlord running in the elections wanted to kill her and that the attack would be planned by his brother; two of the attackers were arrested, but subsequently released as a result of a bribe, and the confession of one of the attackers disappeared from the file;
    Ms. Koofi was, however, able to retrieve it with the help of the security department in her province; the former warlord himself was never arrested, despite being known to the authorities, allegedly due to his political influence;
  - According to the complainant, in early November 2010 four individuals involved in Ms. Koofi's campaign were killed; the assassination reportedly took place in front of a police station in Badakhshan, with the perpetrator having had sufficient time to carry out the killing and drive off in his car to an area controlled by the Taliban; the police allegedly took no action to arrest the killer, who was reportedly able to move about freely in the area where he lived because his brother, a police officer, allegedly prevented his colleagues from taking any action; the police officer was arrested and subsequently released; despite Ms. Koofi having raised the matter in parliament and with its Internal

Security Committee, no parliamentary action ensued, nor was any progress made in the investigation into the murder; the complainant indicated in July 2014 that Ms. Koofi had stopped pursuing the case for fear that further efforts to push for the assailant's arrest would lead to reprisals;

- The leader of the Afghan delegation to the 123rd IPU Assembly (Geneva, October 2010) spoke of the insecurity reigning in Afghanistan and said that the identities of the masterminds and perpetrators of the attempts to assassinate Ms. Koofi were known; however, he did not know that a suspect had been arrested and then subsequently released in the case of the attempted murder of Ms. Koofi, nor was he aware that members of Ms. Koofi's campaign had been killed; he considered that those cases fell within the competence of the police and the Attorney General, but acknowledged that parliament was entitled to question them; a similar response was provided by the delegation to the 124th IPU Assembly (Panama City, April 2011),

- <u>October 2013 death threats</u>:

- The complainant alleges that government authorities notified Ms. Koofi in October 2013 of an imminent threat of a terrorist attack against her by approximately 30 Taliban militants; despite having provided this information, the authorities allegedly took no action to provide Ms. Koofi with additional security; although ultimately no attack was carried out, the complainant alleges that the lack of response by the authorities to her request for additional security may have been due to Ms. Koofi's gender, especially considering that men members of parliament were often afforded such protection when it was warranted,

Recalling that the Afghan delegation to the 128th IPU Assembly (Quito, March 2013) provided the following information: Ms. Koofi's case was considered critical by the parliament and Government of Afghanistan; security measures had been put in place to ensure her protection, and the Wolesi Jirga had provided her with two additional security guards; full security for all members of parliament, including Ms. Koofi, could not be completely guaranteed due to the unpredictable nature of attacks in Afghanistan; the delegation would raise Ms. Koofi's security situation with the Speaker to gauge whether additional protective measures were needed,

Taking into account the following considerations: Ms. Koofi is a women's rights advocate and, according to the complainant, many political and religious leaders in Afghanistan object to her rise to prominence; very few members of parliament receive threats as frequently as and as serious as those targeting Ms. Koofi because of her gender, activism, international network, and ties to a province that has traditionally resisted the Taliban; the situation of Afghan parliamentarians has recently become more difficult because of the deteriorating security situation, with women parliamentarians being targeted more frequently than men parliamentarians; political opponents have also become more aggressive; Ms. Koofi was also the victim of verbal assaults in parliament in 2013, and no one offered her support at the time,

Bearing in mind that Article 23 of the Constitution of Afghanistan guarantees the rights to life and to security, which are also enshrined in the International Covenant on Civil and Political Rights, to which Afghanistan is a party, and that Afghanistan is party to the Convention on the Elimination of All Forms of Discrimination against Women,

1. *Remains preoccupied* by Ms. Koofi's security situation, particularly in light of the continuing threats against her and her entourage; *is alarmed* not only that Ms. Koofi may be targeted because she is a woman and a prominent women's rights advocate, but also at the claims that she has been denied equal protection because of this; *calls on* the authorities to take the necessary steps to ensure her continued protection, and *wishes t*o receive updated information on the current arrangements for her security;

2. *Fears,* however, that any security arrangement is bound to fail if the perpetrators of threats and attacks are not punished and if they believe that they can act with impunity; *remains deeply concerned,* therefore, that the attempt to have Ms. Koofi assassinated in 2010 remains unpunished, along with more recent threats directed at her; *remains*

particularly concerned by the allegations that law enforcement and judicial officials may have assisted those directly responsible for the events that occurred in 2010 and may have thwarted the course of justice; *calls on* the authorities to give renewed impetus to the investigations into these crimes and to ensure that the possible complicity of State officials is also investigated;

3. *Regrets* that it has received no response from the Afghan parliament since March 2013, despite the seriousness of the threats faced by Ms. Koofi; *remains convinced* that monitoring by parliament could be decisive in ensuring that justice prevails and in deterring future criminal acts;

4. *Acknowledges* the difficult security situation of all members of parliament in Afghanistan but *reaffirms* that threats to the life and security of members of parliament, if left unpunished, not only violate their rights to life, security and freedom of expression, but also undermine their ability to exercise their parliamentary mandate, affecting the ability of parliament as an institution to fulfil its role, and that parliament consequently has a vested interest in creating a safer environment for members of parliament, and hence for all citizens;

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

6. *Decides* to continue examining this case.

Malaysia

MAL/15 - Anwar Ibrahim

Decision adopted by the Committee on the Human Rights of Parliamentarians at its 146th session (Geneva, 24 - 27 January 20145)

The Committee,

Referring to the case of Dato Seri Anwar Ibrahim, an incumbent member of the Parliament of Malaysia, and to the resolution adopted by the Governing Council at its 194th session (March 2014),

Recalling the following: 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; *recalling* also that 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 was built on a presumption of guilt,

Considering that Mr. Anwar Ibrahim was re-elected in August 2008 and May 2013 and has since been the de facto leader of the opposition *Pakatan Rakyat* (The People's Alliance),

Considering the following: 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; 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 indicate 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 Malaysia 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 has pleaded not guilty to the charge,

Recalling the following procedural flaws and incidents that occurred before and during the investigation and the proceedings before the first-instance court:

