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Geneva, 21 October 2015

Committee on the Human Rights of Parliamentarians

Decisions adopted by the IPU Governing Council at its 197th session (Geneva, October 2015)

CONTENTS

E

Page

Americas

Asia

Page

CL/197/11(b)-R.3
Geneva, 21 October 2015

Cameroon

CM/01 - Dieudonné Ambassa Zang

Decision adopted unanimously by the IPU Governing Council at its 197th session (Geneva, 21 October 2015)

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 195th session (October 2014),

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, works 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 Minister Delegate to the Office of the President in charge of 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;
- The Minister Delegate to the Office of the President in charge of the CONSUPE, President of the CDBF, stated that 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 and that "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;" he also stated that it was not possible to establish a timetable for winding up the proceedings because how long they last depended not only on the complexity of the case, but also on the rapidity with which the various people contracted by the rapporteur (the respondent, witnesses, and others) reply to the requests for information they have received; he stated 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 stated 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 against him before the CBDF, 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,

Recalling 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 that court by an Order (*Ordonnance de renvoi devant le Tribunal criminal 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,

Recalling 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 also that Mr. Foreman stated in his report that "the law in Cameroon does not allow an accused to be represented by defence counsels in a Criminal Court if he is absent […] In other words, in the defendant's absence, the court's ruling will rely exclusively on the accusation and evidence brought by the prosecution. The European Court of Human Rights has ruled on a number of occasions that, although it is understandable that criminal systems may sanction defendants who refuse to present themselves to the court judging them, depriving them entirely from the right to be defended is a violation of their right to a fair trial. France, for instance, has had to amend its legislation accordingly. Even though the European Convention on Human Rights obviously does not apply in Cameroon, the right to a fair trial is also enshrined in international instruments that are binding upon Cameroon, such as the International Covenant on Civil and Political Rights or the African Charter on Human and People's Rights. Fair trial principles are not only meant to protect the accused, but they also serve to guarantee better justice. A court of law's findings are much less credible when it can rely on one party's arguments only",

Recalling its long-standing doubts about the fairness of the proceedings against Mr. Ambassa Zang and its conviction that the conditions were not met for the equitable and objective treatment of this case should Mr. Ambassa Zang, who enjoys official refugee status abroad, return to Cameroon,

Considering that the Special Criminal Court gave its decision on 18 June 2015, and found Mr. Ambassa Zang guilty and sentenced him in absentia to: (i) a penalty of life imprisonment; (ii) payment to the State of Cameroon of the sum of 5.8 billion CFA francs in damages; and (iii) lifelong forfeiture of his civil rights; Mr. Ambassa Zang sought from the Supreme Court annulment of the decision of the Special Criminal Court, arguing: (i) a material error regarding the amount of the financial penalty, the difference being no less than 91 million CFA francs; (ii) problems raised by the arbitral award concerning the authority of res judicata; and (iii) that Article 7 of the 2006 law organizing the judiciary stipulates that judges must state reasons for their decisions in law and in fact,

Recalling that, according to the complainant, Mr. Ambassa Zang's prosecution 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. *Is deeply concerned* about the verdict handed down against Mr. Ambassa Zang and the severity of the penalty imposed on him;

2. *Believes* that the proceedings leading to his conviction are fraught with irregularities to the point that they can in no way justify his conviction; *fears*, in fact, that the different worrying elements in his file, when taken together, lend strong weight to the accusation that he was subject to a criminal procedure motivated by other than legal concerns;

3. *Points out* in this regard the following: (i) the verdict does not show how the accusations amount to criminal misappropriation and personal enrichment and constitute a criminal offence; (ii) Mr. Ambassa Zang has provided extensive and detailed rebuttals of each of the accusations made against him; (iii) the chief accusation against Mr. Ambassa Zang relates to the Wouri Bridge rehabilitation works, which matter the International Chamber of Commerce already fully adjudicated by finding company UDECTO at fault; (iv) the State of Cameroon does not seem to have asked for, through a formal request for assistance, the information the AFD or other donors may have at their disposal to shed further light on the accusations against Mr. Ambassa Zang; (v) there is a discrepancy between the amount of money that appears in the original accusations and the one mentioned in the verdict against Mr. Ambassa Zang;

4. *Is deeply concerned*, therefore, that the Special Criminal Court did not find it fitting, even on a point of procedure, to take note of the submissions made by Mr. Ambassa Zang's lawyer and therefore convicted Mr. Ambassa Zang without knowing the extensive arguments in his defence; *considers* that this is all the more worrying, given that no full appeal of the Special Criminal Court, which rules at single instance, is possible;

5. *Sincerely hopes* that the Supreme Court, in reaching its decision on the request for annulment of the sentence, will take due account of the multiple procedural irregularities that have occurred in the case; *decides* to closely follow those proceedings, including if possible, by mandating an observer;

6. *Is deeply concerned* that the disciplinary proceedings against Mr. Ambassa Zang appear to be stalled; *fails to understand* how, in light of his evident readiness to respond to the accusations in a timely and detailed manner, any delays can be attributed to him or his lawyer; *calls on* the authorities to do everything possible to expedite the proceedings so as to shed full light on the veracity of the accusations brought against him;

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

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

Democratic Republic of the Congo

DRC/83 - Jean-Bertrand Ewanga

Decision adopted unanimously by the IPU Governing Council at its 197th session (Geneva, 21 October 2015)

The Governing Council of the Inter-Parliamentary Union,

Referring to the case of Mr. Jean-Bertrand Ewanga, a member of the National Assembly of the Democratic Republic of the Congo (DRC), and to the decision that it adopted at its 195th session (Geneva, 16 October 2014),

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

Recalling that Mr. Ewanga, an opposition member of parliament, gave a speech on 4 August 2014 at a public rally, and was arrested on 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 that 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,

Recalling 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**

Recalling 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 a Head of State,

Recalling that, according to the Speaker, a video of Mr. Ewanga's speech was broadcast during the Supreme Court trial and led to the Court's conviction that his words went beyond legal criticism of the Government's action and constituted a criminal offence,

Recalling 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 sorcerers,

Recalling 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,

Recalling that, according to the complainant, Ordinance Law No. 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,

Emphasizing that freedom of expression is protected under article 19 of the International Covenant on Civil and Political Rights and that general comment No. 34 (2011) of the United Nations Human Rights Committee states that, "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" (paragraph 38), and that "defamation laws must be crafted with care to ensure that they […] do not serve, in practice, to stifle freedom of expression" (paragraph 47),

