



Inter-Parliamentary Union  
For democracy. For everyone.

# 130<sup>th</sup> IPU ASSEMBLY AND RELATED MEETINGS

Geneva, 16-20.3.2014

# DRAFT

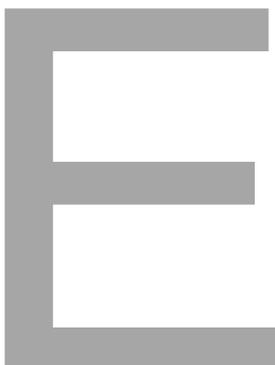
Governing Council  
Item 11(b)

CL/195/11(b)-R.2  
Geneva, 16 October 2014

## Decisions of the Committee on the Human Rights of Parliamentarians

### CONTENTS

	Page
<b>Africa</b>	
● <b>Cameroon</b>	
CM/01 Dieudonné Ambassa Zang Draft decision.....	1
● <b>Democratic Republic of the Congo</b>	
DRC/71 Eugène Diomi Ndongala Draft decision.....	4
DRC/81 Muhindo Nzangi Draft decision.....	8
DRC/83 Jean-Bertrant Ewanga Draft decision.....	10



● **Zambia**

ZM01	Michael Kaingu	
ZM02	Jack Mwiimbu	
ZM03	Garry Nkombo	
ZM04	Request Mutanga	
ZM05	Boyd Hamusonde	
ZM06	Moono Lubezhi (Ms.)	
ZM07	Dora Siliya (Ms.)	
ZM08	Mwalimu Simfukwe	
ZM09	Sarah Sayifwanda (Ms.)	
ZM10	Lt. General Ronnie Shikapwasha	
ZM11	Maxwell Mwale	
ZM12	Kenneth Konga	
ZM13	Annie Munshya Chungu (Ms.)	
ZM14	Howard Kunda	
ZM15	Michael Katambo	
ZM16	James Chishiba	
ZM17	Hastings Sililo	
ZM18	Lucky Mulusa	
ZM19	Patrick Mucheleka	
ZM20	Eustacio Kazonga	
Draft decision .....		13

**Americas**

● **Colombia**

CO/146	Iván Cepeda Castro	
CO/147	Alexander López	
CO/148	Jorge Enrique Robledo	
CO/149	Guillermo Alfonso Jaramillo	
CO/150	Wilson Árias Castillo	
Draft decision .....		16
CO/155	Piedad Del Socorro Zuccardi de Garcia	
CO/157	Oscar Arboleda Palacio	
Draft decision .....		19

**Asia**

● **Israel**

IL/05	Haneen Zoabi	
Draft decision .....		21

● **Malaysia**

MAL21	N. Surendran	
MAL22	Teresa Kok (Ms.)	
MAL23	Khalid Samad	
MAL24	Rafizi Ramli	
MAL25	Chua Tian Chang	
Draft decision .....		24

● **Oman**

OMN/01	Talib Al Mammari	
Draft decision .....		27

	<b>Page</b>
<b>● Palestine/Israel</b>	
PAL/02 Marwan Barghouti	
Draft decision .....	31
PAL/05 Ahmad Sa'adat	
Draft decision .....	33
PAL18 Yaser Mansour	
PAL21 Emad Nofal	
PAL28 Muhammad Abu-Teir	
PAL29 Ahmad 'Attoun	
PAL30 Muhammad Totah	
PAL32 Basim Al-Zarrer	
PAL35 Mohamed Ismail Al-Tal	
PAL47 Hatem Qfeisheh	
PAL48 Mahmoud Al-Ramahi	
PAL57 Hasan Yousef	
PAL60 Ahmad Mubarak	
PAL61 Mohd. Jamal Natsheh	
PAL62 Abdul Jaber Fuqaha	
PAL63 Nizar Ramadan	
PAL64 Mohd. Maher Bader	
PAL65 Azzam Salhab	
PAL66 Ayman Daraghmeh	
PAL67 Ibrahim Abu Salem	
PAL68 Mohammed Musleh	
PAL69 Omar Abd Al Razaq	
PAL70 Daoud Abo Seer	
PAL71 Khaled Saeed	
PAL72 Ibrahim Dahbour	
PAL73 Fadhel Hamdan	
PAL74 Mohd. Mutalaq Abu Jihaisheh	
PAL75 Nayef Rjoub	
PAL76 Sameer Al Qadi	
PAL77 Khalil Al Rabee	
PAL78 Husni Al Borini	
PAL79 Riyadhgh Radad	
PAL80 Abdul Rahman Zaidan	
PAL81 Fathi Qaraa'wi	
PAL82 Khalida Jarrar (Ms.)	
Draft decision .....	35
PAL/83 Aziz Dweik	
Draft decision .....	38

## Europe

<b>● Turkey</b>	
TK/41 Hatip Dicle	
TK/67 Mustafa Balbay	
TK/68 Mehmet Haberal	
TK/69 Gülser Yildirim	
TK/70 Selma Irmak	
TK/71 Faysal Sariyildiz	
TK/72 Ibrahim Ayhan	
TK/73 Kemal Aktas	
TK/74 Engin Alan	
TK/55 Mehmet Sinçar	
Draft decision .....	40



## Cameroon

### CM/01 - Dieudonné Ambassa Zang

The Committee,

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

The Governing Council of the Inter-Parliamentary Union,

*Referring* to the case of Mr. Dieudonné Ambassa Zang, a former member of the National Assembly of Cameroon, and to the decision it adopted at its 194<sup>th</sup> session (March 2014),

*Taking into account* the letter dated 14 March 2014 from the Minister Delegate to the Office of the President in charge of the Supreme State Audit Office, President of the Budget and Finance Disciplinary Council (CDBF), and the information regularly provided the complainant,

*Recalling* the following information on file:

- Mr. Ambassa Zang, Minister of Public Works from August 2002 to December 2004 and known, according to the complainant, for having fought corruption within that ministry, was elected in 2007 on the ticket of the Cameroon People's Democratic Rally;
- On 7 August 2009, the National Assembly Bureau lifted Mr. Ambassa Zang's parliamentary immunity to permit an investigation into allegations of misappropriation of the public funds managed by him when he was Minister of Public Works; although Mr. Ambassa Zang left Cameroon on 12 July 2009, he had a defence note sent on 3 August 2009 to all members of the Bureau; there is no indication that the note was included in the file before the Bureau;
- According to the authorities, the charges laid against Mr. Ambassa Zang stem from audits prompted by a complaint by the French Development Agency (AFD), the funding source for the rehabilitation of the Wouri Bridge, for which Mr. Ambassa Zang was responsible; according to the Prosecutor General, State companies, ministries and other State structures managing public funds are subject to annual audits by the Supreme State Audit Office (CONSUPE); according to the complainant, Mr. Ambassa Zang was never informed about the audits, invited to contribute to the audit process, informed of the conclusions or invited to comment on them;
- On the basis of the audits, the Head of State first opted for criminal proceedings on a charge of misappropriation of public funds; on his orders, a decision was signed on 12 October 2012 also bringing the accusations against Mr. Ambassa Zang before the Budget and Finance Disciplinary Council (CDBF), before which, unlike in a criminal procedure, defendants can be represented in their absence by legal counsel; it would seem that the decision was notified to Mr. Ambassa Zang's counsel in May 2013, or nearly seven months after it was signed, without any explanation; on 20 August 2013, Mr. Ambassa Zang received a partial request for information from the CDBF rapporteur, to which he responded in two defence memoranda; more than two months later, the CDBF rapporteur sent, according to the complainant in violation of the CDBF rules of procedure, a second partial request for information, to which Mr. Ambassa Zang responded on 13 December 2013 with another defence memorandum; according to the complainant, the CDBF rapporteur has also broken the rules of procedure by formulating accusations in addition to those mentioned in the audits,

*Considering* that, in his letter of 14 March 2014, the Minister Delegate to the Office of the President in charge of the Supreme State Audit Office, President of the Budget and Finance Disciplinary Council (CDBF), states inter alia that:

- The CDBF's rules of procedure strictly comply with the general principles of the presumption of innocence and the right of defence, notably the right to be informed, the right to be assisted by a lawyer or counsel, and the right to adversarial proceedings. He added that "However, should one or several new incidents arising from the rapporteur's investigations be closely connected to the presumed offences on the basis of which the respondent was brought before the CDBF, the rapporteur is authorized, in accordance with consistent case-law, to take them into account in his examination of the case. This principle is at all times limited to the management period considered by the audit."
- "It must be remembered that the rapporteur, in examining the evidence both for and against the respondent, is called on to conduct additional investigations (Article 15(2) of the above-mentioned decree) that may result in the following suggestions: (i) requalification of the misdeed; (ii) re-assessment of the financial damage (up or down); (iii) dismissal of the case. Moreover, and by virtue of the connectivity mentioned earlier, the rapporteur can justifiably incorporate new incidents into the examination, even though that is not currently the case at this stage of the proceedings. The criterion of connectivity is, moreover, the main limit to the principle of the fixed nature of the charges.
- "It is not possible to establish a timetable for winding up the proceedings because how long they last depends not only on the complexity of the case but also on the rapidity with which the various people contacted by the rapporteur (the respondent, witnesses, others) reply to the requests for information they have received." He states that "in this case, the difficulties encountered by the rapporteur stem chiefly from the absence of the respondent and the fact that it is therefore impossible to reach him, and from the extensions requested by his counsel to reply to the requests for information and the incomplete nature of the replies provided. Moreover, he states that "the defence would be well advised to contact the CDBF Permanent Secretariat with a view to consulting, on site and as provided for in the regulations, all the documents in the case."

*Recalling* that, according to the complainant, there was no wrongdoing or misappropriation in Mr. Ambassa Zang's favour of any sum whatsoever, the accusations have to do with objective facts and the relevant documents are available at the Ministry of Public Works, the Office of the Prime Minister, the Tenders Regulation Agency and donors such as the AFD; moreover, on 13 July 2010, the International Chamber of Commerce handed down an arbitral award in *UDECTO v. State of Cameroon*, a dispute concerning the execution of the Wouri bridge rehabilitation works; the complainant affirms that, since Cameroon won the case, the company UDECTO being sentenced to pay it substantial sums, and on the strength of the legal principle *non bis in idem*, the charges brought against Mr. Ambassa Zang regarding a prejudice he allegedly caused Cameroon are no longer applicable; the AFD Director General stated in her letter of 7 January 2014 that the AFD wished to specify that it had filed no complaint against Mr. Ambassa Zang and relating to his activities in the context of the proceedings concerning him before the CDBF, and that, owing to the blocking statute, it was not in a position to provide any observations on the matter that could be used as proof in administrative or judicial proceedings abroad, except pursuant to an official request made as part of international judicial assistance procedures,

*Considering* that with regard to the criminal procedure against Mr. Ambassa Zang, the Prosecutor General of the Special Criminal Court deferred him and four other defendants to the Special criminal court by an Order (*Ordonnance de renvoi devant le Tribunal criminel spécial*) dated 9 June 2014; *recalling* in this regard that, on 11 June 2013, more than two years later after the police had completed their investigation, the Prosecutor General of the Special Criminal Court filed charges before the examining judge of that Court, directed against 15 persons, including Mr. Ambassa Zang.

*Considering* that Mr. Simon Foreman, (partner, Courrégé Foreman law office and lawyer at the Paris Bar), was mandated to attend and report on the hearing which took place in this case before the Special Criminal Court on 17 September 2014; in his report, he mentions that "It is worth stressing that the examining judge's order seizing the Court and presenting the charges against the accused mentions no sign whatsoever of personal enrichment on behalf of Mr. Ambassa Zang. Many of the accusations against him relate to the fact that the auditors found no justifying documents for various budgetary expenses, for which he could not account. Given that ministers do not normally leave office taking accounting documents with them, much of Mr. Ambassa Zang's defence arguments rely on the suggestion that such documents might be found, for instance, in the archives of the Ministry of Public

Works or the Ministry of Finance. In any event, his inability to provide detailed justification for expenses that occurred 10 to 12 years' ago (2002-2004) does not amount to evidence of criminal misappropriation. In the absence of criminal intent, it should at the most qualify as mismanagement, possibly resulting in disciplinary proceedings. In reading the examining judge's order, I found no mention of any sign of criminal intent, let alone personal enrichment."