- Mr. Saiful testified in court that he was not examined until about 52 hours after the alleged incident, and the first doctor from Hospital Pusrawi (Pusat Rawatan Islam) reported that he had found no evidence of anal penetration; about two hours later, Mr. Saiful then visited Hospital Kuala Lumpur, a government hospital, and a report endorsed by three specialists from that hospital reached the same conclusion;
- The initial First Information Report to the police by the complainant was not released to Mr. Anwar Ibrahim's counsel for months, raising concerns about evidence-tampering, especially as regards DNA samples; moreover, it has been confirmed that Mr. Saiful visited the office and home of the then Deputy Prime Minister, Najib Tun Razak, a few days before he made the allegations (Mr. Najib initially denied that the meeting took place); Mr. Saiful reportedly also had a private meeting with a senior police officer, Mr. Rodwan Yusof, at a hotel the day before alleging that he had been sodomized;
- The main members of the prosecution team were involved in the earlier sodomy case; Attorney General Abdul Ganil Patail, at the time the main prosecutor, has been investigated by Malaysia's anti-corruption agency over allegations that he had fabricated evidence in that case;
- Mr. Anwar Ibrahim's lawyers were denied pretrial access to DNA samples and likewise denied access to, inter alia, statements made by the plaintiff and key prosecution witnesses, notes from doctors who examined Mr. Saiful, and original copies of CCTV

surveillance system recordings made at the condominium at the time of the alleged incident,

Recalling that, 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,

Recalling also that the Attorney General lodged an appeal, that the appeal proceedings started on 7 September 2012, and that an IPU observer, Mr. Mark Trowell QC, attended most of the hearings in the case in 2013 and 2014,

Recalling further that, 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; that the IPU trial observer remarked in his report of 15 March 2014 regarding the hearings on 6 and 7 March 2014 that the Court of Appeal had returned with a decision on the second day of the hearings one hour after the conclusion of submissions, had not dealt in its oral remarks with any of the four critical issues raised by the defence counsel, and had given Mr. Anwar Ibrahim's lawyer, who had requested an adjournment so as to obtain a medical report concerning Mr. Anwar Ibrahim's heart and blood pressure, only an hour to prepare his client's arguments for mitigation of the sentence,

Considering that the ruling by the Court of Appeal was challenged before the Federal Court, that the Federal Court held hearings in the case from 28 October to 7 November 2014 and that those hearings were followed by the IPU trial observer, and that the Court is due to deliver its verdict on 10 February 2015,

Considering also that, on 18 August 2014, one of Mr. Anwar Ibrahim's lawyers, Mr. N. Surendran, was charged with sedition for stating that the Court of Appeal's conviction of Mr. Anwar Ibrahim was "flawed, defensive and insupportable", that Mr. Surendran was charged a second time, on 27 August 2014, for comments he made on a YouTube video on 8 August 2014, in which he claimed that Mr. Anwar Ibrahim's prosecution was a "political conspiracy" involving the government, and that Mr. Surendran has claimed that he was merely expressing his views on the appellate court's decision as Mr. Anwar Ibrahim's legal counsel and voicing the observations and arguments that he would subsequently present to the Federal Court, as he did in the course of the hearings that took place from 28 October to 7 November 2014,

Considering further that, if the Federal Court upholds Mr. Anwar Ibrahim's conviction, he will be disqualified from holding parliamentary office and will not be eligible to run for parliament for six years after he has completed his sentence, i.e. until July 2027,

Recalling that, during the hearing which the Committee held on 18 March 2014 with the Malaysian delegation to the 130th IPU Assembly (Geneva, March 2014), the leader of the delegation said that the matter was now before the Federal Court, that Malaysia's courts were fully independent, that the case had been pending since 2012 and, when asked if prosecution charges on sodomy were common in Malaysia, that she was only aware of Mr. Anwar Ibrahim's case,

Noting that Mr. Anwar Ibrahim's second trial on sodomy charges has been widely criticized as a bid to derail his political career,

1. *Trusts* that the Federal Court will give due consideration to all the arguments presented in this case, in a manner that will ensure that justice is fully done and seen to be done; *recalls* its concerns in this regard about the rushed manner in which the final hearings were conducted and organized before the Court of Appeal, the apparent ease with which the main arguments presented by the defence, in particular concerning the integrity of the DNA samples, were dismissed, and the fact that the same law, although never or rarely invoked in Malaysia, has been invoked twice against Mr. Anwar Ibrahim;

2. *Is deeply concerned* that Mr. Surendran is facing charges of sedition in relation to the legitimate exercise of his role as legal counsel for Mr. Anwar Ibrahim; *considers* that, in a case like this with strong political connotations, including with regard to some of the allegations concerning the alleged victim (Mr. Saiful), it is crucial for Mr. Anwar Ibrahim's lawyers to be able to present their version of the facts in full, without fear of reprisals; *sincerely hopes,* therefore, that the Attorney General will drop the charges against Mr. Surendran;

3. *Believes* that, in the light of Mr. Anwar Ibrahim's case history and the issues in play, including the fact that, if upheld, the current conviction would eliminate him from the life of parliament for more than a decade, thus depriving the opposition of its main leader, it is critical for the IPU to closely follow the final stage in the proceedings against Mr. Anwar Ibrahim before the Federal Court;

4. *Requests* the Secretary General to make the necessary arrangements to ensure the presence of a trial observer at the final hearing(s);

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. *Decides* to continue examining this case.

Malaysia

MAL/18 - Gobind Singh Deo

Decision adopted by the Committee on the Human Rights of Parliamentarians at its 146th session (Geneva, 24 - 27 January 20145)

The Committee,

Referring to the case of Mr. Gobind Singh Deo, a member of the Parliament of Malaysia, and to the decision it adopted at its 132nd session (January 2011),

Recalling that, on 13 March 2009, acting on a motion brought by Minister Datuk Seri Nazri Aziz, Parliament suspended Mr. Singh from its premises for 12 months without parliamentary pay and privileges for (i) having referred to the alleged involvement of the then Deputy Prime Minister, Datuk Seri Naji Razak, in the murder of a Mongolian woman, (ii) having called the Deputy Prime Minister a murderer, (iii) having disobeyed an order of the Deputy Speaker not to raise this matter and, (iv) having uttered a derogatory statement about the Deputy Speaker,

Recalling that Mr. Singh challenged his suspension in court, which on 22 October 2009 found that it was not competent to examine the issue of suspension, but ruled that Mr. Singh was entitled to payment of his salary and other allowances under Article 64 of the Constitution; Mr. Singh returned to Parliament on 16 March 2010 but, owing to the Speaker's appeal against the court decision, without the payment of his salary and allowances,

Considering that the Court of Appeal upheld the judgement entitling Mr. Gobind Singh to his parliamentary salary and allowances, and that this was subsequently challenged by the Speaker before the Federal Court; on 3 November 2014, the Federal Court ordered Parliament to pay the salary and remuneration withheld from Mr. Gobind Singh Deo during his one year suspension in 2009; the court, in upholding the decision of the High Court and the Court of Appeal, held that there was no law which allowed Parliament the power to do so,

1. *Is pleased* that the Federal Court has finally ruled on the matter and that, as a result of its ruling, the severity of Mr. Gobind Singh Deo's suspension was slightly tempered;

2. *Reaffirms its views* in this regard that, by parliamentary standards and practice in this field, the disciplinary sanction given to Mr. Gobind Singh Deo in 2009 was clearly disproportionate;

3. *Considers*, however, that with the Federal Court's recent ruling, the case has come to a close and *decides* therefore to conclude its examination of the case;

4. *Requests* the Secretary General to inform the parliamentary authorities and the complainant accordingly.