Recalling that, during the universal periodic review (UPR), in 2014, the DRC agreed 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 defenders are able to exercise their activities and to criticize the Government without being subject to intimidation, reprisals or harassment" (paragraph 134.134 of the UPR Working Group's report),

Considering that, in its resolution A/HRC/30/L.30 of 29 September 2015, the United Nations Human Rights Council encouraged the Government of the DRC "to continue its efforts to provide for an expansion of political space in the context of elections, while ensuring respect for human rights and fundamental freedoms, including the freedoms of expression, of association and of peaceful assembly", and also emphasized the importance of ensuring a fair trial for persons involved in proceedings,

- **As regards parliamentary immunity**

Recalling 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 abusively used to override 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,

Recalling 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 due process**

Recalling 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 offences – namely insulting the presidents of the National Assembly and the Senate and insulting the Prime Minister – not on the original charge sheet, although he was never notified of the charges during the trial and could not therefore prepare a defence to them,

Recalling 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,

Bearing in mind that the Constitutional Court was not yet fully operational and that its proceedings continued to be conducted by the Supreme Court at that time,

Considering that the Supreme Court and Constitutional Court decisions were never transmitted by the parties, despite several requests to that effect, and that Mr. Ewanga was released on 30 July 2015 after serving the whole of his sentence without any steps being taken by the Congolese authorities to reach a satisfactory resolution of the case,

Considering also that, following his release, Mr. Ewanga resumed his political activities and was reinstated in his parliamentary duties, which he currently continues to exercise,

1. *Notes with interest* that Mr. Ewanga regained his freedom after serving the whole of his sentence and *deplores* that no steps have been taken by the DRC authorities to reach a satisfactory resolution of the case;

2. *Is deeply concerned* that Mr. Ewanga was convicted for criticizing government policy and the Head of State, in violation of his fundamental right to freedom of expression; *notes with concern* that this is not the first case of its kind to have been submitted and *urges* parliament to protect the freedom of expression of its members in the future, irrespective of their political affiliation; also *calls on* the authorities to repeal or bring into line with international human rights standards any laws providing for the offence of insulting the Head of State as soon as possible, so as to prevent similar situations from recurring; *wishes* to be kept informed in this regard;

3. *Is shocked* that Mr. Ewanga has been unable to pursue appeal proceedings, despite the alleged irregularities during his trial; *recalls* that the possibility of lodging an appeal is one of the principal guarantees of a fair trial; *deeply regrets* that no reform has been undertaken to date to create an 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 Democratic Republic of the Congo;

4. *Considers* that the National Assembly should have enquired, in full respect of the principle of separation of powers, as to the grounds justifying the use of the flagrante delicto procedure and *expresses its concern* that flagrante delicto appears to have been used abusively to override the procedure for lifting parliamentary immunity; *recalls* that parliamentary immunity serves to protect parliamentarians against potential politically motivated unfounded accusations and prosecutions, and that parliamentary institutions have a duty to ensure that any accusation against one of their members is well founded;

5. *Regrets* not receiving a response to its offer of technical assistance and reiterates that the IPU is available to share its experience in order to help the Parliament of the DRC to reform its existing legal framework so as to strengthen the protection of the fundamental rights of parliamentarians and of freedom of expression, reforms that are essential to provide for an expansion of political space in the context of elections;

6. *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;

7. *Decides* to close the case.

Eritrea

ERI/01 - Ogbe Abraha
ERI/02 - Aster Fissehatsion
ERI/03 - Berhane Gebregziabeher
ERI/04 - Beraki Gebreselassie
ERI/05 - Hamad Hamid Hamad
ERI/06 - Saleh Kekiya
ERI/07 - Germano Nati
ERI/08 - Estifanos Seyoum
ERI/09 - Mahmoud Ahmed Sheriffo
ERI/10 - Petros Solomon
ERI/11 - Haile Woldetensae

Decision adopted unanimously by the IPU Governing Council at its 197th session (Geneva, 21 October 2015)

The Governing Council of the Inter-Parliamentary Union,

Referring to the case of the above-mentioned parliamentarians, former members of Eritrea's National Assembly, and to the resolution adopted at its 193rd session (October 2013),

Recalling the following:

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

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

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

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

close collaborators"; that "The separation of powers among the various arms of the State is inexistent", "Legislative functions accorded to the National Assembly by the unimplemented Constitution have been assumed entirely by the Government", "The National Assembly has not been convened since 2002" and "the court system is weak and prone to interference",

Considering that, in June 2014, the Human Rights Council decided to establish a Commission of Inquiry to conduct in-depth investigations into the human rights situation in Eritrea; the complainants and other relatives of the G11 were able to submit written submissions and to be heard by the Commission (which conducted 550 confidential interviews overall with witnesses and received 160 written submissions); the Commission presented its final report in June 2015 and concluded that systematic, widespread and gross human rights violations have been, and continue to be, committed in Eritrea under the authority of the Government, some of which may constitute crimes against humanity; the Commission has highlighted the case of the G11(referred to as G-15) as follows: "In the area of freedom of expression, the Government systematically silences anyone who is perceived as protesting against, questioning or expressing criticism of the Government and its policies, even when such statements are genuine and legitimate in the context of a democratic public debate. The most visible sign of such repression was the purge in 2001 of the G-15 reform group and of its supposed supporters, who were in their majority either killed or disappeared"; the Commission called for their immediate and unconditional release,

Considering that the Eritrean authorities never granted access to Eritrea to the Commission of Inquiry; fully denied the content of the report, denouncing manipulations orchestrated by subversive groups to discredit Eritrea; and claimed that Eritrea was taking concrete steps to improve the human rights situation and that the bleak human rights narrative portrayed by the Commission ignored this reality and constituted a huge travesty of justice,

Further considering that, in the resolution adopted on 30 June 2015, the Human Rights Council welcomed the report of the Commission of Inquiry and strongly condemned the systematic, widespread and gross human rights violations committed by the Government of Eritrea in a climate of generalized impunity and urged the Government to take immediate and concrete steps to implement recommendations made by the Commission in order to address the dire situation of human rights in the country,

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

1. *Is deeply concerned* at the conclusions of the United Nations Commission of Inquiry on human rights in Eritrea, as they not only confirm its own findings with regard to the G11 prisoners, but also give a comprehensive account of the horrendous backdrop of repression against which those conclusions have to be considered;

2. *Deplores once more* the Eritrean authorities' continued contempt for the most basic human rights of 11 former parliamentarians by keeping them incommunicado for the last 14 years for exercising their right to freedom of expression by calling for democratic reform;