*Recalling* the complainant's affirmation that Mr. Ambassa Zang, who enjoys official refugee status abroad, cannot at present return to Cameroon because he would be arrested and not enjoy a fair trial,

*Recalling* that, according to the complainant, the prosecution of Mr. Ambassa Zang must be seen in the context of "*Opération Épervier*" (Operation Casting Net), which was widely criticized as a campaign originally intended to combat corruption and misappropriation of public funds, but instead used to purge critically-minded public figures who, like Mr. Ambassa Zang, expressed views not always in line with those of their party,

1. *Thanks* the Minister Delegate to the Office of the President in charge of the Supreme State Audit Office, President of the Budget and Finance Disciplinary Council (CDBF), for his detailed reply and the valuable information contained therein;
2. *Thanks* the trial observer for his efforts and for producing his report; *thanks* the parliamentary authorities for their full cooperation in facilitating his mission; *requests* the Secretary General to convey a copy of the report to the relevant authorities and the complainants and any other parties concerned and to seek their observations;
3. *Is concerned* that criminal proceedings against Mr. Ambassa Zang have been re-activated given that he is not allowed to be represented in his absence by legal counsel and given the lack of clarity as to how the facts of which he is accused amount to a criminal offence; *is also concerned* about the possibility that two simultaneous procedures regarding the same facts may lead to contradictory outcomes; *is eager* to receive the authorities' observations on each of those matters;
4. *Trusts*, in light of the explanations provided and commitment expressed by the Minister Delegate to the Office of the President in charge of the Supreme State Audit Office, President of the Budget and Finance Disciplinary Council (CDBF), that the rules of procedure are scrupulously followed and that Mr. Ambassa Zang's right to defence is fully respected in the disciplinary proceedings;
5. *Trusts* that the CDBF will continue to advance with the examination of Mr. Ambassa Zang's case as a matter of urgency, given that 10 years have elapsed since the alleged events and that Mr. Ambassa Zang and his legal counsel have produced extensive replies to refute the allegations; *wishes* to be kept informed of the next steps in the disciplinary proceedings;
6. *Trusts also* that the CDBF will take due account of the arguments presented in Mr. Ambassa Zang's defence, including the arbitral award of the International Chamber of Commerce in *UDECTO v. State of Cameroon*, as well as of any documents available in the archives of the Ministry of Public Works and other official entities that may shed light on the accusations; *suggests* that the State of Cameroon seriously explore the possibility of obtaining, through a formal request for assistance, the information the AFD has at its disposal that could help shed further light on the case;
7. *Requests* the Secretary General to convey this decision to the relevant authorities and the complainant; *requests* him also to convey the present decision to the complainant and any third party likely to be in a position to supply relevant information;
8. *Requests* the Committee to continue examining this case and to report back to it in due course.

## Democratic Republic of the Congo

### DRC/71 - Eugène Diomi Ndongala

The Committee,

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

The Governing Council of the Inter-Parliamentary Union,

*Referring* to the case of Mr. Eugène Diomi Ndongala, a former member of the National Assembly of the Democratic Republic of the Congo (DRC), and to the decision it adopted at its 194<sup>th</sup> session (March 2014),

*Referring* to the letter of the Speaker of the National Assembly of 8 October 2014 and the information provided by the complainants,

*Referring also* to the report on the mission conducted to the DRC from 10 to 14 June 2013 (CL/193/11b)-R.2),

*Recalling* the following allegations provided by the complainants: Mr. Ndongala, the leader of an opposition political party, is being framed because he publicly denounced massive cases of electoral fraud during the 2011 elections and contested the legitimacy of the election outcome; he is being blamed for having boycotted the National Assembly in protest together with 40 opposition members; for these reasons, Mr. Ndongala has been the target since June 2012 of a campaign of political and legal harassment aimed at removing him from the political process and at weakening the opposition; that campaign has been marked by the following alleged violations of his fundamental rights: (i) arbitrary arrest on 27 June 2012, the day before Mr. Ndongala was to establish an opposition party platform, followed by unlawful incommunicado detention by the intelligence services from 27 June to 11 October 2012, during which time Mr. Ndongala was allegedly ill-treated; (ii) arbitrary lifting of Mr. Ndongala's parliamentary immunity in violation of his rights of defence on 8 January 2013; (iii) arbitrary revocation of his parliamentary mandate on 15 June 2013; (iv) baseless and politically motivated judicial proceedings that disregarded the right to a fair trial; (v) illegal remand custody from April 2013 until his conviction on March 2014; (vi) denial of medical care in prison since the end of July 2013,

*Also recalling* that the National Assembly has repeatedly asserted that, since Mr. Ndongala has boycotted the parliamentary institution to which he belonged and questioned its legitimacy, he could not expect to benefit from its protection; that at the hearing held during the 130<sup>th</sup> IPU Assembly, the delegation of the DRC stated that if Mr. Ndongala had not contested the legitimacy of the last elections and had agreed to take part in the parliamentary proceedings, the National Assembly would not have agreed to lift his parliamentary immunity or revoked his parliamentary mandate,

*Also recalling* that, according to the authorities, Mr. Ndongala was never held incommunicado but rather fled in late June 2012 to avoid arrest in *flagrante delicto* proceedings; that, after his immunity had been lifted, he was arrested and remanded in custody; and that he was tried on charges of rape of minors that are unrelated to his political activities,

*Recalling* that, according to the complainants, the accusations that Mr. Ndongala had sexual relations with minors - qualified as rape by the prosecution - are unfounded and a pure fabrication, given that: (i) Mr. Ndongala was not present on the scene of the alleged rape when the police arrived to arrest him "in the act of rape"; (ii) the girls and their alleged father were paid to accuse Mr. Ndongala by a police superintendent and a member of the majority from the same constituency as Mr. Ndongala;

(iii) the girls are adults and are being prosecuted under false identities and the alleged father is a well-known criminal with several convictions for fraud; (iv) the girls and the police superintendent met in order to plot their setting up Mr. Ndongala; (v) the complainants claim that they have evidence of the above, including eyewitnesses,

*Considering* that Mr. Ndongala's trial started in July 2013 and concluded on 12 March 2014; most hearings of the trial were postponed; the substance of the case was only examined briefly at the last hearing according to the complainants,

*Considering* that Mr. Ndongala was convicted as charged by the Supreme Court on 26 March 2014 and was sentenced to 10 years' imprisonment in the first and last instance; that the girls, recognized as rape victims by the Supreme Court, have filed for civil action for damages, with the presentation of oral arguments of the parties set for 22 October 2014,

*Considering* that, according to the complainants, due process was not respected during Mr. Ndongala's trial, which largely took place in camera; the allegations include the following:

- Mr. Ndongala was kept in jail, despite three Supreme Court decisions between April and June 2013 ordering his placement under house arrest in accordance with the law and the practice applicable to Congolese parliamentarians in pretrial detention;
- The presumption of innocence and the confidentiality of the pretrial investigation were violated, given the prosecution's frequent statements to the media stressing Mr. Ndongala's guilt;
- Procedural flaws in the case scheduling and notification procedure prevented the lawyers for the defence from having access to the court file and preparing their client's defence before the first hearings were held in July 2013;
- The substantive examination of the case did not begin until the last hearing and the trial was closed when it had hardly begun; the defence lawyers and Mr. Ndongala were denied the floor and were not given the opportunity to present witnesses and cross-examine those of the prosecution; the two hearings focused exclusively on the testimony of the alleged victims and their "father"; after hearing the testimony of those three people, the judges suddenly decided to close the case and immediately requested the Prosecutor to present his summation without the Court having heard the defence or the plaintiff, who had left the courtroom in boycott over not having been allowed to present their arguments;
- The Court discarded Mr. Ndongala's argument that he was the victim of a political set-up on the grounds that he had not provided evidence in that respect, yet the Court did not allow the defence to do so;
- No exhibit attesting to the rapes was presented or discussed, nor was any medical examination conducted during the investigation; the court relied upon the alleged victims' account, despite major discrepancies casting doubt on their identity, age, filiation and the truthfulness of the accusations against Mr. Ndongala; the Court took no account of the fact that the defence had disputed the age of the girls, which in this particular case was the central element qualifying the alleged sexual relations as rape, given that absence of consent was never alleged;
- The court also relied on highly disputable evidence of the prosecution, namely: (i) evidence that was illegally seized, as Mr. Ndongala's lawyers were excluded from attending the search by the police; (ii) phone records between the girls and a telephone number not attributed to Mr. Ndongala; (iii) the written testimony of two prosecution witnesses whose credibility and reliability were not established and who were never heard by the Court; those witnesses were arrested on 26 June 2012 and then arbitrarily held in a military camp for several months before being released through the intercession of civil society and the United Nations; one of these witnesses, a security guard who was initially prosecuted jointly with Mr. Ndongala, provided written testimony stating that he escorted the girls to Mr. Ndongala's office but did not witness what happened therein; the guard was never called to appear in court, and he subsequently disappeared following his release;
- The composition of the trial chamber was not in compliance with the law;
- Mr. Ndongala's main political opponent in his constituency, a parliamentarian of the majority, and allegedly the instigator of the political set-up against him, acted as one of the legal

representatives of the alleged victims throughout the trial, even though he was not qualified to do so given his status of attorney-in-training;

- The lack of impartiality of certain judges, in respect of whom requests for recusal were filed, and the political pressure said to have been exerted on several judges, as a result of which the composition of the bench ruling on the case was changed in February and March 2014;
- During the trial, the judges never acknowledged the deteriorating state of health of the accused or his having been denied care while in custody, and blamed him of delay tactics and abuse of the judicial process after he collapsed several times during the hearings,

*Considering* that the Court noted in its decision that the accused and his counsel had left the last hearing and had therefore not stated their closing arguments before the end of the trial; it rejected the application of the defence to reopen the proceedings after they had left the hearing in boycott on the grounds that courts and tribunals must not be given over to “the whims of defendants regarding abuse of the law, as in the present case, the intention of the accused and his counsel having already been made known throughout the proceedings”; it blamed the defendant for delaying the progress of the trial by different means, including: (i) “under the guise of illness”; (ii) by interrupting the hearings to consult with his counsel; (iii) by questioning the filiation of the alleged victims; and (iv) by protesting “vigorously before collapsing and getting up again to move aside while his counsel withdrew from the courtroom”,

*Recalling also* the following information provided by the complainants: Mr. Ndongala’s health has deteriorated sharply while in detention since late July 2013, but the authorities have systematically refused to allow him to be taken to hospital; Mr. Ndongala was briefly transferred to a military camp in late July 2013 for medical care but demanded that he be transferred to one of the civilian hospitals with which the prison has an agreement, in accordance with standard prison practice and because he feared for his safety, given that he had been unlawfully detained and tortured in that military camp in the past; after Mr. Ndongala’s cardiac arrest and emergency hospitalization on 27 December 2013, he was forcibly returned to prison the following day before the tests ordered by the doctor had been carried out; according to the complainants, he has been denied appropriate medical care since,

*Recalling in that regard* that, in her letter of 27 November 2013, the Minister of Justice stated that there was no truth to the allegations that Mr. Ndongala had been denied medical care and that the applicable legislative provisions had been respected, that Mr. Ndongala had been seen by the doctor at the military hospital at Kokolo camp in July 2013 and that the doctor had recommended x-rays and physiotherapy, that Mr. Ndongala had obtained a recommendation from the doctor that he continue his treatment at a hospital near the airport that had no agreement with the prison, that “the proximity of the international airport [was] indicative of Mr. Ndongala’s intentions”, and that the prison administration had acted in good faith and given Mr. Ndongala every opportunity to have access to appropriate care outside the prison, but that he had abused that possibility through his behaviour; at the hearing held during the 130<sup>th</sup> IPU Assembly (March, 2014), the delegation of the DRC said, with regard to the denial of medical care, that the fact that Mr. Ndongala was still alive was “irrefutable proof that he continued to receive treatment, otherwise he would already be dead”,

*Considering* that the United Nations Human Rights Committee was seized of the case of Mr. Ndongala on 22 September 2014 and requested on 8 October 2014 that the DRC take all necessary measures to provide appropriate medical assistance in order to ensure that no irreparable health damage is incurred by Mr. Ndongala,

*Recalling* that the Congolese authorities held national consultations from 7 September to 5 October 2013 in order to strengthen national unity, that the Head of State presented the recommendations of the final report that emerged from the consultations to both houses of parliament on 23 October 2013 and set up a national committee tasked with implementing them, and that the final report recommends that, “among the measures taken to ease the political tension and announced by the President of the Republic, the public authorities: (a) grant, depending on the case, a presidential pardon, release on parole and/or amnesty to inter alia (...) Eugène Diomi Ndongala (...)”,

*Considering* that this recommendation has not been implemented to date; the nature of the charges against Mr. Ndongala makes him ineligible for amnesty under the amnesty law adopted in February

2014 and the only possibility left for him is a presidential pardon, according to the letter of the Speaker of 8 October 2014; the complainants have stated that there was no remedy under Congolese law with the exception of a retrial (which stands no chance of succeeding given the political nature of the case according to them), a presidential pardon, or an amnesty, the latter being - in their opinion - the most appropriate way to resolve the case at this stage,

1. *Thanks* the Speaker of the National Assembly for the information provided;
2. *Takes note of* the decision of the Supreme Court and *deeply regrets* that it has not taken into account, nor provided any redress for the serious violations of due process that have characterized the trial;
3. *Once again strongly deplores* that there is no separate avenue of appeal in the judicial process applying to parliamentarians in the DRC; *can but fear* a serious miscarriage of justice in the current circumstances, in particular in light of the eminently political nature of the case;
4. *Is further dismayed* that no progress has been made in resolving the case, and *urges* the DRC authorities, including Parliament, to urgently implement the recommendations of the national consultations through all appropriate means, including presidential pardon, amnesty, or a retrial in full compliance with international standards; *wishes* to be informed of the measures taken without delay;
5. *Reiterates its deep concern* that Mr. Ndongala continues to be denied appropriate medical care and, *urges once again* that the DRC authorities ensure that he is urgently provided with medical care in full compliance with the DRC's international obligations under international human rights law;
6. *Requests* the Secretary General to convey this decision to the parliamentary authorities, the Minister of Justice, the complainants and any third party likely to be in a position to supply relevant information;
7. *Requests* the Committee to continue examining this case and to report back to it in due course.