Sri Lanka

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

Decision adopted by the Committee on the Human Rights of Parliamentarians at its 146th session (Geneva, 24 - 27 January 20145)

The Committee,

Referring to the cases of the above-mentioned parliamentarians, who were all assassinated between 24 December 2005 and 8 January 2008, and to the resolution adopted by the Governing Council at its 193rd session (October 2013),

Taking into account the communication from the Chief Parliamentary Protocol Officer, dated 13 March 2014, forwarding reports from police headquarters and the Attorney General's Department, and the information regularly provided by the complainants,

Recalling the following information on file with regard to Mr. Pararajasingham:

- Mr. Pararajasingham, a member of the Tamil National Alliance (TNA), was shot dead on 24 December 2005 during the Christmas Eve mass at St. Mary's Church in Batticaloa by unidentified gunmen in the presence of some 300 people; his wife and seven other people sustained gunshot injuries; St. Mary's Church is located in a high-security zone between two military checkpoints; at the time of the murder, additional security forces were on duty, which suggests, according to the complainants, that the culprits could have escaped only with the complicity of the security forces;
- The complainants affirm that Mr. Pararajasingham was killed by the Sri Lankan Government with the help of the Tamil Makkal Viduthalai Pulikal (TMVP, also known as the "Karuna group"), a faction led by Mr. V. Muralitharan (alias "Karuna"), which split from the Liberation Tigers of Tamil Eelam (LTTE) in 2004 over grievances that the LTTE gave priority to the situation of the Tamils in the north and disregarded the Tamils in the east; During that time, the Karuna group reportedly asked Mr. Pararajasingham to support the split; his refusal to do so became a problem, given that the Government had wanted the Tamils to divide over the north and east; the complainants affirm that in 2006 the Sri Lankan armed forces launched a major campaign to evict the LTTE from the east of the country, with the assistance of the Karuna group; they also point in this regard to a number of reports in support of the allegations of collusion between the army and the Karuna group;
- With regard to the circumstances of Mr. Pararajasingham's assassination, one of the complainants was told that those who had shot him were from the Karuna group and that their white van had gone in the direction of the army camp situated less than a mile away; the same complainant also affirmed that two of Mr. Pararajasingham's body guards had been sent to the Ministry of Defence just days before the killing and that two new guards had been sent instead; the complainant states that when the killing took place the bodyguard who drove the car was not even on site, as he had locked the car and gone away; after the killing, the killer(s) walked out of the entrance, which was guarded by the other bodyguard; when Mr. Pararajasingham and his wife were taken to hospital, two paramilitary cadres were overheard confirming the former's death over walkie-talkie in the midst of all the people;
- According to the authorities, one of the main problems in the pursuit of justice in the case had been the question of witnesses, as the priest playing the organ at the Christmas Eve mass had been unable to identify any suspects, and witnesses had been afraid to come forward; Soon after the murder, those close to Mr. Pararajasingham had handed over to

the authorities the names of three suspects, namely (a) “Ravi” in Kaluthavalai or Kommathurai, (b) Kalai (from EPDP, a political party and a pro-Government paramilitary organization), and (c) Sitha alias Pradeep, head of the Karuna group’s intelligence; the authorities have affirmed that they have done everything possible to locate and identify these persons, but have been unsuccessful without their full names and addresses,

Recalling the following information on file with regard to Mr. Raviraj:

- Mr. Raviraj, a member of the TNA, was shot dead in the morning of 10 November 2006, along with his security officer, while travelling in his vehicle along a main road in Colombo, the gunman escaping on a motorcycle;
- Investigations revealed that the motorcycle had been sold by two brokers, named Nalaka Matagaweere and Ravindra, to Arul, who at the time was living at the house of S.K.T. Jayasuriya; the latter was taken into custody together with Nalaka; Jayasuriya revealed that Arul was a former LTTE member; Nalaka and Jayasuriya were later released on bail, as inquiries revealed that they had not been in Colombo at the time of Mr. Raviraj’s assassination; arrest warrants were issued for Arul and Ravindra, who, according to the police progress report forwarded in April 2009, were strongly suspected of having gone to the areas then controlled by the LTTE;
- A Scotland Yard team arrived in Sri Lanka on 4 January 2007; the team took swabs of the bloodstain in the bag in which the firearm used for Mr. Raviraj’s assassination had been hidden and transported, and which had been found at the crime scene; the swabs were profiled by Scotland Yard and preserved for matching if and when the suspects are apprehended;
- Since the defeat of the LTTE in May 2009, the Criminal Investigation Department (CID) has attempted to trace Arul and Ravindra among the refugees from the north and has even checked 300,000 displaced people, but to no avail; according to the authorities, a report had been sent to the Attorney General seeking advice on further investigation, and reports from non-governmental organizations, including University Teachers for Human Rights (UTHR), have been read for information about the murder, again to no avail; the complainants underscore that the UTHR’s report concluded that the circumstances of the murder point to State responsibility and that the immediate purpose of Mr. Raviraj's killing appears to have been to silence the Civil Monitoring Committee, which he had set up and whose reports on abductions, killings and extortions had created significant commotion;
- The authorities stated in March 2014 that the Criminal Investigation Department (CID) had recorded statements of the family members of two of the suspects in the Gramaniladhari of Kotahena and Aluthkade areas between July 2013 to February 2014 with regard to their whereabouts, but no useful information had been revealed; further investigations were ongoing by the CID to trace the two potential suspects; the progress of the investigations was periodically reported by the CID to the Magistrate’s Court,

Recalling the following information on file with regard to Mr. Maheswaran:

- The complainant in this case has from the outset emphasized that Mr. Maheswaran voted against the budget on 14 December 2007 and that, soon after the vote, the number of security guards assigned to him was cut from 18 to two; Mr. Maheswaran had openly made several statements to the effect that the reduction of his security detail had put his life seriously at risk and had repeatedly requested the Government to enhance his security, but to no avail; on 1 January 2008, he was shot while attending a religious ceremony in a Hindu temple in Colombo and later died in a Colombo hospital; according to the complainant, the attack came after Mr. Maheswaran had said in a television interview that, when parliamentary sittings resumed on 8 January 2008, he would describe in detail the terror campaign that the Government was pursuing in Jaffna, particularly how abductions and killings were managed;
- The authorities arrested Mr. Johnson Collin Valentino, alias “Wasantha”, from Jaffna, who was identified as the gunman on the basis of a DNA analysis; the investigators concluded that the assailant was a LTTE activist who had been trained and sent to Colombo to kill