3. *Continues to be appalled* by the persistent silence of the authorities, all the more so in light of the uncorroborated information that only two of the 11 former parliamentarians may still be alive and the fact of the continued uncertainty about the fate of the former parliamentarians leaves their families in absolute agony;

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

5. *Can but consider* that the international community, including the global parliamentary community, cannot remain silent in the face of these violations; and *renews its invitation* to all IPU members to exert insistent pressure on the Eritrean authorities for the release of the persons concerned, including by making representations to the diplomatic missions of Eritrea in their countries and raising the case publicly; *as well as its appeal* to the African Union, the Pan-African Parliament, the European Union and the European Parliament to continue doing everything in their power to achieve this objective;

6. *Requests* the Secretary General to convey this decision to the Eritrean authorities, to the complainants, to the UN Special Rapporteur on the human rights situation in Eritrea and to the United Nations Commission of Inquiry, as well as to any third party likely to be in a position to supply relevant information, and to continue making every effort to draw international attention to this case;

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

Niger

RN/115 - Amadou Hama

Decision adopted unanimously by the IPU Governing Council at its 197th session (Geneva, 21 October 2015)

The Governing Council of the Inter-Parliamentary Union,

Referring to the case of Mr. Amadou Hama, former Speaker of the National Assembly of Niger, pursuant to the Procedure for the examination and treatment of complaints (Annex I of the revised rules and practices of the Committee), and the decision adopted by the Committee on the Human Rights of Parliamentarians at its 146th session (Geneva, January 2015),

Referring to the letter of the Speaker of the National Assembly of 23 March 2015 and the letters of the Secretary General of the National Assembly of 23 April 2015 and 6 October 2015,

Considering the following information on file: on 27 August 2014, the Bureau of the National Assembly of Niger authorized the arrest of Mr. Amadou Hama, at the time the Speaker of the National Assembly, in response to a request made by the Prime Minister on 25 August 2014 in the context of judicial proceedings linked to trafficking in babies; Mr. Amadou Hama fled Niger on 28 August 2014 following the Bureau's decision and is currently abroad; a national arrest warrant was issued for him and he was formally charged on 4 December 2014, along with 30 other people, including his wife; the Niamey Criminal Court opened proceedings in the case on 2 January 2015 and declared that it did not have jurisdiction to try the case on 30 January 2015; the prosecution appealed against this decision; the Court of Appeal delivered its verdict on 13 July 2015; it overturned the decision of the court of first instance and ordered the Criminal Court to rule on the merits of the case; Mr. Amadou Hama has appealed against the decision and the trial on the merits can only be held after the Supreme Court has issued its ruling,

Considering that Mr. Amadou's wife benefits from the assistance of a lawyer, that Mr. Amadou Hama will be tried in absentia and will be unable to be represented by a lawyer in his absence from Niger but that, should he be convicted in absentia, he can oppose the verdict and ask for a retrial in his presence pursuant to the Code of Criminal Procedure,

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

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

- **As concerns parliamentary immunity and the procedure followed by the National Assembly to authorize the arrest**

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

- Mr. Amadou Hama was heard by neither the Bureau, of which he was the President at the time, nor a committee of the National Assembly; the file containing the charges against him was not made available to him and the requests filed by the judicial and executive authorities provided scant particulars in this respect;

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

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

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

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

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

- **As concerns the charges and respect for due-process guarantees in the judicial proceedings**

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

Considering also that, according to the complainant, Mr. Amadou Hama's wife had finally managed to become pregnant thanks to the help of a Nigerian doctor who had been recommended by the second wife of the Head of State, and her pregnancy was known to the Head of State himself, who had offered her gifts, in keeping with the traditions of Niger; his wife's pregnancy was kept under observation in Nigeria, to which she travelled several times before giving birth on 1 September 2012; a baptism was organized in Niamey to celebrate the children's birth, and the Head of State himself had attended; all the documents attesting to the pregnancy and to the medical examinations performed in Nigeria had been placed in the file, at the request of the magistrate; the complainant does not consider that he can speak to the veracity of the charges against the other defendants in the case, but he does consider that Mr. Amadou Hama and his wife have been shown no evidence of a link between them and any baby-trafficking network or the alleged "baby factory" or "clinic" run by the Nigerian healer,

Taking into account that, according to the parliamentary authorities, the judicial proceedings were conducted in total independence and in compliance with the Constitution and the laws of Niger; they came in the wake of a judicial investigation of several months that had established

that the purchase of newborn babies in Nigeria had become a widespread practice in Niger, particularly among affluent couples experiencing difficulties having children, and that this practice was part of a sub-regional human trafficking network; the judicial investigation had collected a substantial amount of evidence of child-trafficking and of the involvement of several high-profile citizens of Niger, including Mr. Amadou Hama and his wife, in particular through inquiries conducted in Nigeria and Benin in cooperation with the judicial authorities of those countries,

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

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

Considering that, in his letter of 23 March 2015, the Speaker of the National Assembly reaffirmed that the National Assembly believed that a DNA test was an irrefutable means of ascertaining the parentage of children, and stated that the Niger authorities had accepted the IPU offer of assistance to identify and facilitate the intervention of an independent expert to carry out the DNA test on Mr. Amadou Hama's wife,

Considering that, according the complainant, Mr. Amadou Hama's wife had offered to undergo a DNA test before his arrest to clarify the situation but, as the judge refused, she considered herself to be presumed guilty and subsequently refused to have a DNA test for fear that the results would be falsified; Mr. Amadou Hama refused, on the advice of his lawyers, to have himself or his wife undergo a DNA test, even one organized by an independent expert thanks to IPU facilitation, because he considers that the presumption of innocence must be upheld, that it is up to the prosecution service to furnish evidence, and that agreeing to take the test would set a dangerous precedent in the future,

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

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

Taking into account that, in his letter of 23 March 2015, the Speaker of the National Assembly stated that the National Assembly undertook to review its basic texts to ensure better protection for parliamentarians,

Considering that Mr. Assane Dioma Ndiaye was mandated to observe the appeal proceedings and travelled to Niamey from 26 to 29 April 2015; even though the hearing was postponed at the last minute, he met with all parties and concluded in his mission report that the judicial proceedings

appeared overall to have been conducted properly thus far; he noted that there were opposing views on the case and that, even if there was a legitimate suspicion of score settling, a number of concrete facts had nonetheless emerged that could be considered as grounds for prosecution; he recommended that the Committee again mandate an observer to monitor follow-up proceedings,

1. *Thanks* the authorities for their the cooperation and the documents forwarded;

2. *Also thanks* the trial observer for his mission report and takes note of his conclusions;