## Democratic Republic of the Congo

### DRC/81 - Muhindo Nzangi

The Committee,

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

The Governing Council,

*Referring* to the case of Mr. Muhindo Nzangi and to the decision it adopted at its 194<sup>th</sup> session (March 2014),

*Referring also* to the letter from the Speaker of the National Assembly of 8 October 2014 and the information provided by the complainants,

*Considering* that Mr. Nzangi, a member of parliament for the majority, was arrested on 11 August 2013 following comments he made on a radio show where he criticized the Government; he was charged with jeopardizing state security, insulting the Head of State, and disclosing classified defence information and sentenced on 13 August 2013 to three years in prison at first and last instance by the Supreme Court only on the charge of jeopardizing State security,

*Considering* the following allegations by the complainants: Mr. Nzangi's parliamentary immunity was violated; his conviction constitutes a serious violation of the right to freedom of expression of parliamentarians, Mr. Nzangi having been convicted for having expressed his point of view about the war in the eastern DRC and for having criticized government policy; his trial was not fair, his lawyers not having had the material time to mount a defence (in view of the expedited nature of the *flagrante delicto* procedure applied in the case) and in the absence of the possibility to appeal,

*Bearing in mind* that, in the reasoned decision of February 2014, the Supreme Court held as follows: Mr. Nzangi was guilty of jeopardizing State security because he had "deliberately spread rumours about the Head of State's failure to order the continuation of the war in the east of the country, even though troops from the DRC armed forces at the front were ready to fight the M23"; this was "an inaccurate statement that was of a nature to alarm the people in that part of the country, to worry them and to foment doubt about the strength of the authorities, institutional stability and the public authorities, and that definitely caused unrest in Goma and the neighbouring area"; the "rumours" consisted in Mr. Nzangi's declaration that "if the Head of State does not give the order to kick the aggressors out, we'll go the way of Mali, we've seen loads of Rwandan bodies, and the people have to attack MONUSCO because it has not performed its duties and obligations; the Head of State isn't controlled by anyone and whether the army attacks or no longer attacks, he's the Commander-in-Chief of the army and the army was reorganized after former commanders left for Kinshasa",

*Bearing in mind* the recording of the incriminating radio broadcast provided by the complainants, in particular Mr. Nzangi's words during the broadcast,

*Considering* that Article 153 of the Constitution of the DRC, adopted in 2006, provides that the Court of Cassation shall hear cases involving offences committed by members of the National Assembly and the Senate in first and last instance,

*Recalling* that the Speaker of the National Assembly indicated in his letter of 19 February 2014 that, in application of the recommendations that emerged from the national consultations held in September 2013, the Parliament of the DRC had adopted, on 11 February 2014, an amnesty law that covered the offences for which Mr. Nzangi had been convicted, and that the complainants had confirmed that Mr. Nzangi was eligible for amnesty, which he had applied for in writing pursuant to the law,

*Recalling* that during the 130<sup>th</sup> IPU Assembly (March 2014) the delegation of the DRC indicated that:

- In accordance with the Constitution, and because he had been arrested using the *flagrante delicto* procedure, Mr. Nzangi had not benefited from parliamentary immunity;
- Even though Mr. Nzangi had been found guilty, he had not been removed from office by the National Assembly, which considered that the case could be resolved by granting Mr. Nzangi amnesty for political offences, and that the Speaker of the National Assembly had pledged to do all in his power to ensure that Mr. Nzangi was granted amnesty,

*Considering* that Mr. Nzangi was finally granted amnesty and released from prison on 30 April 2014 in accordance with the amnesty law, and that Mr. Nzangi has since resumed his parliamentary duties,

1. *Thanks* the Speaker of the National Assembly for the information and for his assistance in promoting a satisfactory settlement;
2. *Notes with satisfaction* that Mr. Nzangi was granted amnesty and released from prison under the amnesty law adopted by the Parliament of the DRC in February 2014 and has resumed his parliamentary duties;
3. *Regrets* nevertheless that in sentencing Mr. Nzangi to a prison term for having criticized government policy, even though he did not incite to violence, the authorities of the DRC disregarded Mr. Nzangi's right to freedom of opinion and expression, which is enshrined in Article 19 of the International Covenant on Civil and Political Rights, to which the DRC is a party, therefore *urges* the authorities of the DRC to take all appropriate measures to strengthen freedom of expression and prevent similar incidences from repeating in the future, and *wishes* to be kept informed in this regard;
4. *Deplores again* that there is no separate avenue of appeal in the judicial process applying to parliamentarians in the DRC and *recalls* that the possibility to appeal is one of the principal guarantees of a fair trial; *appeals to* the Parliament of the DRC to create such an avenue of redress so that parliamentarians may enjoy the same full protection of the rights of defence in judicial proceedings as all other citizens of the DRC;
5. *Suggests* that the IPU, in the context of a technical assistance programme, examine together with the parliamentary authorities, the possibility of allowing them to benefit from its experience to address the underlying concerns reflected in this case;
6. *Requests* the Secretary General to convey this decision to the parliamentary authorities, the Minister of Justice, the complainants and any third party relevant to the case;
7. *Decides to close the case.*

## Democratic Republic of the Congo

### DRC/83 - Jean-Bertrand Ewanga

The Committee,

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

The Governing Council of the Inter-Parliamentary Union,

*Having before it* the case of Mr. Jean-Bertrand Ewanga, a member of the National Assembly of the Democratic Republic of the Congo (DRC), which has been examined by the Committee on the Human Rights of Parliamentarians pursuant to the Procedure for the examination and treatment of complaints (Annex I of the revised Rules and practices),

*Referring* to the information provided by the Speaker of the National Assembly in his letter of 8 October 2014, and by the complainant,

*Considering* that Mr. Ewanga, an opposition member of parliament, gave a speech on 4 August 2014 at a public rally, and was arrested in the morning of 5 August 2014; he was charged with insulting the Head of State and inciting racial and tribal hatred; he was tried before the Supreme Court in first and last instance under the *flagrante delicto* procedure; during the trial Mr. Ewanga claimed that the Constitution was violated, causing the judges to suspend the proceedings until a decision on these matters was made by the Constitutional Court; his challenges were rejected by the Constitutional Court and the trial before the Supreme Court resumed; he was subsequently sentenced to one-year imprisonment on 11 September 2014 on the charge of insulting the Head of State and other state officials,

*Considering that* according to the complainant, Mr. Ewanga was arrested, charged, and convicted in violation of his freedom of expression, parliamentary immunity, and right to liberty and due process,

- As regards freedom of expression

*Considering* that, according to the complainant, Article 23 of the DRC Constitution on freedom of expression was violated; Mr. Ewanga was exercising his freedom of expression and did not make any statements that went beyond legal criticism of the Head of State,

*Considering* that, according to the Speaker, a video of Mr. Ewanga's speech was broadcast during the Supreme Court trial and forged the conviction of the Court that his words went beyond normal criticism of the Government's action and were constitutive of a criminal offence,

*Bearing in mind* that the video and the transcript of Mr. Ewanga's speech, provided by the complainant and other reliable sources of information, indicated that he stated that "Kabila must go", that "he stole the elections", that "he lied", and that the Speakers of the Senate and the National Assembly, as well as the Prime Minister, were his sorcerers,

*Bearing in mind* that members of the international community, including the European Union and the United Nations peacekeeping mission in the DRC (MONUSCO), expressed concern over the arrest of Mr. Ewanga, questioned the appropriateness of the use of the *flagrante delicto* procedure, and called on the authorities of the DRC to take necessary measures to ensure that freedom of expression was protected,

*Considering also* that, according to the complainant, Ordinance Law 300 of 16 December 1963, which stipulates the crime of insulting the Head of State, is not in compliance with the DRC Constitution promulgated in 2006 and with international human rights standards, and should be repealed or amended,

- As regards parliamentary immunity

*Considering* that the complainant alleges that Mr. Ewanga was arrested in violation of his parliamentary immunity; it contested the application of the *flagrante delicto* procedure and claimed that it was used abusively to circumvent the National Assembly and Article 107 of the DRC Constitution, which reads that “Parliamentarians may not be prosecuted, investigated, arrested, detained or tried for opinions expressed or votes cast by them in the exercise of their functions”; it alleges that the use of the *flagrante delicto* procedure was abusive both because Mr. Ewanga was simply exercising his freedom of expression and therefore did not commit a crime, and also because he was not arrested at the moment that he gave his speech, but only the following day,

*Considering* that the Speaker of the National Assembly noted that, according to Article 107 of the Constitution, parliamentary immunity only protects opinions or votes expressed in the exercise of parliamentary functions; he also stated that according to Article 7 of the Congolese Criminal Code, the procedure of *flagrante delicto* can be applied whenever an infraction “produces effects ... provided that this occurs shortly after the violation”,

- As regards pretrial detention and house arrest

*Considering* that, according to the complainant, Mr. Ewanga was put in jail on 5 August 2014 despite a Supreme Court order that he be placed under house arrest, which was finally executed on 8 August 2014 when Mr. Ewanga was transferred to a hotel in Kinshasa; the complainant contested, however, that pursuant to the legislation and existing jurisprudence on house arrest, he should have been placed under house arrest at his domicile,

*Considering* that the Speaker of the National Assembly stated that he intervened to the Prosecutor General to obtain the execution of the Supreme Court order,

- As regards due process

*Considering* that, according to the complainant, due process was not respected in the judicial proceedings, in particular: (i) Mr. Ewanga’s lawyers were not provided with access to the court files at the initial hearing of the Supreme Court proceeding and could not consider the evidence against him; (ii) the composition of both the Supreme Court and the Constitutional Court was not consistent with domestic law; (iii) the sentencing was made without the presence of Mr. Ewanga’s legal counsel who had left the courtroom in boycott; (iv) Mr. Ewanga was convicted for additional infractions - namely insulting the Presidents of the National Assembly and the Senate and the Prime Minister - not on the original charge sheet, although he was never notified of the charges during the trial and could therefore not prepare a defence to them,

*Considering* that, according to the Speaker of the National Assembly, Mr. Ewanga’s lawyers had access to the Supreme Court files, otherwise they would not have obtained a stay of enforcement of the case on account of pleas of unconstitutionality,

*Considering* that the reasoned rulings on both the Supreme Court Case and the Constitutional Court case have not yet been made available to Mr. Ewanga and his lawyers by the DRC authorities more than one month after his conviction,

*Bearing in mind* that the Constitutional Court is not fully operational and that its proceedings continue to be conducted by the Supreme Court to date,

*Bearing in mind* that freedom of expression is protected by Article 19 of the International Covenant on Civil and Political Rights (ICCPR) and that, according to the United Nations Human Rights Committee

ICCPR general comment No. 34 (2011), “the mere fact that forms of expression are considered to be insulting to a public figure is not sufficient to justify the imposition of penalties ... all public figures, including those exercising the highest political authority such as heads of state and government, are legitimately subject to criticism and political opposition” (para. 38), “defamation laws must be crafted with care to ensure that they ... do not serve, in practice, to stifle freedom of expression” (para. 47),

*Considering* that, during the Universal Periodic Review in 2014, the DRC accepted to “ensure that the freedoms of expression and peaceful assembly are respected in conformity with international standards and that members of political parties, journalists and human rights activists are able to exercise their activities and criticize the Government without being subject to intimidation, reprisals or harassment” (para. 134.134 of the Report of the Working Group of the UPR),

1. *Thanks* the Speaker of the National Assembly for the information provided;
2. *Observes* that Mr. Ewanga criticized government policy, the Head of State and other state authorities; *notes* that the language of his comments was not conducive to promoting constructive and amicable political dialogue; *but considers*, based on the video and transcript of the speech, that his words fell within the scope of protected free speech pursuant to Article 19 of the ICCPR and should therefore have been protected; *urges* the DRC authorities, including Parliament, to consider all appropriate means of resolving the case, including presidential pardon, amnesty, or a retrial in full compliance with international standards;
3. *Is deeply concerned* that the procedure of *flagrante delicto* appears to have been used abusively and *considers* that the National Assembly should have inquired, in full respect of the principle of separation of powers, as to the grounds justifying the use of the procedure and made its own assessment on whether the procedure was used properly;
4. *Notes with concern* the allegations regarding the violation of due process and *wishes* to receive the reasoned rulings of both the Supreme Court and the Constitutional Court; *reaffirms its longstanding view* that the possibility to appeal is one of the principle guarantees of a fair trial; therefore *urges* the Congolese Parliament to create a separate avenue of redress in the judicial process applying to parliamentarians, so that they may enjoy the same full protection of the rights of defence in judicial proceedings, as all other citizens of the DRC;
5. *Urges* the authorities to repeal or amend the laws stipulating the crime of insulting the Head of State and other high political authorities and bring it in compliance with international human rights standards so as to prevent similar incidences from being repeated in the future; *wishes* to be kept informed in this regard;
6. *Suggests* that the IPU, in the context of a technical assistance programme, examine together with the parliamentary authorities the possibility of allowing them to benefit from its experience to address the underlying concerns reflected in this case;
7. *Requests* the Secretary General to convey this decision to the parliamentary authorities, the complainant, and any third party likely to be in a position to supply relevant information;
8. *Requests* the Committee to continue examining this case and report back to it in due course.