Mr. Maheswaran; Mr. Valentino confessed to the crime and was found guilty on 27 August 2012 and sentenced to death,

Recalling the following information on file with regard to Mr. D.M. Dassanayake:

- Mr. Dassanayake was killed on 8 January 2008, along with a bodyguard, in a roadside claymore mine attack while on his way to Parliament; the subsequent arrest of a key Liberation Tigers of Tamil Eelam (LTTE) suspect operating in Colombo led to the arrest of other suspects, whose revelations resulted in the recovery of the remote-control device used to detonate the explosive that killed Mr. Dassanayake;
- According to the reports from police headquarters and the Attorney General's Department, as forwarded by the Chief Parliamentary Protocol Officer on 21 June 2013, one of the suspects, namely Mr. W. Don Hyzin Fernando, had pleaded guilty and had been sentenced on 1 August 2011 to two years rigorous imprisonment, a 10-year suspension and the payment of a fine of Rs. 30000. According to information conveyed by the authorities in 2014, two other accused, namely Mr. Sunderam Sathisha Kumaran and Mr. Kulathunga Hettiarachchige Malcom Tyrone, stood indicted in the High Court of Negombo on nine counts. These counts included conspiracy to commit murder and abetment to commit murder. The case was before the High Courts of Negombo under case No. 136/2012; the trials started on 16 September 2013 and were in progress,

Considering that, following earlier resolutions in 2012 and 2013, the United Nations Human Rights Council adopted a resolution on 27 March 2014 entitled "Promoting reconciliation, accountability and human rights in Sri Lanka", in which it requests the Office of the UN High Commissioner for Human Rights: (a) to monitor the human rights situation in Sri Lanka and to continue to assess progress on relevant national processes; (b) to undertake a comprehensive investigation into alleged serious violations and abuses of human rights and related crimes by both parties in Sri Lanka during the period covered by the Lessons Learnt and Reconciliation Commission (*2002-2009: reference to years added...*), and to establish the facts and circumstances of such alleged violations and of the crimes perpetrated with a view to avoiding impunity and ensuring accountability, with assistance from relevant experts and special procedures mandate-holders; *considering* that the results of the investigation, for which the Sri Lankan authorities at the time have refused any cooperation, will be officially presented and discussed by the UN Human Rights Council on 25 March 2015,

Considering that presidential elections took place in Sri Lanka on 8 January 2015 and that a new Cabinet took office on 12 January 2015; *considering* that one of the complainants in the case of Mr. Pararajasingham has received indications that the Government intends to take serious steps to hold those responsible for this murder to account,

1. *Is deeply concerned* that those responsible for the murders of Mr. Pararajasingham and Mr. Raviraj, in which cases the complainants have from the outset pointed to the possible involvement of paramilitary forces, have yet to be held to account; *considers* that this regrettable state of affairs, nine and eight years respectively after those crimes were committed, should induce the new Government of Sri Lanka to do everything possible to look for fresh evidence and to re-examine carefully the existing leads and information;

2. *Sincerely hopes*, therefore, that the new authorities will give their full attention to elucidating these crimes, including by examining the allegation that the Sri Lankan army may have played a role in the murder, with the help of the Karuna group and others;

3. *Considers* in this regard that the Sri Lankan authorities stand much to gain from cooperating with the international community and making use of relevant international expertise and advice to shed full light on these crimes; therefore *calls on* the authorities to work closely with the OHCHR investigation team on Sri Lanka and to act on the recommendations that the UN Human Rights Council may adopt as a result of its work;

4. *Remains convinced* that for justice to take its course it is essential that witnesses can step forward without fear of reprisals; *trusts* that the Sri Lankan Government will give

priority to finalizing, in consultation with all relevant stakeholders, including civil society organizations, an effective witness protection programme for witnesses in and outside Sri Lanka;

5. *Reiterates its wish* to receive a copy of the judgement handed down against the culprit in the case of Mr. Maheswaran, in particular so as to understand whether it takes account of the timing of his killing and the reduction of his security detail;

6. *Also wishes* to receive a copy of the judgement against the individual convicted for the killing of Mr. Dassanayake; *trusts* that trial proceedings against the two other suspects have been completed, or are otherwise near completion; *wishes* to receive detailed information on this point, including by means of a copy of the court rulings or the indictments;

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

8. *Decides* to continue examining this case.

Sri Lanka

SRI/68 - Sarath Fonseka

Decision adopted by the Committee on the Human Rights of Parliamentarians at its 146th session (Geneva, 24 - 27 January 20145)

The Committee,

Referring to the case of Mr. Sarath Fonseka, a member of the main opposition party in the Sri Lankan Parliament at the time of the submission of the communication, and to the decision adopted by the Governing Council at its 143rd session (October 2013),

Recalling the following: Mr. Fonseka, former Commander of the Sri Lankan Army, was arrested on 8 February 2010 for having, while in uniform, discussed his entry into politics with two members of parliament; while in detention, he was elected in April 2010 to the Parliament of Sri Lanka; on 13 August 2010, a court martial found him guilty on three counts under the Military Act and he was dishonourably discharged; on 17 September 2010, a second court martial found him guilty under Section 109 of the Army Act of having violated procurement guidelines and sentenced him to 30 months' imprisonment; Mr. Fonseka appealed these rulings, while three more cases were brought against him before the High Court,

Recalling that the complainant has alleged from the outset that there were concerns about respect for the right to a fair trial in several of the legal proceedings against Mr. Fonseka,

Recalling that, as a result of his convictions, Mr. Fonseka, by virtue of Articles 89(d) and 91 of the Constitution, was disqualified from retaining his seat in Parliament and debarred from standing in elections for a period of seven years following completion of his sentence, the petition against the removal of Mr. Fonseka's parliamentary seat was dismissed on 10 January 2011 by the Supreme Court; owing to this judgment, his seat was vacated,

Recalling that, in 2012, then President Rajapakse granted remission of the remaining time to be served by Mr. Fonseka, pursuant to the powers vested in him by Article 34 of the Constitution, as a result of which Mr. Fonseka was released on 21 May 2012,

Considering that presidential elections took place in Sri Lanka on 8 January 2015 and that a new Cabinet took office on 12 January 2015,

Considering that the new Sri Lankan authorities have since decided to restore Mr. Fonseka's full political rights, quash his previous convictions, discontinue ongoing legal proceedings, and reinstate him as an army general,

1. *Takes* note that Mr. Fonseka is no longer subject to any legal proceedings, nor to any restrictions to the exercise of his political rights;

2. *Considers* therefore that there are no grounds for any further action in this case and *decides* to close it;

3. Requests the Secretary General to convey this decision to the relevant authorities and the complainant.

Iceland

IS/01 - Birgitta Jónsdóttir

Decision adopted by the Committee on the Human Rights of Parliamentarians at its 146th session (Geneva, 24 - 27 January 20145)