3. *Notes with concern* that parliamentary procedure has not been conducted with respect for the rights of defence of Mr. Amadou Hama and *recalls* that the raison d'être of parliamentary immunity, in particular parliamentary inviolability, is to ensure that parliament functions smoothly and in complete independence, shielding its members from frivolous accusations, and that, consequently, lifting a member's immunity is a serious measure that must be taken in conformity with the applicable constitutional, legislative and regulatory provisions and with absolute respect for the rights of defence of the parliamentarian concerned;

4. *Notes with concern* that, unlike the procedure for lifting immunity, the procedure for authorizing the arrest of a member of parliament by the Bureau while in recess is currently governed by no legal provisions; and *considers* that this legal vacuum is not conducive to ensuring due process; *therefore notes with interest* the Speaker of the National Assembly's commitment to amending its Standing Orders as soon as possible, with a view to establishing an appropriate framework for the procedure, in particular by incorporating all guarantees relating to the rights of defence; and *wishes* to be kept informed of progress achieved to that effect;

5. *Observes* that the judicial proceedings are ongoing; *agrees with* the trial observer's conclusion that the judicial proceedings appeared overall to have been conducted properly thus far; *takes note* of the Niamey Court of Appeal's decision of 13 July 2015; and *expresses the wish* to send an observer again when the trial on the merits begins;

6. *Notes the wish* of the complainant that the presumption of innocence should be upheld; and *considers* that it is up to the Prosecutor at this stage to furnish evidence against Mr. Amadou Hama and his wife; *hopes* that the trial on the merits will clarify the evidence collected by the prosecution service against them;

7. *Requests* the Secretary General to convey this decision to the parliamentary authorities, the complainant and any third party likely to be able to provide relevant information and to take any necessary steps to organize a trial observer's mission in due course;

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

Colombia

CO/142 - Álvaro Araújo Castro

Decision adopted unanimously by the IPU Governing Council at its 197th session (Geneva, 21 October 2015)

The Governing Council of the Inter-Parliamentary Union,

Referring to the case of Mr. Álvaro Araújo Castro, a former member of the Colombian Congress, and to the resolution adopted at its 193rd session (October 2013),

Considering the information provided by Mr. Álvaro Araújo at the hearing held with the Committee on 18 October 2015,

Recalling the following information on file:

- On 15 February 2007, the Supreme Court issued detention orders for the then Senator Araújo on charges of aggravated criminal conspiracy and voter intimidation, allegedly for having collaborated in his Department César with paramilitary group *Bloque Norte*, led by Mr. Rodrigo Tovar Pupo (alias "Jorge 40"), for the purpose of winning the parliamentary election;
- Given that members of Congress are investigated and judged in single-instance proceedings by the Supreme Court, Mr. Araújo relinquished his seat in Congress on 27 March 2007; as a result, his case was transferred to the ordinary judicial system, under which he would be investigated by the Prosecutor's Office and tried by an ordinary court with the possibility of appealing;
- However, after a reinterpretation of its jurisprudence, the Supreme Court re-established its jurisdiction with respect to his case and, on 18 March 2010, without giving him the opportunity to be heard, declared him guilty of aggravated criminal conspiracy and voter intimidation and sentenced him to a prison term of 112 months and to payment of a fine; in the same ruling, the Supreme Court ordered that an investigation be conducted to establish whether or not Mr. Araújo could be considered part of the paramilitary command structure and therefore to share responsibility for the crimes against humanity it had committed; as with the original charges, both the investigation and any subsequent trial on this matter are entrusted to the Supreme Court, whose ruling would not be subject to appeal;
- A legal expert, Mr. Alejandro Salinas, asked by the Committee to examine whether the right to a fair trial had been respected in the case, concluded that the legal proceedings against Mr. Araújo were fundamentally flawed;
- Mr. Araújo was released on parole in February 2011, having served three-fifths of his prison sentence,

Considering that, on 18 March 2015, the Supreme Court ordered that the investigation into crimes against humanity establish whether or not Mr. Araújo appeared in the records of paramilitary groups as a member or integral part of its structure and that it examine the dispossession of land, as revealed by demobilized paramilitary member, Mr. José del Carmen Gelves Albarracín (alias "El Canoso"), and the murder in 1997 of Mr. Araújo's employee, Mr. Eusebio de Jesús Castro Visbal, as denounced by demobilized paramilitary member, Mr. Hernando de Jesús Fontalvo Sánchez (alias "El Pájaro"), so as to establish whether Mr. Araújo bore responsibility for these crimes; on 22 September 2015, the Supreme Court extended the investigation by 30 days; *considering* that there are no time limits for the Supreme Court in advancing its investigation into Mr. Araújo's possible responsibility, as the accusations concern crimes against humanity,

Recalling that, according to Mr. Araújo, the Prosecutor's Office had already previously investigated his alleged involvement in the murder of his aforesaid employee, but had decided to discontinue the investigation; Mr. Araújo affirms in this regard that the statements made by "El Pájaro" are hearsay and not credible and that a member of the Prosecutor's Office had pressured Mr. Jesús

Castro's family members, who first, in the presence of the former paramilitary member, denied the truth of his testimony regarding false accusations against Mr. Araújo, which they later retracted,

Considering that Mr. Araújo affirms that Mr. Jesús Castro had been killed by the paramilitary for the sole reason that guerrilla groups had set up road blocks and carried out targeted kidnappings opposite his terrain; he affirms that he was quick to denounce the murder publicly, went under heavy protection to Mr. Jesús Castro's funeral, and in 2009 took action to obtain reparation for his family, as no such reparation had been forthcoming after more than 13 years,

Considering that Mr. Araújo has made sworn statements to the Prosecutor's Office to denounce the untruthfulness of the statements made by "El Canoso" and "El Pájaro", which matter was being examined by the Working Group on False Witnesses of the Prosecutor's Office; with regard to the allegation made by "El Canoso" that Mr. Araújo was responsible for the dispossession of land, the latter denied it and said that, out of loyalty to a friend, he had helped his mother to protect a piece of land in Santa Marta that belonged to her with fences, but which had subsequently been invaded, which matter was before the courts,

Considering also that Mr. Araújo has made sworn statements to the Prosecutor's Office that he had become an enemy of the paramilitary because: (i) they had made an attempt on his life on 1 October 2000, after which Mr. Araújo immediately rushed to the police, with whose help one of the responsible paramilitary members was killed and another seriously injured; and (ii) he denounced the crimes and pressure exerted by the paramilitary, naming "Jorge 40", in a speech he delivered in Valledupar on 29 September 2002 at an event attended by the then President Uribe and other dignitaries; Mr. Araújo affirms that many of the members of the political party he belonged to, ALAS, were assassinated by the paramilitary between 1998 and 2004; *considering* also that "Jorge 40" has stated to the Prosecutor's Office that Mr. Araújo was not part of his organization and acknowledged that Mr. Araújo had publicly denounced the crimes committed by his group,