## Zambia

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

The Committee,

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

The Governing Council of the Inter-Parliamentary Union,

*Referring* to the case of the above-mentioned individuals, all elected in the September 2011 parliamentary elections as members of political parties that are now in the opposition, and the decision which it adopted at its 194<sup>th</sup> session (March 2014),

*Recalling* that, according to the complainant, immediately following the legislative and presidential elections in September 2011, the Patriotic Front Government embarked on a campaign of score-settling against members of the former government, abusing provisions of the Public Order Act, disrupting opposition activities and using the pretext of the “anti-corruption fight” to eliminate political competition; according to the complainant, apart from a few isolated cases that have gone to trial, the accusations against opposition members have proved groundless, and the unsubstantiated prosecutions have been abandoned in some cases, such as with respect to Ms. Sarah Sayifwanda, Mr. Mwalimu Simfukwe, Mr. Garry Nkombo and Mr. Request Muntanga, but in others the Government is pressing on despite the absence of evidence, like in the cases of Mr. Maxwell Mwale, Ms. Dora Siliya and Mr. Ronnie Shikapwasha,

*Recalling* that the parliamentary authorities observed that, in spite of judicial pronouncements on the administration of the Public Order Act, challenges persisted and that, while successive governments had insisted that the Public Order Act was impartially administered, the opposition felt that its administration was biased towards the Government and that the matter occasionally arose even on the floor of the House; the parliamentary authorities affirmed that the criminal cases against members of parliament, which primarily concern charges of abuse of authority at the time when the individuals concerned were ministers in the previous government, were following their normal course before the courts,

*Taking into account* that the President of the Committee on the Human Rights of Parliamentarians, Senator Juan Pablo Letelier, conducted an on-site mission to Zambia from 22 to 25 September 2014 at the invitation of the Speaker of the National Assembly; his full mission report will be presented to the Governing Council at its next session (March-April 2015), after being shared with all parties for their observations; the preliminary observations regarding the mission are as follows:

- The authorities extended their full cooperation during the mission, thus permitting the President of the Committee to meet the relevant legislative, judicial and executive authorities, including the Vice-President, Speaker of the National Assembly, Minister of Home Affairs, Deputy Inspector General of Police, Attorney-General and Director of Prosecutions, as well as the parliamentarians directly concerned;

- The cases before the Committee have to be seen in the context of: (i) the unprecedented number of contested parliamentary seats and disqualified members of parliament following the 2011 parliamentary elections, thereby altering the balance of power in Parliament; (ii) incidents of political harassment and violence, in particular in 2012 and 2013, such as in the lead-up to the Livingstone by-election in February 2013, although, with the exception of the reported violence during the by-election in August 2014 in Mangango, by-elections held in 2014 appear to have been largely peaceful; and (iii) the lack of legislation on the financing of political parties and political campaigns, clear rules on floor-crossing and the absence of a new Constitution that could possibly address these and other outstanding critical questions with a view to enhancing democracy in Zambia,
- With regard to the observations on the specific human rights cases, the preliminary mission findings include the following:
  - In light of the detailed allegations of the arbitrary arrests of and legal criminal action in December 2012 against members of parliament Ms. Anne Chungu, Mr. Michael Katambo, Mr. Howard Kunda and Mr. James Chishiba and in February 2013 with respect to members of parliament Mr. Garry Nkombo and Mr. Request Mutanga, which legal action - in the absence of any proof of wrongdoing - was subsequently abandoned in court, it appears that the police have indeed abused their authority in these cases and there is concern that no action appears to have been taken to look into these incidents and to hold police officers to account;
  - The Public Order Act, which existence and application are at the centre of several of the concerns in the cases at hand, puts undue strain on the right of freedom of assembly; there have been reports of instances of the police unduly limiting political activity by the opposition even in the face of court orders, such as in the case of the public meeting called for in September 2012 in Lusaka's Kanyama compound; parliamentarians have not always been proposed alternative dates or venues in response to apparently justified security concerns from police, nor have they systematically used the legal process to challenge decisions taken by the police to limit the exercise of the right of freedom of assembly in specific instances;
  - There has been a serious delay in handling petitions for the disqualification of seats, several of which remain pending three years after the parliamentary elections took place;
  - There has been a serious delay in the legal proceedings concerning the charges of abuse of authority (corruption) against former member of parliament Maxwell Mwale and concerns about the legal justification for the continued confiscation of member of parliament Kenneth Konga's campaign vehicles and restrictions on the full use of other property;
  - No legal action has been taken against the alleged attacker of Mr. Garry Nkombo at a police station in February 2013, despite the existence of a report detailing Mr. Nkombo's version of the facts and his injury;
- In order to address those specific concerns, the mission recommends that:
  - The Public Order Act be amended so as to reduce the discretion and powers of police in response to political opposition; the police be reprimanded when and where they continue to insist on the need for a permit for members of parliament, which under the current Public Order Act is no longer needed, abuse their discretion to cancel or postpone without justification duly announced public meetings or arbitrarily arrest parliamentarians taking part in such meetings; full support be given to the National Human Rights Commission's work aimed at identifying and discussing solutions for human rights challenges that have arisen in the application of the Public Order Act; members of parliament who consider that, under the Public Order Act or any other law, the police have abused their rights, make effective use of national legal means of recourse;
  - Steps be taken to investigate and establish accountability for the arbitrary arrest and detention of members of parliament in December 2012 and February 2013;

- The relevant courts decide swiftly on outstanding petitions for disqualification of seats and organize as quickly as possible, where called for, by-elections;
  - Steps be taken to shed full light on, and if applicable, establish responsibility for, the alleged attack on Mr. Nkombo in February 2013;
  - Complaints by Mr. Kenneth Konga regarding the unlawful continued confiscation and limitation on the use of his property be dealt with swiftly;
  - Ongoing criminal cases of alleged abuse of authority against current and former members of parliament, in particular that of Mr. Mwale which has been going on since 2011, be expedited;
  - Action be taken to adopt a political parties act, a legal framework to address political party and campaign financing and floor-crossing and to promote a full and open exchange of views on the Government's plans for a new Constitution,
1. *Thanks* the Speaker and the other Zambian authorities for the full cooperation which they have extended to the mission, including the extensive documentation that they have provided;
  2. *Takes note of* the preliminary mission observations and *eagerly awaits* the final mission report at the next IPU Assembly (March-April 2015); *looks forward* to receiving in the meantime the observations of the authorities on the preliminary mission's specific concerns and recommendations;
  3. *Encourages* the authorities to seize the opportunity to review and amend the Public Order Act now, well before the next parliamentary and presidential elections, and to put in place for this purpose a national consultative process involving all political parties, the police, the National Human Rights Commission, as well as other parties interested, with a view to ensuring that the concerns and challenges that have arisen in the cases at hand are properly addressed; *assures* that the IPU stands ready to assist in those efforts, including by sharing relevant experiences from other countries, should that be requested;
  4. *Requests* the Secretary General to convey this decision to the relevant authorities and the complainant; *requests* him also to convey the present decision to the complainant and any third party likely to be in a position to supply relevant information;
  5. *Requests* the Committee to continue examining this case and to report back to it in due course.

## Colombia

CO/146 - Iván Cepeda Castro  
CO/147 - Alexander López  
CO/148 - Jorge Enrique Robledo  
CO/149 - Guillermo Alfonso Jaramillo  
CO/150 - Wilson Árias Castillo

The Committee,

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

The Governing Council of the Inter-Parliamentary Union,

*Referring* to the cases of Mr. Iván Cepeda Castro, Mr. Alexander López, Mr. Jorge Enrique Robledo, Mr. Wilson Árias Castillo and Mr. Guillermo Alfonso Jaramillo, all current members, with the exception of the last-named individual, of the Colombian Congress from the opposition party *Polo Democrático Alternativo* (Alternative Democratic Pole), and to the decision it adopted at its 194<sup>th</sup> session (March 2014),

*Recalling* that the five individuals concerned received several death threats until 2012,

*Recalling* that Mr. Cepeda has since 2013 received the following threats:

- in February 2013, an anonymous call was made regarding a plot hatched against Mr. Cepeda, claiming that two brothers, Pedro and Santiago Gallón Henao, had paid an armed group to go to Melgar municipality (Tolima) to prepare an attack on him in Bogotá;
- in July 2013, a human rights defender and member of the National Movement of Victims of State Crimes, MOVICE, Sucre branch, received a threat directed at various labour and human rights leaders, including Mr. Cepeda, in which the latter is referred to as “the spokesperson and chief ambassador for terrorism in Colombia and a major terrorist”;
- on 5 August 2013, a threat was sent to Mr. Cepeda’s work email address by “LOS RASTROJOS - COMANDOS URBANOS”; the threat was identified as PUBLIC COMMUNIQUE No. 012 04 of August 2013 and sent from an email address identified as jrojasilva@gmail.com; it contained three points, the second of which identifies as “... military target and permanent enemies of the country a series of people referred to as trade union/guerrilla leaders, and ideologues clothed as lawyers, senators and representatives, the insurgents: ... IVAN CEPEDA (emphasis added) ...”;
- Mr. Cepeda was also mentioned as a military target by “the national urban commandos of the Rastrojos” in their PUBLIC COMMUNIQUE No. 18 of 10 September 2013 and PUBLIC COMMUNIQUE of 24 September 2013;
- on 4 February 2014, Mr. Cepeda and Mr. Alirio Uribe Muñoz, his running-mate for the Chamber of Deputies in the elections of 9 March 2014, were threatened by email by those who called themselves the AGUILAS NEGRAS BLOQUE CAPITAL D.C; in their threat, they tell their two targets that their time has come, that this is the only warning and that they better withdraw from politics and save their lives,

*Considering* that on 31 July 2014, Mr. Cepeda received a letter from Mr. Hernan Alonso Villa, Jefe Militar de los Urabeños y el Bloque Metro de la Autodefensas Unidas de Colombia, announcing that he would be subject to a military trial and death if he did not go into exile within the next four months. The letter made particular reference to the problems faced by former President and current Senator Alvaro Uribe, thereby implicitly criticizing Mr. Cepeda’s work to investigate alleged links

between Mr. Uribe and the paramilitary. On 1 August 2014, Mr. Cepeda informed the National Protection Unit, the national police and the Prosecutor's Office respectively of the threat. According to the complainant, the National Protection Unit replied on the same day that it was the National Police that was in charge of assessing risks faced by parliamentarians and adopting adequate protection measures,

*Recalling* that on 4 February 2014, *semana.com* (Colombia) published the results of its investigation into the "Andromeda" affair, involving unlawful eavesdropping to uncover the Government's representatives in the peace process in Havana, including Mr. Cepeda; *considering* that in August 2014, the complainant provided information according to which a hacker by the name of Mr. Andrés Sepúlva, who is being detained, reportedly spied on Mr. Cepeda on behalf of those close to Mr. Alvaro Uribe,

*Recalling* that the complainant, in his communication of 6 February 2014, stated that Mr. Cepeda has continued to ask the Prosecutor's Office for guarantees of security and protection; Mr. Cepeda has always informed the competent national authorities of any threats against them so that they could conduct the necessary investigations; however, in his communication of 6 February 2014, the complainant points out that only in 2013 was Mr. Cepeda approached about an investigation into a denunciation made in 2008,

*Recalling* that the acting Chief Prosecutor of Colombia stated in October 2010 that all threats against members of the Alternative Democratic Pole were being investigated with the utmost diligence, but that it was often very difficult to lay hands on those responsible since they were experts at covering up their identity and whereabouts; in its report of 12 January 2011, the Prosecutor's Office affirmed that the threats issued by *Águilas negras* against Mr. Cepeda and by *Los rastros - comandos urbanos* against Senators López, Robledo and Jaramillo were all the subject of ongoing criminal investigations; *recalling* also that the current Chief Prosecutor stated to Senator Juan Pablo Letelier, then Committee Vice-President, during the latter's visit to Colombia in March 2013 that his Office was doing everything possible to hold the culprits of threats against members of the opposition to account,

*Recalling* that in March 2013 the *Procuraduría* reportedly opened two disciplinary procedures against Mr. Cepeda; according to the complainant, the first one concerns Mr. Cepeda's efforts to accompany the displaced victims of violence returning to their land in Las Pavas community; the other investigation is reportedly based on the investigations conducted by Mr. Cepeda into the denunciations for paramilitarism against Mr. Álvaro Uribe; according to the complainant, this disciplinary procedure is based on two supposed faults, the first for procedural fraud and the second for overstepping and usurping duties; in view of the above and, given the seriousness of the situation, a petition for a temporary injunction [*solicitud de medida cautelar*] has been filed with the Inter-American Commission on Human Rights, in order to stop the procedures that could end up curtailing Mr. Cepeda's political life. At the same time, a suit has been filed charging the Colombian State with violating Article 23 of the American Convention on Human Rights, in that it permitted an administrative authority to investigate authorities or public servants elected by the people and possibly to sanction them with removal from office. The suit also refers to Articles 8, 16, 25 and others on political rights and due process,

1. *Is alarmed* at the repeated death threats directed against Mr. Cepeda;
2. *Considers* that the risks Mr. Cepeda has incurred as a long-standing critical voice in Colombia have to be taken extremely seriously and that the authorities should do everything possible to ensure that he will not suffer the same fate as his father;
3. *Is therefore deeply concerned* at the absence of any information indicating that full-scale investigations are under way and results have been obtained to establish accountability;
4. *Reaffirms its belief* that it is the duty of the Colombian authorities to do everything possible to ensure that the threats against Mr. Cepeda and the other members of the Alternative Democratic Pole do not go unpunished and *urges* them therefore to take effective steps towards

identifying and holding to account the culprits; *wishes* to know what recent steps the Prosecutor General's Office has taken in this regard;

5. *Calls* on the competent authorities to ensure without delay that an effective security detail is in place for Mr. Cepeda and his legislative team; *wishes* to receive official information on this point; *is eager* to know whether the other members of Congress remain at risk and, if so, what security arrangements have been made for them;
6. *Considers* that the protection of the physical integrity and the ability of members of the opposition to carry out their work without fear of reprisals should be of direct concern to the Colombian Congress; *calls therefore on* the Colombian Congress to use fully its constitutional powers to address the concerns that have arisen in this case;
7. *Is eager to understand* the legal grounds and facts underpinning the two disciplinary investigations initiated against Mr. Cepeda; *would appreciate* therefore receiving the observations of the *Procuraduría* on this matter; *wishes to be kept* informed of the ongoing legal challenges in the investigations brought before the Inter-American Commission on Human Rights and the Colombian courts;
8. *Considers* that a follow-up visit to Colombia by a Committee delegation would help to promote further progress in addressing the issues which have arisen in this case; *requests* the Secretary General therefore to make the necessary arrangements for this purpose;
9. *Requests* the Secretary General to convey this decision to the relevant authorities and the complainant; *requests* him also to convey the present decision to the complainant and any third party likely to be in a position to supply relevant information;
10. *Requests* the Committee to continue examining this case and to report back to it in due course.