The Committee,

Referring to the case of Ms. Birgitta Jónsdóttir, a member of the Icelandic Parliament, and to the resolution adopted by the Governing Council at its 193rd session (9 October 2013),

Recalling the following information on file:

- Birgitta Jónsdóttir has been a member of the Icelandic Parliament since July 2009. She was the co-producer of a video, released by WikiLeaks, showing United States soldiers shooting civilians in Baghdad from a helicopter;
- On 14 December 2010, upon the United States Government's request, the District Court for the Eastern District of Virginia presented a sealed order to Twitter to turn over to the United States the records and other information concerning Ms. Jónsdóttir's Twitter account and that of two other individuals; the Twitter order was unsealed on 5 January 2011 and on 7 January 2011, Twitter informed Ms. Jónsdóttir of the Court's Order for it to turn over certain subscriber information concerning her; on 26 January 2011, Ms. Jónsdóttir and the other two persons concerned filed a motion to withdraw the Twitter order, to unseal all orders and supporting documents relating to Twitter and any other service provider, and requested a public docket for each related order;
- At the request of Ms. Jónsdóttir's US legal counsel, the IPU submitted a memorandum to the court concerning Ms. Jónsdóttir, which sets out its concerns regarding the impact the Twitter order may have on her freedom of expression, right to privacy, right to defend herself and her parliamentary immunity; the memorandum was accepted by the judge and became part of the court records;
- On 11 March 2011, the court denied the motion to withdraw the order, granted the motion to unseal only in part and took the request for public docketing of certain material under consideration; the defence counsel filed objections against the ruling, which were dismissed on 10 November 2011; Ms. Jónsdóttir decided not to challenge the latter decision, out of fear of obtaining an adverse ruling that could affect others,

Considers that the case also has to be seen against the backdrop of modern communication technology having radically increased individuals' access to information and facilitated their active participation in society, but also having contributed to a blurring of the lines between the public and private spheres and permitted unprecedented levels of interference with the right to privacy, primarily by States and businesses,

Considering also in this regard that in December 2013 the UN General Assembly adopted resolution 68/167 on the right to privacy in the digital age; in the resolution, the General Assembly affirmed that the rights held by people offline must also be protected online, and called upon all States to respect and protect the right to privacy in digital communication. It further called upon all States to review their procedures, practices and legislation related to communications surveillance, interception and collection of personal data, emphasizing the need for States to ensure the full and effective implementation of their obligations under international human rights law,

Considering Article 25 (a) of its procedure for reviewing and handling complaints relating to the closing of cases,

1. *Remains concerned* about the repercussions of the Twitter court order on Ms. Jónsdóttir's right to freedom of expression and right to privacy; *recalls* in this regard that, under international human rights law, restrictions on these rights are subject to a threefold test: they should be prescribed by law, they must be necessary in a democratic society, and they must be proportionate to these necessary purposes; *fails to see* how the restrictions that would result from compliance with the Twitter court order can be justified on such grounds;

2. *Notes* nevertheless that Ms. Jónsdóttir has decided not to pursue the matter in court; *considers* therefore that it is no longer warranted to continue examining the case; and *requests* the Secretary General to inform the relevant authorities and the complainant accordingly;

3. *Suggests* nevertheless, given the wider ramifications of the case at hand, which concern fundamental challenges to protecting human rights in the face of fast-moving technological developments, that the IPU continues to explore ways of promoting a discussion of these challenges, their impact on parliamentary life, and the opportunities for parliamentary action among members of parliaments, human rights experts and representatives of the information technology industry;

4. *Requests* the Secretary General to take the necessary steps to this end.

Russian Federation

RUS/01 - Galina Starovoitova

Decision adopted by the Committee on the Human Rights of Parliamentarians at its 146th session (Geneva, 24 - 27 January 20145)

The Committee,

Referring to the case of Ms. Galina Starovoitova, a member of the State Duma of the Russian Federation, who was assassinated on 20 November 1998, and to the resolution adopted by the Governing Council at its 192nd session (27 March 2013),

Recalling the following information on file provided over several years:

- In June 2005, two men, Mr. Akishin and Mr. Kolchin, were found guilty of Ms. Starovoitova's murder and sentenced to 20 years in prison by the St. Petersburg City Court, which, in its judgment, concluded that the murder had been politically motivated; in September 2007, two others were found guilty of complicity in the murder and sentenced to 11 and 2 years in prison respectively; four other suspects were acquitted and released; there are open national and international arrest warrants for three other individuals; in its report of April 2008, the Prosecutor General's Office stated that the investigation and search operations to identify the mastermind(s) of Ms. Starovoitova's murder were ongoing,

Recalling that Ms. Starovoitova was a prominent Russian human rights advocate and had denounced instances of high-profile corruption shortly before her assassination; *recalling* also that, in November 2009, the United Nations Human Rights Committee expressed "its concern at the alarming incidence of threats, violent assaults and murders of journalists and human rights defenders in the Russian Federation, which has created a climate of fear and a chilling effect on the media ...", and urged the Russian Federation "to take immediate action to provide effective protection and ensure the prompt, effective, thorough, independent, and impartial investigation of threats, violent assaults and murders and, where appropriate, prosecute and initiate proceedings against the perpetrators of such acts"; *recalling further* that many States made similar recommendations during the first and second Universal Periodic Reviews of the Russian Federation's compliance with its human rights obligations before the United Nations Human Rights Council (February 2009, April 2013),

Recalling the information that Mr. Sergey A. Gavrilov, a member of the Russian delegation, provided to the Committee at the hearing held during the 126th IPU Assembly (Kampala, March-April 2012):

- It was very difficult to identify the mastermind(s) behind Ms. Starovoitova's murder, which had to be seen in the context of her political activism; after it became possible, in 2006, for convicts to obtain reduced sentences in exchange for cooperation in providing essential information about unresolved crimes, Mr. Kolchin had cooperated to help advance the recently resumed investigation into Ms. Starovoitova's murder; as a result, the authorities had been able to identify Mr. Mikhael Glushchenko, a former member of parliament and a businessman involved in large-scale criminal activities, as the presumed mastermind; Mr. Glushchenko was now a formal suspect inthe investigation into Ms. Starovoitova's murder and had been found guilty of extortion and sentenced to a long term in prison, which he was currently serving;
- The State Duma was fully committed to shedding light on and establishing accountability for Ms. Starovoitova's murder and had set up an anti-corruption and security committee that was monitoring the case and coordinating with the Prosecutor General's Office about further developments; it should be possible to communicate further information on the investigation and proceedings to the IPU in the coming months,

Considering that the State Duma has not provided information on the case since the above-noted hearing, despite repeated requests,