Considering that, in September 2015, the Colombian Supreme Court closed the investigation into the possible responsibility for crimes against humanity of seven other former members of Congress, most of whom were part of the original case which led to Mr. Araújo's conviction in 2010, with the argument that the fact that they were found guilty of criminal conspiracy for having cooperated with the paramilitary for electoral support did not make them automatically responsible for their illegal activities; *considering also* that these seven former members of Congress all signed, unlike Mr. Araújo for whom there is no such evidence, a political and electoral pact with the paramilitary and had admitted to cooperating with the paramilitary in return for lenient sentences as part of a plea bargain agreement,

Recalling also that an IPU delegation travelled to Bogotá in August 2011 to help strengthen the National Congress of Colombia and, as part of that assignment, formulated a series of recommendations, including with a view to helping ensure greater respect for fair-trial standards in criminal cases against members of Congress; *recalling also* that the Committee's then Vice-President, Senator Juan Pablo Letelier, met with the relevant Colombian parliamentary and judicial authorities and the source during his visit to Colombia on 20 and 21 March 2013 and discussed implementation of those recommendations with them,

Recalling that Mr. Araújo submitted a petition to the Inter-American Commission on Human Rights in 2011 denouncing the flawed judicial proceedings in his case; *considering* that in light of the ongoing investigation by the Supreme Court on crimes against humanity, Mr. Araújo fears that he might soon be re-arrested and has therefore asked the Inter-American Commission to adopt precautionary measures in his favour,

Considering that Committee member Senator Letelier travelled to Washington in September 2015 to meet with the Secretariat of the Inter-American Commission to discuss progress in the consideration of this and other cases that are simultaneously before the Committee and the Commission,

1. *Reaffirms* its long-standing view that Mr. Araújo was convicted in 2010 in legal proceedings that violated his right to a fair trial and in the absence of compelling, tangible and direct evidence to substantiate his conviction, on the grounds of complicity with the paramilitary forces, and on charges of aggravated criminal conspiracy and voter intimidation; *points out*

in this regard that, to the contrary, events and statements show that there was clear hostility between Mr. Araújo and the paramilitary groups in his Department;

2. *Remains deeply concerned*, therefore, that the Supreme Court invoked his 2010 conviction to order an investigation into the much more serious accusation that he was, in fact, part of the paramilitary command structure, and that such investigation, which relates to crimes against humanity, can run indefinitely, as it is not subject to the statute of limitations;

3. *Considers* that, so long as basic fair-trial concerns are not addressed and there is no convincing evidence for the lesser charge, such investigation is inappropriate;

4. *Fails to understand* in this regard that the Supreme Court recently discontinued an investigation on the same charge against several other parliamentarians who had admitted to having cooperated with paramilitary groups and who had been signatories to cooperation agreements with these groups, but did not take the same decision in Mr. Araújo's case, in which such evidence and admission are absent; *wishes* to receive clarification on this point;

5. *Considers* that, as a minimum, the investigation of the Supreme Court against Mr. Araújo should be suspended until the Prosecutor's Office has terminated its investigation into the denunciations against the two demobilized paramilitary members or, better still, dropped altogether; *recalls* in this regard its long-standing concerns about the credibility of testimonies of demobilized paramilitaries and the manner in which they are obtained and used in criminal cases;

6. *Remains convinced* that concerns about the lack of fair-trial standards inherent in the procedure applicable to Colombian members of Congress in criminal matters can only be fully addressed through new legislation; *reaffirms* the continued readiness of the IPU to provide support for any legislative efforts undertaken by Congress and other relevant Colombian authorities in this regard;

7. *Recalls* that the American Convention on Human Rights and related jurisprudence provide extensive protection of the right to a fair trial; *considers,* therefore, that action by the Inter-American Commission on Human Rights is crucial to helping address the injustice suffered by Mr. Araújo; *sincerely hopes* that the Commission will rule on the petition for precautionary measures as a matter of priority, so as to prevent any further violations of Mr. Araújo's rights;

8. *Considers* that it would be timely to carry out a mission to Colombia to address the serious concerns that have emerged in this case with the relevant executive, parliamentary and judicial authorities, in particular the Supreme Court, the complainant and others who might be able to assist; *requests* the Secretary General to seek the agreement of the Colombian parliamentary authorities for this purpose in the hope that the mission can soon take place;

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

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

Venezuela

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

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

Decision adopted by consensus by the IPU Governing Council at its 197th session (Geneva, 21 October 2015)[1]

The Governing Council of the Inter-Parliamentary Union,

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

Considering the extensive information provided by the Venezuelan delegation to the 133rd IPU Assembly (October 2015) during the meeting held with the Committee, including a letter from the leader of the delegation to the IPU Secretary General, transmitting details on the criminal investigations into several of the individuals concerned, and the information regularly provided by the complainant,

Considering the following information on file:

- **With regard to Mr. Pilieri, Mr. Sánchez, Mr. Alemán and Mr. Blanco:**

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

- **With regard to Mr. Richard Mardo:**

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

1 The delegations of Venezuela and Cuba expressed their reservations regarding the decision.

- In its ruling of 17 July 2013, the Supreme Court requested the National Assembly to lift Mr. Mardo's parliamentary immunity, "an action which, if taken, is fully in accordance with Article 380 of the Code of Criminal Procedure", which stipulates that, "Once the required formalities for the prosecution have been duly completed, the official shall be suspended, or suspended and barred, or barred from holding any public office during the trial"; on 30 July 2013, the National Assembly decided to lift Mr. Mardo's parliamentary immunity;
- According to the complainant, the authorities have not advanced with the criminal proceedings, which seem to have stalled; the authorities have stated that matters are proceeding and that Mr. Mardo was officially charged on 25 June 2014,