## Colombia

CO/155 - Piedad del Socorro Zuccardi de García

CO/157 - Oscar Arboleda Palacio

The Committee,

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

The Governing Council,

*Referring* to the case of Ms. Piedad del Socorro Zuccardi de García, a member of the National Congress of Colombia when an investigation was opened against her on charges of aggravated criminal conspiracy for the purpose of organizing, promoting, arming or financing illegal armed groups, following accusations that she had cooperated with paramilitary groups, and to the decision it adopted on her case at its 193<sup>rd</sup> session (October 2013),

*Having before it* the case of Mr. Oscar Arboleda Palacio, a former member of the National Congress of Colombia, which has been examined by the Committee on the Human Rights of Parliamentarians pursuant to the Procedure for the examination and treatment of complaints (Annex I of the revised Rules and practices); *considering* that Mr. Arboleda is being investigated on the same charges as Ms. Zuccardi de García,

*Considering* that Ms. Zuccardi de García and Mr. Arboleda were placed in pretrial detention by decisions of the Supreme Court of Justice on 5 March and on 11 September 2013 respectively and that on 8 October 2014 the Supreme Court changed Mr. Arboleda's detention to house arrest in response to his poor health and the treatment he required,

*Considering* that the complainants point out that both former members of Congress do not benefit from a fair trial and are being prosecuted in the absence of any concrete and reliable proof, with the prosecution relying significantly on the testimony of a convicted drug trafficker and self-proclaimed demobilized paramilitary member, Mr. Juan Carlos Sierra alias "El Tuso"; they point in this regard also to the decisions by the Office of the (*Procuraduría*) Attorney-General had on 12 June 2012 and on 5 November 2013 to dismiss the cases against Ms. Zuccardi de García and Mr. Arboleda respectively,

*Considering* the following: The reports of the Committee's on-site missions to Colombia in 2009 and 2010 refer extensively to concerns about respect for fair-trial guarantees in criminal proceedings against current and former members of Congress, who are investigated and judged in a single instance by the Supreme Court, and about how the investigation and proceedings are handled in practice; with regard to the testimony of demobilized paramilitaries, the 2010 mission concluded, "such testimonies, however useful they may be, must be treated with great caution. The credibility of those persons, who have committed atrocious abuses, cannot be taken for granted. What seems clear is that the demobilized paramilitaries have their own interest in acting in a certain manner in order to be granted the lenient sentences provided for in the Justice and Peace Act. This necessarily implies that many feel it better to speak than remain silent, even when they know little or nothing of information,

*Considering finally* that several attempts have been made to introduce legislation to ensure that Colombian parliamentarians enjoy, like other Colombian citizens, the right to a fair trial, including the possibility of appeal, and that the most recent attempt was part of a larger series of judicial reform measures adopted by the Colombian Congress on 20 June 2012, but subsequently revoked after the President of the Republic objected to it; *considering* that a Bill to balance the powers of the different branches of the State was brought before the National Congress in September 2014,

*Considering* that an observer from the IPU, Mr. Nick Stanage from Doughty Street Chambers, attended the hearings which took place before the Supreme Court in both cases on 22 and 23 September 2014 and met with several of the parties directly concerned and has produced a report in which he expresses both concern about due process and the evaluation of the credibility of the evidence at hand,

1. *Thanks* the trial observer for his efforts and the report he has produced; *also thanks* the National Congress of Colombia for facilitating his mission;
2. *Requests* the Secretary General to convey a copy of the report to the relevant Colombian authorities and to the complainants with a view to soliciting their views;
3. *Decides* to continue closely monitoring the proceedings in both cases, including by exploring the option of a continued presence at future hearings before the Supreme Court;
4. *Reaffirms its view* that the legal framework in Colombia should ensure that members of Congress benefit from due process in criminal procedures so that they can fulfil their mandates effectively and without fear of reprisals; therefore *calls on* the competent authorities to do everything possible to renew consultations with a view to helping ensure that the current legal provisions governing the procedure applicable to members of Congress in criminal cases are finally overhauled so as to ensure their full compatibility with fundamental fair-trial standards, including the right to appeal and non-discrimination towards members of Congress; *affirms* the continued readiness of the IPU to assist in this regard;
5. *Requests* the Secretary General to convey this decision to the relevant authorities and the complainant; *requests* him also to convey the present decision to the complainant and any third party likely to be in a position to supply relevant information;
6. *Requests* the Committee to continue examining this case and to report back to it in due course.

## Israel

### IL/05 - Haneen Zoabi

The Committee,

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

The Governing Council of the Inter-Parliamentary Union,

*Having before it* the case of Ms. Haneen Zoabi, a member of the Knesset of Israel, which has been examined by the Committee on the Human Rights of Parliamentarians pursuant to the Procedure for the examination and treatment of complaints (Annex I of the revised Rules and practices),

*Considering* the following information provided by the complainant:

- On 29 July 2014, the Knesset's Ethics Committee decided to suspend for six months Knesset Member Haneen Zoabi's right to make speeches in the Knesset and 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;
- According to the complainant, the issue at the centre of the Ethics Committee's decision was 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, she responded: "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 MK 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. According to the complainant, the Deputy Attorney-General, Mr. Raz Nizri, admitted that there was a difficulty in seeing the statements as incitement to commit kidnapping;
- On 7 October 2014, Ms. Zoabi filed a petition with the High Court of Justice to strike down the six-month suspension, which is pending,

*Considering* that the complainant affirms that the decision by the Ethics Committee is part of a campaign of persecution, which situation has reportedly been highlighted by Israeli legal experts,

*Considering also* that, according to the complainant, Ms. Zoabi's punishment is discriminatory and that an example thereof is 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, was murdered by an extremist, citing exactly this kind of justification for his actions,

*Considering also* that the Attorney-General announced on 25 July 2014 that he had instructed police to begin 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 materials relevant to the investigation, although Ms. Zoabi addressed the allegations at a police interrogation in the city of Lod on 11 August 2014,

*Considering furthermore* that the complainant affirms that during this period the police have not been acting as a neutral law enforcement body and have been actively abusing their powers and denying people the right to peaceful demonstration and that, according to the NGO Adalah, more than 600 people had been arrested over their alleged participation in protests since the beginning of July 2014, all of them Palestinian citizens,

*Considering* that the complainant points out that Ms. Zoabi has had personal experience of abusive police behaviour on several recent occasions, most notably at an anti-war demonstration in Haifa on 18 July 2014. There, she was verbally and physically abused by police officers and handcuffed for half an hour. Ms. Zoabi has formally filed a complaint against the police for their behaviour at the demonstration. So far no investigation has been initiated,

*Considering* that, according to the complainant, Ms. Zoabi is the only public figure in Israel to be facing an investigation for incitement, even though there was an outpouring of anti-Arab racist statements during Israel's 50-day Operation Protective Edge, including calls for violence and threats to Palestinians both in Gaza and in Israel from leading Jewish politicians, rabbis and academics; the complainant affirms that the investigation against Ms. Zoabi is being pushed through at great speed to take advantage of the war atmosphere so that there is a national consensus in favour of punishing her,

*Recalling* that, under the previous legislature, on 13 July 2010, the Knesset passed a resolution to revoke 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, which matter was also examined through the procedure of the Committee on the Human Rights of Parliamentarians,

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

1. *Is deeply concerned* that Ms. Zoabi has been suspended from taking part in all parliamentary activity except for voting for six months, hence impairing her ability to exercise the mandate entrusted to her by her electors and their effective representation in the Knesset; *fears* that she was suspended on account of having exercised her freedom of speech by expressing a political position, as the Committee on the Human Rights of Parliamentarians believed was the case when the Knesset punished her for her participation in the Gaza-bound flotilla in 2010; *wishes* to receive a copy of the full decision taken by the Knesset Ethics Committee;
2. *Sincerely hopes* that the High Court of Justice will swiftly decide on the petition challenging the suspension and adopt a decision that fully recognizes the right to freedom of expression, respect for which is essential for members of parliament; *wishes* to be kept informed of developments in the proceedings;
3. *Wishes* to receive official information with regard to the criminal investigation against Ms. Zoabi, including with regard to the precise facts in support of the accusations made against her;
4. *Wishes also* to receive official information regarding steps taken to investigate the alleged verbal and physical abuse by police which Ms. Zoabi suffered during a demonstration on 18 July 2014; *also wishes to know* whether an analysis has been made, including by the Knesset through the exercise of its oversight functions, of the performance of the police in handling the demonstration;

5. *Requests* the Secretary General to convey this decision to the relevant authorities and the complainant; *requests* him also to convey the present decision to the complainant and any third party likely to be in a position to supply relevant information;
6. *Requests* the Committee to continue examining this case and to report back to it in due course.

## Malaysia

MAL21 - N. Surendran  
MAL22 - Teresa Kok (Ms.)  
MAL23 - Khalid Samad  
MAL24 - Rafizi Ramli  
MAL25 - Chua Tian Chang

The Committee,

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

The Governing Council of the Inter-Parliamentary Union,

*Having before it* the case of Mr. N. Surendran, Ms. Teresa Kok, Mr. Khalid Samad, Mr. Rafizi Ramli and Mr. Chua Tian Chang, members of the House of Representatives of Malaysia, which has been examined by the Committee on the Human Rights of Parliamentarians pursuant to the Procedure for the examination and treatment of complaints (Annex I of the revised Rules and practices),

*Taking into account* the information provided at the hearing which the Committee had on 14 October 2014 with the Malaysian delegation to the 131<sup>st</sup> IPU Assembly and the information that the complainants have regularly provided,

*Considering* that the five parliamentarians have been charged with sedition or are being investigated for this crime under (a), (b) and (c) of Section 4(1) of the Sedition Act of 1948:

- Ms. Teresa Kok, an opposition member of parliament for Seputeh in the Federal Territory of Kuala Lumpur, was charged on 5 May 2014 for making a satirical video called "Onederful Malaysia" which was published on YouTube on 27 January 2014. The Malaysian delegation emphasized that, according to the charges, the video raised, inter alia, sensitive security issues in Sabah, contained insults and promoted disaffection against the judiciary; a hearing in the case will take place before the High Court on 5 November 2014;
- Mr. Khalid Samad, a member of parliament for Shah Alam in the State of Selangor, was charged on 26 August 2014, under Section 4(1)(b) of the Sedition Act, for suggesting during a press conference in the parliamentary lobby, held on 26 June 2014, that an enactment allowing the Selangor Islamic Religious Council (MAIS) to control the State's religious authorities should be reviewed. The Malaysian delegation emphasized that, according to the charges, his remarks included, inter alia, calls for the return to a constitutional monarchy and questioned the powers of the rulers; the case was going to be heard next in court from 1 to 5 December 2014;
- Mr. N. Surendran, an opposition member of parliament for Padang Serai in the State of Kedah and lawyer for opposition leader Mr. Anwar Ibrahim, was charged twice within two weeks. His first charge, under Section 4(1)(c) of the Sedition Act, was for a press statement he released on 18 April 2014 entitled "Court of Appeal's Fitnah 2 written judgement is flawed, defensive and insupportable", in which he criticized the decision of the appellate court against the appeal of his client, Mr. Anwar Ibrahim, for a second sodomy conviction. The second charge, under Section 4(1)(b) of the Sedition Act, on 28 August 2014, was for a video on YouTube dated 8 August 2014 in which he stated that Mr. Anwar Ibrahim's second sodomy trial and conviction was part of a political conspiracy. A court hearing in the case took place on 14 October;