Considering that, according to the complainants, Mr. Glushchenko has been charged not as the mastermind of the crime but as one of the organizers acting under instructions; he has allegedly entered a plea bargain by agreeing to provide names of the mastermind(s) in exchange for a reduced sentence; it is expected that the Public Prosecutor's Office will shortly proceed with an indictment and a trial against Mr. Glushchenko; the investigators remain committed to pursuing the case and the investigation has apparently gained momentum on the basis of the information provided by Mr. Glushchenko; there is hope that it may lead to investigations and charges against new suspects in the future,

1. *Notes with satisfaction* that the pursuit of justice in this case continues to make progress towards identifying the mastermind(s) behind Ms. Starovoitova's murder, and *expresses the hope* that Mr. Glushchenko's indictment and trial will allow the investigators to make further progress towards ensuring full accountability for those responsible for ordering Ms. Starovoitova's murder;

2. *Regrets* that it has not received any response from the State Duma since March 2012; *encourages* it to provide updated information and observations, including confirmation of the latest developments in the investigation; *reaffirms* its conviction that the State Duma's continued interest in the case of a former colleague killed for having exercised her right to freedom of speech is critical to helping ensure that justice is done;

3. *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;

4. *Decides* to continue examining this case.

Iraq

IQ/62 - Ahmed Jamil Salman Al-Alwani

Decision adopted by the Committee on the Human Rights of Parliamentarians at its 146th session (Geneva, 24 - 27 January 20145)

The Committee,

Referring to the case of Mr. Ahmed Jamil Salman Al-Alwani, a former member of the Council of Representatives of Iraq, and to the resolution adopted by the IPU Governing Council at its 194th session (March 2014),

Taking into account the letter of the Speaker of the Council of Representatives dated 31 December 2013, the information provided by a member of the delegation of Iraq at a hearing held during the 130th IPU Assembly (Geneva, March 2014), and the information transmitted by the complainant and other sources of information,

Recalling that Mr. Al-Alwani was arrested on 28 December 2013 in Ramadi, in Al-Anbar Governorate, during a raid on his home carried out by Iraqi forces in the middle of the night; that the gunfight resulted in casualties, including deaths, among the security forces; that Mr. Al-Alwani's brother and members of his entourage were also killed; that the circumstances of the raid, including the reasons why the Iraqi forces conducted it, remain unclear,

Considering that Mr. Al-Alwani was detained, charged for terrorist-related crimes under the Iraqi Anti-Terrorism Law, and tried before the Central Criminal Court of Baghdad; that he was sentenced to death on 23 November 2014 and was given 30 days to appeal the ruling,

Considering the following information on file:

- The complainant has stated that Mr. Al-Alwani was arrested in retaliation for his outspoken support for the grievances of the Sunni population; Mr. Al-Alwani was a member of the Al-Iraqiya political block and was serving his second parliamentary mandate; he was known to be a prominent critic of the Iraqi Prime Minister at the time, Nouri Al-Maliki, and a supporter of the demonstrations that started in Ramadi in December 2013 in protest against the perceived marginalization and persecution of Iraqi Sunnis by the central Government; the Prime Minister at the time was said to have publicly announced on 22 December 2013 that these protests had become a "headquarters for the leadership of Al-Qaida" and to have warned that the security forces would intervene; Mr. Al-Alwani had held meetings with the provincial authorities on 27 December 2013, the day before his arrest, in an effort to defuse the tension between the governorate and the central Government;
- The complainant alleges that, at the time of the raid, Mr. Al-Alwani and his entourage had no way of knowing whether they were engaged in a confrontation with Iraqi Security Forces, a terrorist group, or an armed militia, considering the precarious security situation at the time, and that the raid was conducted in the middle of the night; the complainant alleges that Mr. Al-Alwani's entourage only responded to the gunfire in self-defence;
- According to a member of the delegation of Iraq who appeared before the Committee at the 130th Assembly (Geneva, March 2014), the Council of Representatives had not received any information on the exact circumstances of, and grounds for Mr. Al-Alwani's arrest, which had been the subject of much speculation; there were, however, two opposing points of view in that respect within Parliament: (i) one was that he was a terrorist and was caught *in flagrante delicto* by the Iraqi forces; and (ii) the other was that he was attacked by the Iraqi forces because he had supported the demonstrations, and was accused of terrorism because he and his bodyguards opened fire to defend themselves when the house was broken into by unknown armed forces in the middle of the night;

- During the same hearing held at the 130th Assembly, the same member of the delegation of Iraq indicated that the Council of Representatives had, at that time, not been able to obtain any information on the charges and proceedings against Mr. Al-Alwani, or on his conditions of detention or his health, and did not know whether he had been subjected to torture; the member, however, stated that torture in detention was a long-standing problem in Iraq, which had been documented, including in reports of the Parliamentary Human Rights Committee; the member also noted that there were special procedures to respect under the Constitution and the laws of Iraq to arrest and prosecute members of parliament and that, regardless of the circumstances and grounds for his arrest, Mr. Al-Alwani was entitled to protection from torture and to a fair trial; he was then detained in Baghdad and had not been allowed to receive visits from family members, lawyers or from the parliamentary authorities pursuant to the terrorism law; a hearing had taken place in the main courtroom of Baghdad and the trial had been suspended after Mr. Al-Alwani requested the transfer of the proceedings to Al-Anbar Governorate according to the normal criminal procedure that provided him with the right to be tried in his province of origin, however, the member observed that this did not usually apply in terrorism cases and the current instability in Al-Anbar did not allow for such a transfer;
- According to the complainant, in the months following his arrest, neither Mr. Al-Alwani's relatives, nor his lawyers knew where he was being detained and were prevented from visiting him in detention; the complainant also stated that Mr. Al-Alwani was subjected to severe torture and forced to make false confessions that were used against him and led to his conviction;
- Mr. Al-Alwani was sentenced to death for murder and attempted murder as a result of the deaths of, and injuries sustained by, security forces during the gunfight; according to the complainant, he denied all charges and firmly denied opening fire on the security forces during the trial;
- According to the complainant Mr. Al-Alwani was denied the right to a fair trial and the right to mount an adequate defence; he was denied the right to defend himself, the right to choose his lawyer, and, on three occasions, the lawyers assigned to him were allegedly forced to resign by the judges for attempting to effectively present their defence arguments; one of his lawyers was harassed and arbitrarily arrested by Iraqi security forces, allegedly in reprisal for accepting to represent Mr. Al-Alwani; Mr. Al-Alwani was also denied the right to meet with his lawyer during his detention, and was therefore unable to prepare his defence; several international human rights non-governmental organizations have corroborated that Mr. Al-Alwani was denied the right to a fair trial and, in particular, the right to a defence, and they have urged for a stay of execution on these grounds;
- The complainant has not been able to confirm whether Mr. Al-Alwani has lodged an appeal, but it does not expect the appeal process to be conducted in compliance with international standards of due process, due to the lack of independence and impartiality of the judicial system,