- **With regard to Ms. María Mercedes Aranguren:**

- On 12 November 2013, the National Assembly lifted Ms. Aranguren's parliamentary immunity so as to allow charges of corruption and criminal association to be filed in court; the complainant points out that Ms. Aranguren had switched to the opposition in 2012 and that the lifting of her immunity and her subsequent suspension under Article 380 of the Code of Criminal Procedure meant that she would be replaced by her deputy, who remained loyal to the ruling party, thus giving the majority the 99 votes needed for the adoption of enabling legislation (*ley habilitante*) investing the President of Venezuela with special powers to rule by decree; the complainant affirms that the case against Ms. Aranguren is not only baseless, but had been dormant since 2008 and was only reactivated in 2013 in order to pass the enabling legislation;
- According to the complainant, the authorities have not advanced with the criminal proceedings, which seem to have stalled; the authorities deny this allegation and state that on 10 December 2014, the court in charge of the case ordered her arrest,

- **With regard to Ms. María Corina Machado:**

- On 24 March 2014, the Speaker of the National Assembly announced, without any discussion in plenary, that Ms. Machado had been stripped of her mandate after the Government of Panama had accredited her as an Alternate Representative at the March 2014 meeting of the Permanent Council of the Organization of American States (OAS) in Washington, DC, so as to allow her to present her account of the situation in Venezuela; according to the Speaker, Ms. Machado had contravened the Constitution by accepting the invitation to act as a Panamanian official at the meeting; the complainant affirms that the decision to revoke Ms. Machado's mandate was taken without respect for due process and was unfounded in law, first, because it was taken unilaterally by the Speaker of the National Assembly without any debate in plenary, and second, because Ms. Machado was accredited as a member of another country's delegation merely so that she could take part in a single meeting, a step taken in the past in respect of other participants at OAS meetings, and she had in no way accepted or assumed any official post or responsibilities on behalf of the Panamanian Government;
- The matter was brought before the Constitutional Chamber of the Supreme Court which, in its decision of 31 March 2014, concluded, relying primarily on Articles 130, 191, 197 and 201 of the Constitution, that Ms. Machado had automatically lost her parliamentary mandate by agreeing to act as an alternate representative for another country before an international body;
- According to the complainant, days before Ms. Machado was stripped of her parliamentary mandate, the National Assembly had requested the Prosecutor General's Office, in a document signed by 95 parliamentarians from the majority, to initiate pretrial proceedings against her for, according to the Speaker, "the crimes, devastation and damage in the country" following the large demonstrations and violent clashes between protestors and government forces that took place in the early months of 2014;
- Ms. Machado is subject to two criminal investigations; the complainant affirms that the investigations relate to allegations that she was accused of involvement in an alleged plot to carry out a coup d'état and assassinations and of incitement to violence; Ms. Machado has denied the accusations and charge against her; the authorities affirm, however, that both investigations relate to allegations of conspiracy, in connection with work carried out by several representatives of the NGO *Sumate*, including Ms. Machado, in support of a consultative referendum, which is illegal, as this matter falls within the purview of the National Electoral Commission, and the fact that this NGO received funding from a US

organization, which is considered possible foreign interference and against the security of the nation; the authorities affirm that the formal written charge (*escrito de acusación*) was presented on 30 September 2014 and that on 6 July 2015 a preliminary hearing took place on the case; as for the second investigation, the authorities affirm that it derives from a complaint presented by several members of the National Assembly, in which they ask for an investigation into the possible commission by Ms. Machado of several criminal offences; this case is at its preliminary stage and, on 3 December 2014, formal charges were brought in the prosecutor's office;

- On 14 July 2015, the Comptroller General of the Republic fined Ms. Machado and suspended her from her duties for 12 months, thereby blocking her intention to stand in the parliamentary elections scheduled for 6 December 2015 for a further term as a member of the National Assembly; the Comptroller alleges in his decision to suspend her that María Corina Machado concealed income in her sworn financial disclosures, consisting of food and transport vouchers available to members of parliament; Ms. Machado claims, however, never to have used such vouchers; according to the complainant, the suspension is at any rate unconstitutional and a violation of human rights, for two reasons: Article 42 of the Venezuelan Constitution provides that the exercise of a citizen's political rights can be suspended only by a final court ruling; this means that suspension from public office can be imposed as punishment only in the context of a (criminal) trial and by means of a firm sentence, since access to public office is recognized by the State as one of the political rights of its citizens, in addition to the right to vote and the right to be elected; the Comptroller General of the Republic cannot legitimately impose the punishment of suspension, since it is an administrative organ that issues administrative rulings; in addition, the Inter-American Court of Human Rights, in the case *Leopoldo López v. Venezuela*, established that Article 23.2 of the American Convention on Human Rights allows for political suspension only when on the basis of a firm sentence by a competent court in criminal proceedings; moreover, the complainant affirms that it is absolutely disproportionate and even irrational to impose such a severe punishment as suspension for the omission from an income or asset statement of an (alleged) payment due from the National Assembly itself, which has all of the information about such payments, given that no mismanagement of public funds had occurred, or any other reproachable conduct substantiated – only a formal omission at most; the authorities affirm that the decision taken by the Comptroller has a solid basis in Venezuelan law and that due process was fully followed,

- **With regard to Mr. Juan Carlos Caldera:**

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

- **With regard to Mr. Ismael García:**

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

Considering that, according to the complainant, the lifting of parliamentary immunity, inasmuch as it has the effect of suspending the parliamentary mandate, requires a three-fifths majority vote in the National Assembly, whereas the parliamentary authorities affirm that a simple majority is

sufficient; *considering also* that, according to the complainant, the fact of suspending a member of parliament for the duration of criminal proceedings under Article 380 of the Code of Criminal Procedure runs counter to Articles 42 and 49(2) of the Constitution, which circumscribe limitations to political rights and guarantee due process and the presumption of innocence, an affirmation denied by the authorities,

Recalling that an IPU mission was due to travel to Venezuela in June 2013 to address, among other things, the issues that had arisen in this case, but that the mission was postponed at the last minute in order to allow the parliamentary authorities more time to organize the meetings requested; *considering* that the Committee has since proposed on several occasions to the parliamentary authorities that the mission be carried out, each time without an official response or endorsement,

Considering that, with regard to the parliamentary elections taking place on 6 December 2015, several of the parliamentarians, with the exception of Ms. Machado, Mr. Caldera and Mr. Marcano but possibly also others, appear to have put themselves forward for election,

1. *Thanks* the Venezuelan delegation for the information it provided;

2. *Expresses regret* at the lack of cooperation of the Venezuelan authorities to organize the proposed visit;

3. *Reaffirms its belief* that the National Assembly should be the place in Venezuela where different views are expressed without fear of reprisal and charges of incitement to violence and where efforts are made to find common ground; *is concerned,* therefore, that the National Assembly itself, rather than the judicial authorities, took the initiative, at least in the cases of Mr. Mardo and Ms. Machado, to press criminal charges against members of the opposition, thereby lending weight to the allegation that the charges are politically rather than legally motivated;