- Mr. Rafizi Ramli, an opposition member of parliament for Pandan in the Federal Territory of Kuala Lumpur, is currently under three separate sedition investigations. One is for providing the media with a letter allegedly written to Bank Rakyat from the Domestic Trade, Cooperatives and Consumerism Minister, Datuk Seri Hasan Malek. Another is for remarks he made against right-wing groups in the country in which he criticized their call to protest outside of churches. The third is for writing a book called "Reformasi 2.0: Fakta Kes Anwar Ibrahim" (translated as "Reforms 2.0: The Facts of Anwar Ibrahim's Case"); according to the Malaysian delegation, the investigations are ongoing;
- Mr. Chua Tian Chang, an opposition member of parliament for Batu, is also being charged with sedition over speeches he made at the Kuala Lumpur and Selangor Chinese Assembly Hall in Jalan Maharajalela, allegedly claiming that the United Malays National Organization staged the Sulu invasion into Sabah; according to the Malaysian delegation, the cases will next be heard in court on 30 October, 14 November and 11 December 2014,

*Considering* that the complainants are concerned about the wave of legal action taken under the Sedition Act, which they affirm aims to stifle the opposition; they consider that the act is drafted so broadly so as to criminalize democratic speech, including criticism against the Government, its leaders, and ruling political parties, as well as discussions of religion and ethnicity,

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

*Considering* that, according to the Malaysian delegation, freedom of expression was fully respected in Malaysia, that the Sedition Act was nothing new and had been inherited from the former British rulers, that the existence of the Sedition Act had to be seen in the context of complex racial and religious relations in Malaysia and that parliamentarians charged with sedition were not targeted because of their opposition to the Government, but because they had allegedly violated the laws of Malaysia; the delegation also emphasized that the Attorney-General, in deciding whether or not to bring or pursue a case, placed great importance on whether or not it was in the public interest to do so,

*Considering* that in 2102 the Malaysian Prime Minister announced that the Government intended to carry out a comprehensive review of the Sedition Act; *considering* that the complainants are concerned that, despite this announcement, no serious efforts have been made to this effect,

*Considering* that, according to the Malaysian delegation, the Government has been actively exploring, through the establishment of a dedicated team, four different options to review the Sedition Act, namely: (i) maintaining the act with minor changes, (ii) abolishing it, (iii) replacing it with the National Harmony Act, or (iv) maintaining the Sedition Act along with the adoption of the National Harmony Act; the matter was now in the hands of the Attorney-General's Chambers, which were due to make a proposal on how to go forward,

*Considering* that the Malaysian delegation stated that it would welcome a visit by a Committee delegation with a view to promoting better understanding of the issues and challenges related to the Sedition Act,

1. *Thanks* the Malaysian delegation for their cooperation and the information provided;
2. *Is concerned* about the ongoing criminal proceedings under the Sedition Act against five parliamentarians and their impact on the right to freedom of expression, respect for which is essential for members of parliament to effectively carry out their functions; *considers* in this regard that the conviction of the late Mr. Karpal Singh bears out that the application of the Sedition Act can have the effect of punishing remarks that seem to fall squarely within the exercise of the right to freedom of expression, and of easily leading to the loss of the parliamentary mandate, as would have been the case had his sentence been upheld on appeal;

3. *Decides* therefore to monitor closely the ongoing legal proceedings regarding the five parliamentarians; *would appreciate receiving* further details on the precise facts that have led to the charges and the investigations;
4. *Notes with interest* the continuing efforts being made by the authorities to review the Sedition Act; *underscores* that the Malaysian Parliament has a particular responsibility in bringing these efforts to fruition, not only because they will require legislative action, but also because the Parliament has a special interest in ensuring that its members can speak out freely without fear of undue legal action;
5. *Welcomes* the invitation extended by the Malaysian delegation for a Committee delegation to go to Malaysia; *considers* that such a visit would be an excellent opportunity to enhance the Committee's understanding of the pending review of the Sedition Act, to identify opportunities for sharing other countries' legislative experiences in promoting full respect for freedom of expression while safeguarding social and religious cohesion, and to acquire a full understanding of the application of the Sedition Act in the pending proceedings against members of parliament;
6. *Requests* the Secretary General to make the necessary arrangements for the visit to take place in the near future;
7. *Requests* the Secretary General to convey this decision to the relevant authorities, the complainants and any third party likely to be in a position to supply relevant information;
8. *Requests* the Committee to continue examining this case and to report back to it in due course.

## Oman

### OMN/01 - Talib Al Mamari

The Committee,

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

The Governing Council of the Inter-Parliamentary Union,

*Having before it* the case of Mr. Talib Al Mamari, a member of the *Majlis A'shura* of Oman, which has been examined by the Committee on the Human Rights of Parliamentarians pursuant to the Procedure for the examination and treatment of complaints (Annex I of the revised Rules and practices),

*Taking into account* the letters from the Chairman of the *Majlis A'Shura*, the last one dated 9 September 2014, the information provided at the hearing held on 14 October 2014 with the Omani delegation to the 131<sup>st</sup> IPU Assembly, and the information regularly provided by the complainants,

*Considering* the following facts regarding Mr. Al Mamari's arrest, prosecution and sentencing:

- Mr. Al Mamari was arrested, with the prosecutorial authorities invoking *flagrante delicto*, which application is contested by the complainants, on 24 August 2013 in connection with his participation in a demonstration on 22 August 2013;
- He was convicted on 10 October 2013 and sentenced to a seven-year prison term and a fine of 1,000 riyals for impairing the honour of the State, disturbing public order and obstructing traffic; in this regard, the court verdict states that Mr. Al Mamari was convicted of inciting unrest by "inciting people of Liwa to demonstrate in front of Sohar Industrial Port" and deliberately spreading biased reports violating the dignity of the State because he "intentionally spread tendentious news that could impair the honour of the country". On the latter crime, court documents illustrate that more specifically, Mr. Al Mamari impaired the honour of the country by giving the Government a deadline to respond to the demonstrators' demands, and threatening to demonstrate further - ready to die if need be - should no government response be forthcoming; Mr. Al Mamari and his lawyers rejected the conclusions of the first instance ruling, objecting to both its form and substance, and filed an appeal;
- Mr. Al Mamari was released on bail on 11 October 2013 pending the appeal, but re-arrested later that same day on accusations that he was responsible for incitement during Friday prayers at the mosque;
- Mr. Al Mamari's verdict was upheld in a Court of Appeals on 16 December 2013, which reduced his sentence to a four-year prison term and a 500-riyal fine after merging the sentences for the multiple crimes of which he was convicted;
- In February 2014, the Supreme Court overturned the decision against Mr. Al Mamari, due to a procedural error, ruling a retrial in the Court of Liwa - the location of the alleged crime - as opposed to the Court in Muscat;
- The retrial nevertheless took place once again in Muscat, according to the Omani delegation, at the hearing held on 14 October 2014, because of "security concerns" and given that the Supreme Court's decision to transfer the case to Liwa had subsequently been effectively challenged in court;
- On 6 August 2014, the court in Muscat found Mr. Al Mamari guilty of the charges and sentenced him to a four-year prison term and 700-riyal fine. The judge ruled that Mr. Al Mamari could be released on bail for the amount of 10,000 riyals; Mr. Al Mamari appealed and is awaiting the verdict, which may be handed down at the next hearing scheduled for 25 October 2014;

- Following the payment of bail, Mr. Al Mamari remains in detention, however, due to the investigation pending against him in connection with the accusations of incitement during Friday prayers at the mosque,

*Considering* that, with regard to the demonstrations in which Mr. Al Mamari took part and the precise circumstances of his arrest, the complainants affirm the following:

- The demonstrations in which Mr. Al Mamari participated were peaceful and were held in protest against pollution in Liwa; the demands of the demonstrators were not political, as they merely requested the Government to protect the health of Liwa inhabitants affected by the pollution; according to the complainants, Mr. Al Mamari was arrested and sentenced for exercising his freedom of peaceful assembly; they underscore that many people reported that he attended the demonstration as a mediator and was carrying out his duty as a member of parliament, concerned by popular demands; the complainants also affirm that a video provided by the authorities that allegedly implicated Mr. Al Mamari as inciting violence during the protest was clearly modified and edited, and that the footage of children throwing rocks was in fact of a separate event that had occurred on a different occasion;
- On 23 August 2013, Mr. Al Mamari held meetings with other parliamentarians and security authorities about the protests and the security forces' response. At the end of the meeting, Mr. Al Mamari returned to his brother's house, where he was staying after being injured by the police intervention in the demonstration. Mr. Al Mamari was arrested by security forces after they raided his brother's house in the early hours of 24 August 2013;
- In the course of the demonstrations, members of the security forces fired tear gas and used water cannons to disperse the crowd and Mr. Al Mamari was among those injured by the violent police intervention; the Chairman of the *Majlis A'Shura* noted in his letter of 6 March 2014, however, that the *Majlis* could not review the medical report on injuries of the citizens concerned, as none had lodged official complaints; however, according to the Chairman, members of the *Majlis* did not notice any injuries requiring medical treatment on the day following the event,

*Considering* that, according to the information provided by the Omani delegation at the hearing on 14 October 2014,

- Mr. Al Mamari's colleagues in Parliament had advised him not to take to the streets and to use instead his powers in Parliament to plead his cause;
- The region of Liwa had benefited from large-scale investments which had been very beneficial to the people. While there may have been some pollution, the Government ensured that acceptable limits were not exceeded and five ministers had gone to the area to set such limits; if there was any serious concern about pollution the Parliament would have been the first to know about it and to adopt a critical position,

*Considering* that, with regard to Mr. Al Mamari's conditions of detention and the question of respect for fair trial:

- One of the complainants states that, in the period preceding the first appeal, Mr. Al Mamari had been held in solitary confinement in a national security detention centre, without his lawyer being able to access his client, and that Mr. Al Mamari was tried at first instance by an inimical judge closely associated with the prosecution;
- In his letter of 12 January 2014, the Chairman of the *Majlis A'shura* noted that Mr. Al Mamari was convicted in the first instance court in a public hearing, with his lawyer in attendance and with full access to evidence and that Mr. Al Mamari's lawyer was also present during the appeal proceedings. The Chairman concluded by explaining that, in his view, all measures taken were legal and did not violate any provision. In his letter dated 6 March 2014, the Chairman remarked that Mr. Al Mamari was being treated properly by the prison authorities, detained with others, and allowed to receive visits. The Chairman attached a document from the Director of the Central Prison where Mr. Al Mamari was detained detailing the list of Mr. Al Mamari's visitors, including the dates of their visits and their relationship to Mr. Al Mamari; the Deputy Chairman of

the *Majlis A'shura*, at the hearing held with the Committee on 17 March 2014, confirmed this information and added that Mr. Al Mamari was even in charge of leading Muslim prayers with other inmates, that other members of parliament had the right to visit him and had done so;

- The Deputy Chairman of the *Majlis A'shura* stated at the aforesaid hearing that Mr. Al Mamari's trial had been carried out according to due process and that he had been allowed to present a strong defence; he also stated that the *Majlis A'Shura* had closely monitored proceedings, including through the presence of a trial observer,

*Recalling* that the complainant affirms that Mr. Al Mamari's prosecution has to be seen in the following context: Since his election to Parliament in 2011, Mr. Al Mamari has staunchly defended his province's interest in Parliament, especially denouncing environmental damage and pollution in the region, and has come to be known for criticizing the Government for its lack of commitment to the rule of law and good governance; the complainant also affirms in this respect that Mr. Al Mamari's conviction follows previous incidents of harassment in connection with his parliamentary work; it alleges that Mr. Al Mamari was arrested in the context of the popular protests in 2011 demanding a more inclusive political process in Oman; he was detained for nearly 48 hours and then released after reportedly being beaten and ill-treated by police officers; in 2012, the Public Prosecutor's Office initiated proceedings against him because of a Facebook post criticizing an employee of the Ministry of Housing and requested the *Majlis A'Shura* to lift Mr. Al Mamari's parliamentary immunity, which it did not do; in late 2012, Mr. Al Mamari was assaulted in a hotel room and handcuffed by police officers, who reportedly beat and threatened him,

*Considering* that, on 9 May 2014, one of the complainants expressed alarm over the arrest and detention of three individuals - at least one of which was a relative of Mr. Al Mamari - allegedly apprehended for publicly defending Mr. Al Mamari and calling for his release. These arrests were confirmed by the other complainant, with the nephew of Mr. Al Mamari having reportedly been detained for 67 days,

*Considering* that the United Nations Special Rapporteur on the rights to freedom of peaceful assembly and of association conducted a mission to Oman between 8 and 13 September 2014 and that he was not permitted to meet with Mr. Al Mamari; *considering* that in the preliminary findings of his mission, released in a statement on 13 September 2014, the Special Rapporteur:

- Voiced concerns over the limiting of freedom of assembly and association rights and a "pervasive culture of silence and fear affecting anyone who wants to speak and work for reforms in Oman";
- Stated that he had spoken with many people who reported having been arrested or detained without due process and subject to intimidation and torture for asserting their rights;
- Stated that, although the right to peaceful assembly was guaranteed in Omani Basic law, the caveat that this must be "within the limits of the law" was applied in a manner often leading to the annulment of the essence of such rights;
- Expressed concern regarding the response of the public authorities to protests, where he received reports of arbitrary arrest and excessive force and concern about reported reprisals against human rights activists and bloggers, and highlighted the arrests and imprisonment of individuals allegedly for expressing dissenting views online,

*Considering* that the Omani parliamentary authorities have repeatedly affirmed that freedom of opinion and expression was fully protected in Oman, including for members of parliament, and that Mr. Al Mamari had exercised this right without ever complaining about harassment,