Recalling that, according to the Speaker of the Council of Representatives at the time, as of late December 2013: (i) the Council of Representatives and its parliamentary investigative committee had been unable to visit Mr. Al-Alwani in detention or obtain any information on his place or conditions of detention, or even on his health; (ii) the Council of Representatives had not been apprised of the progress made in the investigation; (iii) Mr. Al-Alwani's parliamentary immunity had been violated and there were concerns with regard to respect for constitutional and legal safeguards; and (iv) Mr. Al-Alwani was protected by parliamentary immunity and should therefore be released,

Considering that no further information has been submitted by the Speaker of the Council of Representatives, or any other Iraqi authorities on Mr. Al-Alwani's situation, despite repeated requests,

Bearing in mind that the case comes against a political backdrop of violent internal conflict in parts of Iraq and that elections took place in 2014, resulting in the appointment of new parliamentary and executive authorities and bringing about what may now be a new stage of political compromise and enhanced national dialogue according to the United Nations,

Bearing in mind that the 2005 Constitution guarantees the right to life, security and liberty (Article 15), provides that homes may not be entered, searched or put in danger except by a judicial decision and in accordance with the law (Article 17.2), guarantees the right to a defence in all phases of the investigation and the trial (Article 19.4), and prohibits unlawful detention and detention in places not designed for that purpose (Article 19.12); that Article 60 of the Constitution guarantees parliamentary immunity and prohibits the arrest of a member during the legislative term of the Council of Representatives, unless the member is accused of a felony and the Council decides by an absolute majority to lift the immunity, or if caught *in flagrante delicto* committing a felony,

Bearing in mind that Iraq is a party to the International Covenant on Civil and Political Rights and to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; that the international community - through the reports of the United Nations Secretary-General, the United Nations Assistance Mission for Iraq, the Office of the High Commissioner for Human Rights, and the United Nations Special Rapporteur on the independence of judges and lawyers – has repeatedly voiced serious concerns regarding the lack of fair trial, the use of torture, the level of independence of the judicial system, and the use of the death penalty,

1. *Is appalled* that Mr. Al-Alwani was sentenced to death and *notes with deep concern* that there is serious doubt that the case complied with basic fair trial and due process guarantees*; remains concerned* that Mr. Al-Alwani may have been exposed to torture; and *calls on* the authorities to investigate these allegations without further delay;

2. *Urges* the judicial authorities to lift the death sentence passed against Mr. Al-Alwani, especially given the absence of clear and detailed information on the grounds of the raid and circumstances of the attack, the trial proceedings, and on the manner in which the investigation was carried out; *wishes to receive* further information on these matters, as well as a copy of the court decision and information on the legal avenues of redress still available to Mr. Al-Alwani, including whether he has appealed the conviction;

3. *Regrets* that the Council of Representatives has not responded to requests for information regarding the case; *trusts* that it has continued to undertake urgent efforts to ensure respect for Mr. Al-Alwani's rights and to closely monitor the situation; *is eager to know* whether, as the former Speaker of the Council of Representatives suggested, a visit by the Council or any of its committees has taken place; *stresses* that the Committee strives to foster dialogue and cooperation with the authorities of Iraq, first and foremost with the Council of Representatives, its primary interlocutor pursuant to its procedure; therefore, *sincerely hopes* that constructive dialogue is resumed shortly in the pursuit of a satisfactory settlement of the case;

4. *Requests* the Secretary General to convey this decision to the parliamentary authorities, the Prime Minister, the Higher Judicial Council, the complainant, and any third party likely to be in a position to supply relevant information;

5. *Decides* to continue examining this case.

Israel

IL/03 - Mohammad Barakeh

Decision adopted by the Committee on the Human Rights of Parliamentarians at its 146th session (Geneva, 24 - 27 January 20145)

The Committee,

Referring to the case of Mr. Mohammad Barakeh, a member of the Parliament of Israel (the Knesset), and to the decision it adopted at its 143rd session (January 2014),

Taking into account the information provided by the complainant in December 2014 and January 2015,

Recalling the following: Mr. Barakeh was indicted on four counts of assault, of insult to or obstruction of the work of police officers or soldiers, which he allegedly committed at four separate and unrelated anti-Wall and anti-war demonstrations over a period of three years; Mr. Barakeh denied the charges and argued that he himself was the victim of police brutality, having filed complaints in this regard,

Recalling that on 26 October 2011, the Tel Aviv Magistrate's Court issued a decision dismissing two of the four charges filed against Mr. Barakeh on the grounds that they were covered by his substantive parliamentary immunity,

Recalling that, according to Mr. Barakeh's legal defence counsel, the two remaining charges are weak and should be dismissed in full; it affirms that with respect to the first charge, according to which Mr. Barakeh assaulted a border policeman in May 2005 during a demonstration at the West Bank village of Bi'lin against Israel's Separation Wall, he was hit in the thigh by a sound bomb that was thrown in his direction; according to the complainant, the prosecution alleges that Mr. Barakeh attacked the border policeman to prevent the arrest of a Palestinian youngster; with regard to the second remaining charge, which dates back to July 2006, the prosecution alleges that Mr. Barakeh assaulted a private individual during a demonstration against the Second Lebanon War in July 2006; the complainant affirms that the prosecution's case ignores the fact that Mr. Barakeh was defending the demonstrators, including 80-year-old activist Uri Avnery, against a group of right-wing activists who were attacking the protestors,

Considering that the Tel Aviv Magistrate's Court exonerated Mr. Barakeh in March 2014 of the first of the two remaining charges, but convicted him on the other, and that on 24 April 2014, the same court sentenced him to pay a fine of 400 shekels and compensation of 250 shekels (equivalent to US$ 165 in total) to the activist whom he was convicted of assaulting,

Considering that, on 15 December 2014, the Tel Aviv District Court ordered the Tel Aviv Magistrate's Court to review its decision to convict Mr. Barakeh, as it believed that the Tel Aviv Magistrate's Court had not explained why his acts were not covered by his parliamentary immunity,

1. *Takes note* with interest of the ruling by the Tel Aviv District Court; *would appreciate* receiving a copy thereof;

2. *Trusts* that, in reaching a new decision, the Tel Aviv Magistrate's Court will take due account of Mr. Barakeh's parliamentary immunity and of the fundamental idea it embodies that parliamentarians should be able to carry out their work freely without obstruction and fear of prosecution;

3 *Seriously hopes* that the Tel Aviv Magistrate's Court will rule on the case as a matter of urgency given that eight and a half years have passed since the alleged event giving rise to the remaining charge took place; therefore *eagerly awaits* its decision;

4. *Reiterates its wish* to receive official information on the outcome of the investigation that must have long been completed into the long-standing complaints of ill-treatment filed by Mr. Barakeh;

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

6. *Decides* to continue examining this case.