4. *Sincerely hopes* that the soon-to-be elected National Assembly and parliamentary authorities will adopt a different approach and leave the initiative for any future criminal proceedings against parliamentarians in the hands of the prosecutor's office and the courts, and jealously safeguard respect for parliamentary immunity as enshrined in the Constitution, including by giving full and objective consideration to future requests for the lifting of such immunity;

5. *Expresses deep concern* at what appears to be a pattern of legal harassment of Ms. Machado; *considers* that the stripping of her parliamentary mandate in 2014 has no basis in law and was done with lack of due process, and that the recent decision to prevent her from standing in the forthcoming elections appears to be similarly flawed and frivolous; *is also deeply concerned* about the ongoing criminal investigations against her and the discrepancy between the versions of the authorities and the complainant with regard to the facts in support of the investigations; *fails* in this regard to understand, on the basis of the authorities' version, what she is being accused of exactly; *looks forward* therefore to receiving a copy of the charge sheets against Ms. Machado;

6. *Regrets* the absence of any official information on the legal steps taken against Mr. García; *fails to understand* how, given his status as a parliamentarian entrusted with oversight of the State apparatus, including the State security sector, his comments and action can give rise to a defamation case; *reiterates its wish* therefore to receive the views of the authorities on these matters;

7. *Remains convinced,* all the more so in the light of the forthcoming parliamentary elections, that a visit by a Committee delegation to Venezuela would provide a useful and direct opportunity to gain a better understanding of the complex issues at hand, including with regard to assessing whether there is a need to further examine, or rather to close, some of the cases at hand in which criminal investigations are ongoing;

8. *Requests* the Secretary General to contact the parliamentary authorities who will be installed after the elections, so as to seek their consent for such a visit in the hope that it will soon take place;

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

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

Bangladesh

BGL/14 - Shah Ams Kibria

Decision adopted unanimously by the IPU Governing Council at its 197th session (Geneva, 21 October 2015)

The Governing Council of the Inter-Parliamentary Union,

Referring to the case of Mr. Shah Ams Kibria, a member of the Parliament of Bangladesh who was assassinated in a grenade attack in January 2005, and to the resolution adopted at its 190th session (April 2012),

Taking into account the letters from the parliamentary authorities, dated 24 March and 13 October 2015, the information provided at the hearing held on 27 March 2015 with the Bangladeshi delegation to the 132nd IPU Assembly, as well as the information provided by the complainants and other sources of information,

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

- The initial inquiry into the assassination proved to be an attempt by the investigating officers to divert the course of justice; since the investigation was reopened in March 2007, Islamist militants belonging to the Horkatul Jihad al Islami (Huji), including its leader Mufti Hannan Munshi, have been implicated; according to the Home Ministry's report of March 2010, several persons have been arrested, including the two who detonated the grenades (Mizanur Rahman Mithu and Md Badrul Alam Mizan); in addition, the former State Minister for Home Affairs, Mr. Lutfozzaman Babar, stands accused of harbouring and protecting the individuals who threw the grenades;
- According to the parliamentary authorities, the investigation had found that a Kashmir-based Islamic militant organization led by Abdul Mazid Butt helped Mufti Abdul Hannan and Moulana Tajuddin, Huji leader in Bangladesh, transport Arges grenades from Pakistan to Bangladesh with the intent to commit assassinations in different parts of the country; further investigation had also revealed that the accused Badrul Alam Mizan, Mizanur Rahman Mithu, Badrul, and Mohammed Ali were present when the grenades were thrown at Mr. Kibria;
- On 20 June 2011, the Criminal Investigation Department (CID) submitted a supplementary charge sheet against 14 other persons with the request that the court rule on their status;
- Mr. Kibria's family objected to the charge sheet and filed a no-confidence motion on the grounds that it was in its view incomplete and, among other concerns, failed to identify all the individuals involved in the assassination, in particular the real masterminds of the murder; the family further expressed concern that, unless further investigations were conducted, the evidence was unlikely to hold up in court, as it had been drawn largely from interrogations conducted in prison and the accused would claim that they had been obtained under duress; the family also remained concerned about persisting political interference in the investigations and the fact that it was not kept regularly informed of new developments and that its proposals to help advance the investigation had been disregarded;
- In January 2012, the judge granted the family's motion and ordered that further investigations be carried out; the newly assigned investigating officer visited Mrs. Kibria and indicated that she would remain in regular contact with the family as the third investigation proceeded;
- The parliamentary Standing Committee on the Ministry of Home Affairs has continued to monitor the case,

Considering that, according to the authorities and one of the complainants, in the course of this third investigation, the investigating officer reviewed past case records and obtained testimony from 93 witnesses; this resulted in the identification and arrest of new suspects; a new charge sheet was submitted in December 2014 against 35 individuals; this third charge sheet was transferred to the

Speedy Trial Tribunal in June 2015 and confirmed on 13 September 2015; judicial proceedings are now under way, with 171 witnesses expected to provide testimony,

Considering that, according the authorities, the new suspects identified include Mr. Harris Chowdhury (the political advisor of the then Prime Minister Khaleda Zia – Mr. Chowdhury appears to also have been involved in the August 2004 attack on the then leader of the opposition and current Prime Minister, Sheikh Hasina), who is suspected of having planned the assassination; Mr. Harris Chowdhury, as well as two other suspects identified in the latest charge sheet, have absconded; the Bangladeshi authorities confirmed that they have informed Interpol for necessary action and that a red notice was issued against Mr. Harris Chowdhury,

Considering that, according to one of the complainants, Mr. Kibria's family no longer received regular updates on the investigation in past years and has been unable to obtain detailed information on the new charge sheet, particularly as regards the grounds and evidence upon which the 35 suspects have been charged; the complainant observes that this lack of information, coupled with the long history of political interference, complications and delays in the investigation, has resulted in a loss of confidence in the judicial process on the part of Mr. Kibria's family; although no reports have indicated that the family contested the third charge sheet as it had done in the two earlier ones, the family reportedly continues to believe that other individuals involved in the crime, particularly the potential instigators, had not yet been charged due to political interference; the complainant has further pointed out that Mr. Harris Chowdhury has been the subject of old-standing arrest warrants in other proceedings and that no serious efforts appear to have been undertaken by the authorities to have him located and extradited,