*Taking note* of the invitation which the Omani delegation to the 131<sup>st</sup> IPU Assembly extended to the Committee to visit Oman to enhance its understanding of the issues which have arisen in the case, including the specific cultural and historical context in which they have to be seen,

1. *Thanks* the Chairman of the *Majlis A'Shura* and the Omani delegation for their cooperation and the information they have provided;

2. *Is concerned* about the serious allegation that Mr. Al Mamari was prosecuted and convicted on the basis of charges which may have disrespected his legitimate right to freedom of assembly; *wishes* to receive a copy of the first-instance ruling in the retrial as well as a copy of the evidence, including videos and testimonies, that the court has relied on in support of his conviction; *wishes* also to receive a copy of the legal document regarding the decision to overturn the original order by the Supreme Court for the retrial to take place in Liwa;
3. *Trusts* that the appeal court will issue an exemplary ruling that takes due account of Mr. Al Mamari's basic human rights; *wishes* to receive a copy of the ruling on appeal as soon as it becomes available;
4. *Is concerned* about the allegation that three individuals were the subject of reprisals for publicly raising concern about the case of Mr. Al Mamari; *wishes* to receive the official views on this matter;
5. *Wishes also* to receive official documentation on the legal and factual grounds in support of the accusation that Mr. Al Mamari's speech at the mosque during Friday prayers amounted to incitement; *wishes* to be informed of the stage reached in the legal proceedings in this matter;
6. *Notes* the discrepancies between the information provided by the authorities and the complainants with regard to the allegations of use of disproportionate force by law enforcement officers during the demonstrations; *wishes* to receive specific information from the complainants about whether or not those who were reportedly injured submitted official complaints to the relevant authorities in this regard;
7. *Welcomes* the invitation extended by the Omani delegation for a Committee delegation to visit Oman; *considers* that such a visit would provide an excellent opportunity to exchange views, in a spirit of dialogue and openness, with the parliamentary, judicial and executive authorities, the complainants and relevant third parties, and to acquire a better understanding of the issues that have arisen in the case, including their legal, historical and cultural context; *underscores* that it is of primary importance that the delegation also meet with Mr. Al Mamari himself;
8. *Requests* the Secretary General to make the necessary arrangements for the visit to take place in the very near future and to convey this decision to the parliamentary authorities, the complainants and any third party likely to be in a position to assist with the preparation of the visit;
9. *Requests* the Committee to continue examining this case and to report back to it in due course.

## Palestine/Israel

### PAL/02 - Marwan Barghouti

The Committee,

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

The Governing Council of the Inter-Parliamentary Union,

*Referring* to the case of Mr. Marwan Barghouti, an incumbent member of the Palestinian Legislative Council (PLC), and to the decision it adopted at its 194<sup>th</sup> session (March 2014),

*Also referring* to Mr. Simon Foreman's expert report on Mr. Barghouti's trial (CL/177/11(a)-R.2) and to the study published in September 2006 by B'Tselem (the Israeli Information Center for Human Rights in the Occupied Territories), entitled "*Barred from Contact: Violation of the Right to Visit Palestinians Held in Israeli Prisons*",

*Recalling* the following on file regarding Mr. Barghouti's situation:

- He was arrested on 15 April 2002 in Ramallah by the Israeli Defence Forces and transferred to a detention centre in Israel; on 20 May 2004, Tel Aviv District Court convicted him on one count of murder relating to attacks that killed five Israelis, on one count of attempted murder relating to a planned car bomb attack and on one count of membership of a terrorist organization, and sentenced him to five life sentences and two 20-year prison terms; Mr. Barghouti did not lodge an appeal because he does not recognize Israeli jurisdiction; in his comprehensive report on Mr. Barghouti's trial, Mr. Foreman stated that "the numerous breaches of international law make it impossible to conclude that Mr. Barghouti was given a fair trial"; those breaches included the use of torture;
- According to his letter of 6 January 2013, the Diplomatic Advisor to the Knesset stated that: "Mr. Barghouti was detained in Hadarim prison. He was held in a regular cell with other inmates, without any separation or isolation. Mr. Barghouti is entitled to and, in fact, receives regular visits from his family, the last of which was on 4 December 2012",

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

*Considering* that Israel released 26 long-serving Palestinian prisoners every day on 13 August, 30 October and 30 December 2013, as part of a United States-brokered deal allowing the resumption of Israeli-Palestinian peace talks; the individuals form the first three of four groups of Palestinian prisoners detained before 1993, totalling 104 individuals; the release of the fourth and last batch of prisoners, due to take place at the end of March 2014, did not occur following disagreements between Israeli and Palestinian authorities about the peace talks,

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

1. *Deeply deplores* that 12 years after his arrest Mr. Barghouti remains in detention as the result of a trial which, in the light of the compelling legal arguments put forward in Mr. Foreman’s report (on which the Israeli authorities have never provided their observations), did not meet the fair-trial standards which Israel, as a party to the International Covenant on Civil and Political Rights, is bound to respect, and therefore did not establish Mr. Barghouti’s guilt;
2. *Calls on* the Israeli authorities to release him without delay and to provide, until that occurs, new official information on his current conditions of detention, in particular his family visiting rights, along with information on the extent to which he has access to medical care; *remains concerned* in this regard about the reported prison conditions in which Palestinian prisoners are held in Israel;
3. *Urges* the authorities to accede to its own long-standing request, for as long as Mr. Barghouti remains imprisoned, to be granted permission to visit him; *sincerely hopes* that the authorities will respond favourably and facilitate such a visit;
4. *Requests* the Secretary General to convey this decision to the relevant authorities and the complainant; *requests* him also to convey the present decision to the complainant and any third party likely to be in a position to supply relevant information;
5. *Requests* the Committee to continue examining this case and to report back to it in due course.

## Palestine/Israel

### PAL/05 - Ahmad Sa'adat

The Committee,

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

The Governing Council of the Inter-Parliamentary Union,

*Referring* to the case of Mr. Ahmad Sa'adat, elected in January 2006 to the Palestinian Legislative Council, and to the decision it adopted at its 194<sup>th</sup> session (March 2014),

*Referring also* to the study produced by the Israeli non-governmental organization Yesh Din (Volunteers for Human Rights) on the implementation of due process rights in Israeli military courts in the West Bank, entitled *Backyard Proceedings*, which reveals the absence of due process rights in those courts, and to the study published in September 2006 by B'Tselem (the Israeli Information Center for Human Rights in the Occupied Territories), entitled *Barred from Contact: Violation of the Right to Visit Palestinians Held in Israeli Prisons*,

*Recalling* the following on file regarding Mr. Sa'adat's situation:

- On 14 March 2006, Mr. Sa'adat, whom the Israeli authorities had accused of involvement in the October 2001 murder of Mr. R. Zeevi, the Israeli Minister of Tourism, was abducted by the Israeli Defence Forces from Jericho Jail and transferred to Hadarim Prison in Israel, together with four other prisoners suspected of involvement in the murder; the Israeli authorities concluded one month later that Mr. Sa'adat had not been involved in the killing but charged the other four suspects; 19 other charges were subsequently brought against Mr. Sa'adat, all arising from his leadership of the Popular Front for the Liberation of Palestine (PFLP), which Israel considers a terrorist organization, and none of which allege direct involvement in crimes of violence; on 25 December 2008, Mr. Sa'adat was sentenced to 30 years in prison;
- Mr. Sa'adat suffers from cervical neck pain, high blood pressure and asthma, and has reportedly not been examined by a doctor and is not receiving the medical treatment he needs; when he was first detained, the Israeli authorities refused to let his wife visit him; for the first seven months, Mr. Sa'adat received no family visits; his children, who have Palestinian identity cards, were not allowed to visit their father, for reasons unknown; in March and June 2009, Mr. Sa'adat was placed in solitary confinement, prompting him to go on a nine-day hunger strike in June 2009;
- On 21 October 2010, Mr. Sa'adat's isolation order, due to expire on 21 April 2011, was confirmed a fourth time for a further six months; it was apparently again extended in October 2011, bringing Mr. Sa'adat's time in isolation to three years; his isolation ended in May 2012, as part of the agreement ending the April-May 2012 hunger strike by some 2,000 Palestinian detainees in Israel; one of the complainants

affirmed in September 2012 that, while Mr. Sa'adat's wife and oldest son had been able to visit him, his other three children continued to be denied permits;

- According to his letter of 6 January 2013, the Diplomatic Advisor to the Knesset stated that: "Mr. Sa'adat was detained in Hadarim Prison. He was held in a regular cell with other inmates, without any separation or isolation. Mr. Sa'adat is entitled to and, in fact, receives regular visits from his family, the last of which was on 4 December 2012",

*Considering* that Israel released 26 long-serving Palestinian prisoners every day on 13 August, 30 October and 30 December 2013, as part of a United States-brokered deal allowing the resumption of Israeli-Palestinian peace talks; the individuals form the first three of four groups of Palestinian prisoners detained before 1993, totalling 104 individuals; the release of the fourth and last batch of prisoners, due to take place at the end of March 2014, did not occur following disagreements between Israeli and Palestinian authorities about the peace talks,

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

1. *Deeply deplores* that eight years after his arrest Mr. Sa'adat remains in detention as a result of a politically motivated trial; *reaffirms* in this regard its long-standing position that Mr. Sa'adat's abduction and transfer to Israel were related not to the original murder charge but rather to his political activities as PFLP General Secretary;
2. *Calls on* the Israeli authorities to release him without delay and to provide, until that occurs, new official information on his current conditions of detention, in particular his family visiting rights, along with information on the extent to which he has access to medical care; *remains concerned* in this regard about the reported prison conditions in which Palestinian prisoners are held in Israel;
3. *Urges* the authorities to accede to its own long-standing request, for as long as Mr. Sa'adat remains imprisoned, to be granted permission to visit him; *sincerely hopes* that the authorities will respond favourably and facilitate such a visit;
4. *Requests* the Secretary General to convey this decision to the relevant authorities and the complainant; *requests* him also to convey the present decision to the complainant and any third party likely to be in a position to supply relevant information;
5. *Requests* the Committee to continue examining this case and to report back to it in due course.

## Palestine/Israel

PAL18 - Yaser Mansour	PAL67 - Ibrahim Abu Salem
PAL21 - Emad Nofal	PAL68 - Mohammed Musleh
PAL28 - Muhammad Abu-Teir	PAL69 - Omar Abd Al Razaq
PAL29 - Ahmad 'Attoun	PAL70 - Daoud Abo Seer
PAL30 - Muhammad Totah	PAL71 - Khaled Saeed
PAL32 - Basim Al-Zarrer	PAL72 - Ibrahim Dahbour
PAL35 - Mohamed Ismail Al-Tal	PAL73 - Fadhel Hamdan
PAL47 - Hatem Qfeisheh	PAL74 - Mohd. Mutalaq Abu Jihaisheh
PAL48 - Mahmoud Al-Ramahi	PAL75 - Nayef Rjoub
PAL57 - Hasan Yousef <sup>1</sup>	PAL76 - Sameer Al Qadi
PAL60 - Ahmad Mubarak	PAL77 - Khalil Al Rabee
PAL61 - Mohammad Jamal Natsheh	PAL78 - Husni Al Borini
PAL62 - Abdul Jaber Fuqaha	PAL79 - Riyadh Radad
PAL63 - Nizar Ramadan	PAL80 - Abdul Rahman Zaidan
PAL64 - Mohammed Maher Bader	PAL81 - Fathi Qaraa'wi
PAL65 - Azzam Salhab	PAL82 - Khalida Jarrar (Ms.)
PAL66 - Ayman Daraghmeh	

The Committee,

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

The Governing Council of the Inter-Parliamentary Union,

*Referring* to the case of the above-mentioned parliamentarians, all of whom were elected to the Palestinian Legislative Council (PLC) in January 2006, and to the decision it adopted at its 194<sup>th</sup> session (March 2014),

*Recalling* that the parliamentarians concerned were elected to the Palestinian Legislative Council on the Electoral Platform for Change and Reform and arrested following the kidnapping of an Israeli soldier on 25 June 2006, that they were prosecuted and found guilty of membership in a terrorist organization (Hamas), holding a seat in parliament on behalf of that organization, providing services to it by sitting on parliamentary committees, and supporting an illegal organization, and that they were sentenced to prison terms of up to 40 months,

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

*Considering* that, according to information provided on 14 September 2014 by one of the complainants, although the number of PLC members in administrative detention had dwindled to five by March 2013, they now numbered 26, with many arrests having taken place since June 2014 following the abduction, with the Israeli authorities blaming Hamas, of three Israeli teenagers, who were later found to have been killed,

---

1

According to the press, Mr. Hasan Yousef was freed on 19 January 2014.