Israel

IL/05 - Haneen Zoabi

Decision adopted by the Committee on the Human Rights of Parliamentarians at its 146th session (Geneva, 24 - 27 January 20145)

The Committee,

Recalling the decision adopted by the IPU Governing Council at its 195th session (October 2014) on the case of Ms. Haneen Zoabi, a member of the Knesset of Israel,

Bearing in mind the following information provided by the complainant:

- On 29 July 2014, the Knesset Ethics Committee decided to suspend, for six months, Ms. Zoabi's right to make statements in the Knesset and to submit parliamentary questions or initiate debates in committees or the Knesset plenary, reportedly because it considered that Ms. Zoabi had made statements that "deviated from the realm of legitimate expression" for a member of the Knesset; according to the complainant, the suspension is the longest in the Knesset's history and the maximum the Committee can impose under Israeli law;
- The issue at the centre of the Ethics Committee's decision is an interview Ms. Zoabi gave on Radio Tel Aviv on 17 June 2014, five days after three Israeli teenagers were abducted in the West Bank, at which time it was not known that they had been killed; Ms. Zoabi upset the interviewer and many listeners by refusing to describe the abductors simplistically as "terrorists", instead asking: "Is it strange that people living under occupation and living impossible lives, in a situation where Israel kidnaps new prisoners every day, is it strange that they act this way? They are not terrorists. Even if I do not agree with them, they are people who do not see any way open to change their reality, and they are compelled to use means like these until Israel wakes up and sees the suffering, feels the suffering of the other"; the complainant affirms that almost all media coverage and even a reference to this statement by the Knesset Ethics Committee left out the part in which Ms. Zoabi said that she did "not agree" with the kidnapping;
- The Attorney-General's Office reportedly announced on 24 July 2014 that it would not order a police investigation for incitement regarding the interview; the Deputy Attorney-General, Mr. Raz Nizri, admitted that it was difficult to see the statements as incitement to kidnapping;
- On 7 October 2014, Ms. Zoabi filed a petition with the High Court of Justice to strike down the six-month suspension,

Considering that, on 10 December 2014, the High Court of Justice dismissed the petition and concluded that, "The penalty imposed is indeed unusually severe compared to penalties imposed in the past (…) However, given the circumstances of the matter, the petitioner's harsh statements and their timing, and since a significant portion of the punishment falls on recess time, we did not see fit to intervene in the broad discretion of the Ethics Committee",

Recalling that the complainant affirms that the Ethics Committee decision is part of a campaign of persecution against Ms. Zoabi, who represents Israel's large Palestinian minority – a fifth of its overall population – and is a critical voice in the Knesset; according to the complainant, Ms. Zoabi's punishment is discriminatory, as illustrated by the fact that when former Knesset member Aryeh Eldad called in 2008 for Mr. Ehud Olmert, the Prime Minister at the time, to be sentenced to death for suggesting that parts of the occupied territories become a Palestinian state, the Ethics Committee suspended him for just one day; the complainant affirms that this was clear incitement to violence in a country where a former Prime Minister, Mr. Yitzhak Rabin, had been murdered by an extremist who justified his actions on those very grounds,

Recalling also that the Attorney-General announced on 25 July 2014 that he had instructed the police to open a formal investigation of Ms. Zoabi on suspicion of inciting others to violence and insulting a public servant, namely a police officer, outside Nazareth's district court on 6 July 2014; according to the complainant, Ms. Zoabi's lawyers have not yet been provided with the documents relevant to the investigation, even though Ms. Zoabi addressed the allegations at a police interrogation in Lod on 11 August 2014,

Recalling further that, according to the complainant, Ms. Zoabi has personally experienced police violence on several recent occasions, most notably at an anti-war demonstration in Haifa on 18 July 2014 where she was verbally and physically abused by police officers and handcuffed for half an hour; Ms. Zoabi filed a formal complaint against the police for their behaviour at the demonstration, but no investigation has been opened to date,

Recalling lastly that, during the previous legislature, on 13 July 2010, the Knesset adopted a resolution revoking three of Ms. Zoabi's parliamentary privileges for the duration of the legislative period owing to her participation in the Gaza-bound humanitarian flotilla in May 2010, a matter also examined by the Committee on the Human Rights of Parliamentarians,

Considering that the heads of the Knesset parliamentary factions decided at a meeting on 3 December 2014 to schedule parliamentary elections for 17 March 2015 (the meeting was held after Prime Minister Benjamin Netanyahu dismissed two centrist cabinet members, Finance Minister Yair Lapid and Justice Minister Tzipi Livni, for their opposition to the draft nationality law entitled "Israel, the nation-state of the Jewish People"),

Considering also that the complainant fears that Ms. Zoabi, who intends to stand in the elections, will be disqualified by the Central Elections Committee (CEC), which is scheduled to take a decision on requests for disqualifications on 22 February 2015, and that, should the CEC disqualify her, the Supreme Court will rule on the disqualification on 27 February 2015,

Recalling in this regard that the CEC disqualified Ms. Zoabi at the previous general election in 2013 on the grounds that she had undermined the State of Israel, a decision that was overturned at the last minute by the Supreme Court,

Recalling also that, in 2014, legislation submitted to the Knesset and referred to in some quarters as the "Zoabi bill" stipulated that, in the case of "a [member of the Knesset] who in a time of war or military action against an enemy state or terror organization offers public support for the military struggle against the State of Israel, their term in the Knesset shall be terminated on the day the Knesset decides by a majority of its members and at the recommendation of the Knesset House Committee that the published comments constitute the aforementioned expressions of support"; *considering* that this bill may be revived once a new Knesset has been elected and installed,

Bearing in mind that Israel is party to the International Covenant on Civil and Political Rights and thus bound to guarantee the right to freedom of expression, which is also guaranteed under Israel's Basic Laws,

1. *Regrets* that the High Court of Justice did not deem fit to quash Ms. Zoabi's suspension; *considers* in this regard that Ms. Zoabi was suspended on account of having exercised her right to freedom of speech by expressing a political position, as the Committee on the Human Rights of Parliamentarians believed was the case when the Knesset sanctioned her for her participation in the Gaza-bound flotilla in 2010;

2. *Trusts* that Ms. Zoabi will be allowed to stand in the forthcoming parliamentary elections; *decides* to closely follow developments in this regard;

3. *Reiterates its wish* to receive official information with regard to the criminal investigation of Ms. Zoabi, including with regard to the precise facts in support of the accusations against her;

4. *Remains keen* to receive official information regarding the steps taken to investigate the alleged verbal and physical abuse by police which Ms. Zoabi suffered during a demonstration on 18 July 2014;

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

6. *Decides* to continue examining this case.