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

*Considering* that in the first half of 2014, one of the complainants referred to the hunger strike which started in April 2014 of 125 Palestinians in administrative detention in Israel. According to the complainant, PLC members Mr. Mahmoud Al-Ramahi, Mr. Hatem Qfeisheh, Mr. Mohammad Jamal Al-Natsheh, Mr. Abdul Jaber Fuqaha, Mr. Nizar Ramadan and Mr. Mohammed Maher Badr were part of this group. The complainant affirms that the Israeli Prison Service (IPS) responded to the strikers by carrying out violent raids and searches of their cells, transferring them from one prison to another and punishing them, including through denial of family visits and of access to the prison yard and the confiscation of newspapers or books. In this context, the complainant affirms that Mr. Mohammad Jamal Al-Natsheh was beaten in detention. It also affirms that lawyers were being systematically denied access to the detainees on strike. The hunger strike ended on 25 June 2014, reportedly after minor concessions, but no major change of policy from Israel,

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

- The Supreme Court of Israel has ruled that the exceptional measure of administrative detention, which is usually ordered for six months, but can, in fact, be prolonged indefinitely, can only be applied if there is current and reliable information to show that the person poses a specific and concrete threat, or if the confidential nature of the intelligence and the security of the sources prohibit the presentation of evidence in an ordinary criminal procedure; according to the Israeli authorities there are two avenues of judicial review, namely the independent and impartial military courts, which have the authority to assess the material relevant to the detainee in question in order to determine whether the decision to detain him/her was reasonable given his/her general rights to a fair trial and freedom of movement, and military prosecution, which implements a “cautious and level-headed” policy in the use of administrative detention; this approach is said to have reduced the number of administrative detention orders;
- Human rights organizations in and outside Israel have repeatedly stressed that administrative detention is usually justified by reference to a “security threat”, without, however, specifying the scope and nature of the threat or disclosing the evidence; accordingly, although administrative detainees are entitled to appeal, this right is ineffective, given that the detainees and their lawyers do not have access to the information on which the orders are based and are therefore unable to present a meaningful defence,

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

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

*Recalling also* the following information on file with regard to the revocation of the residence permits of three PLC members: In May 2006, the Israeli Minister of the Interior revoked the East Jerusalem residence permits of Mr. Muhammad Abu-Teir, Mr. Muhammad Totah and Mr. Ahmad Attoun, arguing that they had shown disloyalty to Israel by holding seats in the PLC; the order was not implemented, owing to their arrest in June 2006; after their release in May/June 2010, the three men were immediately notified that they had to leave East Jerusalem; Mr. Abu-Teir was ordered to leave by 19 June 2010 and, refusing to do so, was arrested on 30 June 2010 and later deported to the West Bank; the other two

parliamentarians were ordered to leave by 3 July 2010 and, likewise refusing to comply with the order, took refuge in the International Committee of the Red Cross (ICRC) building in Jerusalem, from which they were removed by the Israeli authorities on 26 September 2011 and 23 January 2012, respectively,

*Bearing in mind*, lastly, that, in its concluding observations on the third periodic report of Israel under the International Covenant on Civil and Political Rights,<sup>2</sup> the United Nations Human Rights Committee recommended, *inter alia*, that all persons under Israel's jurisdiction and effective control be afforded full enjoyment of the rights enshrined in the Covenant,

1. *Is alarmed* at the recent wave of arrests of PLC members, thus bringing the total number of PLC members held in administrative detention to 26; *deplores* this situation, which not only prevents the parliamentarians concerned - a fifth of the Council's total membership - from carrying out the mandate for which they were elected, but also greatly impairs the right of the Palestinian people to be represented by persons of their choice;
2. *Considers* in this regard that the continued practice of administrative detention is bound to impede the proper functioning of the Palestinian Legislative Council, as its members can be arrested at any time and placed in administrative detention for as long as the Israeli military authorities wish;
3. *Calls on* the Israeli authorities therefore to abandon the practice of administrative detention and either to release the members of the Palestinian Legislative Council being held in administrative detention forthwith or, should there be concrete and convincing proof of criminal involvement, to prosecute them in full accordance with normal criminal procedure;
4. *Is deeply concerned* about allegations that the Israeli authorities took reprisals against and intimidated those who started a hunger strike earlier this year aimed at putting an end to their administrative detention; *is particularly concerned* about allegations that Mr. Mohammad Jamal Al-Natsheh was beaten in detention; *wishes* to receive the views of the Israeli authorities on these allegations;
5. *Wishes* to receive official information regarding the reported conviction of and 12-month prison term for PLC member Mr. Husni Al Borini, and should he have indeed been sentenced, a copy of the ruling, as well as the criminal charges brought against detained PLC members Mr. Riyadh Radad, Mr. Abdul Rahman Zaidan and Mr. Fathi Qaraa'wi and, should charges exist, to receive details of their nature and the facts to support them;
6. *Is concerned* that Ms. Khalida Jarrar was reportedly ordered to leave her home in Ramallah and to move to Jericho for six months, which duration was reportedly subsequently brought down to one month; *wishes* to receive the official views on this matter including, should the existence of the order be confirmed, on the justification and legal grounds for the order;
7. *Remains deeply concerned* that Mr. Totah, Mr. Abu-Teir and Mr. Attoun were effectively removed from East Jerusalem; *reiterates its long-standing concerns* about the decision to revoke their residence permits and the manner of its implementation; *considers* that the revocation is at odds with the Hague Convention (IV) of October 1907 on the rules of customary international law, Article 45 of which stipulates that the inhabitants of an occupied territory, of which East Jerusalem may be considered an example, are not to be compelled to swear allegiance to the occupying power;
8. *Requests* the Secretary General to convey this decision to the relevant authorities and the complainant; *requests* him also to convey the present decision to the complainant and any third party likely to be in a position to supply relevant information;
9. *Requests* the Committee to continue examining this case and to report back to it in due course.

---

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

## Palestine/Israel

### PAL/83 - Aziz Dweik

The Committee,

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

The Governing Council of the Inter-Parliamentary Union,

*Having before it* the case of Mr. Aziz Dweik, Speaker of the Palestinian Legislative Council (PLC), which has been examined by the Committee on the Human Rights of Parliamentarians pursuant to the Procedure for the examination and treatment of complaints (Annex I of the revised Rules and practices),

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

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

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

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

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

1. *Is alarmed* at Mr. Dweik's renewed arrest, which is an affront to the authority of the Palestinian Legislative Council; *fears* that his arrest may not be based on formal charges of any specific criminal activity but rather on his political affiliation, and that it was therefore carried out for non-judicial purposes;

2. *Recalls* in this regard its long-held view that, with regard to Mr. Dweik's previous arrest, detention and prosecution, that they were unrelated to any criminal activity on his part but were linked to his election on the Change and Reform list in a free and fair election recognized as such by the international community;
3. *Is therefore extremely eager* to receive official information from the Israeli authorities as to whether Mr. Dweik is now the subject of recognizable charges of criminal activity against him;
4. *Calls on* the Israeli authorities, should such charges have been made, to try him in a fair and transparent legal process, guaranteeing the full right of defence, as required under international human rights law and international humanitarian law, or otherwise to release him forthwith;
5. *Wishes* to receive official information on Mr. Dweik's current conditions of detention, in particular his family visiting rights, along with information on the extent to which he has access to medical care; *remains concerned* in this regard about the reported prison conditions in which Palestinian prisoners are held in Israel;
6. *Requests* the Secretary General to convey this decision to the relevant authorities and the complainant; *requests* him also to convey the present decision to the complainant and any third party likely to be in a position to supply relevant information;
7. *Requests* the Committee to continue examining this case and to report back to it in due course.

## Turkey

TK/41 - Hatip Dicle  
TK/67 - Mustafa Balbay  
TK/68 - Mehmet Haberal  
TK/69 - Gülser Yildirim (Ms.)  
TK/70 - Selma Irmak (Ms.)  
TK/71 - Faysal Sariyildiz  
TK/72 - Ibrahim Ayhan  
TK/73 - Kemal Aktas  
TK/74 - Engin Alan  
TK/55 - Mehmet Sinçar

The Committee,

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

The Governing Council of the Inter-Parliamentary Union,

*Referring* to the cases of the above-mentioned parliamentarians and to the decision adopted at its 194<sup>th</sup> session (March 2014),

*Referring* to the full report on the mission conducted to Turkey by two members of the IPU Committee on the Human Rights Parliamentarians, Vice-President of the Committee Ms. Ann Clwyd and Ms. Margaret Kiener Nellen, from 24 to 27 February 2014 (CL/195/11(b)-R.1),

*Recalling* that the nine parliamentarians above were all elected in June 2011 while in prison and are being prosecuted for destabilizing or overthrowing the constitutional order, including by being members of terrorist organizations, in three complex cases known as the “Sledgehammer/Balyoz case”, the “Ergenekon case” and the “KCK case”,

*Considering* that the nine parliamentarians have now been released pending the completion of ongoing proceedings following ground breaking decisions of the Constitutional Court of Turkey on the excessive length of pretrial detention, the right of elected parliamentarians to sit in Parliament and the need to respect international fair trial guarantees; Mr. Alan and Mr. Dicle were granted provisional release on 19 and 28 June 2014, respectively,

*Considering* that they are now able to exercise their parliamentary mandate with the exception of Mr. Dicle, who lost his parliamentary status at the time of his invalidation; Mr. Balbay’s and Mr. Haberal’s restrictions on the freedom of movement have been lifted,

*Recalling* that Mr. Mehmet Sinçar, a former member of the Grand National Assembly of Turkey, of Kurdish origin, was assassinated in September 1993 in Batman (south-eastern Turkey),

*Considering* that the appeal in Mr. Sinçar’s case was concluded in January 2011; the decision does not make any specific reference to the murder of Mr. Sinçar, to the appeal lodged by his family or to any of the arguments raised by their lawyers; it does not indicate that the judicial process effectively probed the political and security context prevailing at the time of the murder and the possible responsibility of the chain of command of the Turkish intelligence and security officers, in particular existing information implicating five agents in planning and executing the crime,

Considering that the mission concluded and observed the following:

- With regard to freedom of expression:
  - The protection of freedom of expression in Turkey has been a long-standing issue of concern in prior cases before the Committee on the Human Rights of Parliamentarians which, since 1992, has repeatedly called on the Turkish authorities to take action to enhance respect for this fundamental right;
  - Peaceful and legal political activities of the parliamentarians concerned have been regarded as evidence of criminal and terrorist acts by the prosecution and the courts, and that despite progress made in legislative reforms; the Turkish legal framework and judicial practice continue to largely fail to distinguish between peaceful protest and dissenting opinions on the one hand, and violent activities pursuant to the same goals on the other;
  - In the case of Mr. Dicle, his statement publicly expressing a non-violent opinion supportive of the PKK fell within the scope of freedom of speech; he was therefore convicted in violation of his right to freedom of expression and that, as a consequence, his parliamentary mandate was arbitrarily invalidated,
- With regard to fair-trial guarantees:
  - In light of the information and documentation reviewed during and after the mission, the delegation has concluded that the judicial process under which the parliamentarians concerned have been, and continue to be, tried is not in compliance with international standards of due process, that justice was neither achieved nor perceived to have been achieved, and that the large scope of the proceedings and the broader context lend weight to the allegations that the judicial proceedings may have been politically motivated,

Considering that the Constitutional Court ruling of 18 June 2014 concluded that fair trial violations occurred in the Sledgehammer case, which will pave the way for a retrial of Mr. Alan and other defendants in the case,

Considering that, in their observations on the mission report, the parliamentary authorities have stated that:

- They did not have any general objections to the findings of the delegation;
  - Further legislative reforms were completed with the amendments made by Law No. 6526 of 21 February 2014, known as the Fifth Judicial Reform Package;
  - The first hearing of the retrial of the persons accused in the Sledgehammer case, including Mr. Alan is scheduled for 3 November 2014,
1. *Thanks* the Turkish authorities for their observations and *notes with interest* that they generally share the findings of the mission;
  2. *Further thanks* the mission delegation for the work done and endorses its overall conclusions; and *trusts* that the Turkish authorities will implement its recommendations promptly;
  3. *Notes with satisfaction* that all parliamentarians have been released pending the completion of the ongoing proceedings and, with the exception of Mr. Dicle, are now able to exercise their parliamentary mandate; *also notes with interest* that the travel restrictions on Mr. Balbay and Mr. Haberal have been lifted; *welcomes* the legislative reforms undertaken by the authorities;
  4. *Deeply regrets*, however, that the parliamentarians concerned spent over half of their parliamentary term and an average of four years in detention before a solution was found; and *urges* the Turkish authorities to adopt appropriate constitutional and legislative amendments to fully implement the rulings of the Constitutional Court as regards the pretrial detention of parliamentarians;

5. *Is deeply concerned* that the peaceful and legal activities of the parliamentarians concerned were regarded as evidence of criminal and terrorist acts by the prosecution and the courts, and *calls on* the authorities to urgently strengthen freedom of expression and association, in particular concerning anti-terrorist legislation and the offence of membership of a criminal organization; *wishes* to be kept informed on legislative reform contemplated on these issues;
6. *Expects* that the judicial proceedings will provide appropriate redress for the acknowledged violations of due process and will be completed swiftly in compliance with international standards; *wishes* to be regularly apprised of their status and outcome;
7. *Urges* the Turkish authorities to pursue further investigations in the case of Mr. Sinçar and fully take into account existing information implicating five agents of the Turkish intelligence Services in planning and executing the crimes; *further invites* the parliamentary authorities to consider establishing a parliamentary commission to investigate the murder, together with other human rights violations committed in the 1990s in south-eastern Turkey, including abuses by State perpetrators;
8. *Trusts* that the parliamentary authorities will liaise with the competent executive and judicial authorities to keep the Committee apprised of any future developments so as to facilitate a dialogue conducive to a satisfactory settlement of the cases under examination;
9. *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;
10. *Requests* the Committee to continue examining this case and to report back to it in due course.