Considering that, during the hearing conducted on the occasion of the 132nd IPU Assembly (Hanoi, March 2015), the Deputy Speaker of the Bangladeshi Parliament affirmed that the case was now on the right track and that the Bangladeshi authorities were committed to completing the judicial proceedings quickly and that he was confident that quick progress would be made towards the resolution of the case; he observed that the delays in the investigation were initially caused by political factors; he fully acknowledged that justice delayed was justice denied and emphasized that transparency of the proceedings and due process were essential to a satisfactory outcome; he was not aware that Mr. Kibria's family had not been informed of recent investigative steps and observed that it was normally a matter of routine for investigators to keep the families informed; he further pledged to convey a copy of the new charge sheet when made public upon its confirmation by the court, as well as continue to convey information on any new developments in the proceedings,

Bearing in mind the striking similarities between the grenade attack on Mr. Kibria and that on Sheikh Hasina and others five months earlier; both attacks targeted key members of the opposition at the time, and the same type of grenade was used both times; in both cases the investigation has revealed an alleged conspiracy between members of the then ruling party and Islamist extremists and, in this respect, several of the persons charged stand accused in both cases,

Also bearing in mind that Article 35 of the Bangladeshi Constitution provides that "every person accused of a criminal offence shall have the right to a speedy and public trial by an independent and impartial court or tribunal established by law"; the International Covenant on Civil and Political Rights – to which Bangladesh is a party – also affirms the right to be tried without undue delay; at its universal periodic review (UPR) before the United Nations Human Rights Council, Bangladesh accepted recommendations made to end impunity and to take necessary measures to ensure that perpetrators of human rights violations are prosecuted,

1. *Thanks* the parliamentary authorities for the information provided and for their renewed cooperation;

2. *Notes with interest* the ongoing progress in identifying those responsible for the attack, which has resulted in a third charge sheet, and the identification of new suspects, including one of the alleged planners; *further notes* that judicial proceedings are now under way; *wishes* to receive a copy of the latest charge sheet, as well as further information on the grounds and evidence supporting the charges against the suspects;

3. *Remains deeply concerned* that, ten years after the attack, none of the perpetrators has yet been held responsible in a court of law; and *hopes* that the trial will proceed swiftly

and that further progress will promptly be made towards full accountability for this serious crime; *wishes* to send an observer to the trial and to be kept informed of new developments in the case;

4. *Observes with concern* that several suspects remain at large; *urges* the authorities to pursue all necessary efforts to apprehend them; *wishes* to be kept informed of progress in this regard, including with regard to the measures already taken by the authorities to obtain the extradition of some of the absconded suspects;

5. *Notes with concern* allegations that Mr. Kibria's family has not been kept regularly informed of progress made in the investigation and has lost confidence in the proceedings; *calls upon* the authorities to ensure that the family is regularly and fully informed and therefore able to participate meaningfully in the ongoing proceedings for the sake of transparency and accountability of the ongoing judicial process;

6. *Notes with appreciation* that the Parliament of Bangladesh continues to monitor the case and *trusts* that it will continue to keep the Committee regularly apprised of any significant developments;

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, and to organize a trial observation mission;

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

Bangladesh

BGL/15 - Sheikh Hasina

Decision adopted unanimously by the IPU Governing Council at its 197th session (Geneva, 21 October 2015)

The Governing Council of the Inter-Parliamentary Union,

Referring to the case of Sheikh Hasina, leader of the opposition at the time the communication was submitted, and current Prime Minister of Bangladesh, and to the resolution adopted at its 190th session (April 2012),

Taking into account the letters from the parliamentary authorities, dated 24 March and 13 October 2015, the information provided at the hearing held on 27 March 2015 with the Bangladeshi delegation to the 132nd IPU Assembly, as well as the information provided by the complainants and other sources of information,

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

- On 21 August 2004, a well-planned grenade attack was launched against Sheikh Hasina, resulting in her injury, as well as the death and injury of scores of other individuals;
- The initial investigation into the attack resulted in the arrests of 30 suspects, three of whom made statements confessing their participation in the attack, which later were found to be false and fabricated;
- A subsequent investigation into the attack revealed the following: the attack was carried out by Islamist militants belonging to Horkatul Jihad al Islami (Huji), several of whom, including its leader Mufti Hannan Munshi, were arrested in connection with the case; upon interrogation, the assailants disclosed the involvement of government officials, who upon further investigation were found to have provided administrative and financial support for the attack, including involvement in its planning and in helping facilitate the escape of some of the perpetrators;
- After the deadline for submitting the final investigation report had been extended many times, on 2 July 2011, the Criminal Investigation Department (CID) submitted a supplementary charge sheet and formally indicted, on 18 March 2012, 30 more persons, including Mr. Lutfozzaman Babar (State Minister of Home Affairs), Mr. Abdus Salam Pinto (Deputy Minister, whose brother, Mr. Moulana Mohammad Tajuddin supplied the grenades used in the attack), Mr. Ali Ahsan Mohammed Mujahid (Secretary General of Jamaat E Islami Bangladesh), Mr. Tarek Rahman (Senior Vice-President of the Bangladesh Nationalist Party (BNP) and the son of former Prime Minister Khaleda Zia), and Mr. Harris Chowdhury (Political Adviser to Khaleda Zia), who were charged under sections 34, 109, 118, 119, 120(b), 201, 212, 217, 218, 302, 307, 324, 326, and 330 of the Penal Code and sections 3, 4 and 6 of the Explosive Substances Act; former heads of intelligence and former heads of police were also named in the charge sheet; further investigations also found that Abdus Salam Pinto, Lutfozzaman Babar and Tarek Rahman assured the perpetrators that they would provide the necessary administrative help to carry out the attack, with Mr. Babar assuring that security measures would be managed in a way enabling the assailants to execute the attack freely; seven of the indicted individuals were also found to have diverted the initial investigation in order to shield the true perpetrators;
- By October 2011, the case was under way and being tried by the Speedy Trial Court;
- Of the 52 individuals now charged with involvement in the crime, 19 remain at large, including Mr. Rahman and Mr. Chowdhury, who are believed to be in the United Kingdom;
- The Parliament's Standing Committee on the Ministry of Home Affairs has continued to monitor the case,

Considering that, according to one of the complainants, the trial proceedings have been excessively slow, with only a fraction of the 491 individuals registered to provide depositions having had their testimonies processed, and without any indication that the procedure would be completed any time soon; this slow progress in the trial, as well an apparent lack of serious effort to have absconded suspects located and arrested, has contributed to a deterioration of confidence in the judicial system,

Considering that, according to the authorities, 188 witnesses had provided depositions as of September 2015; one suspect, Mr. Abu Bakar (aka Hafej Salim Hawlader), had been arrested and forwarded to the Court, and that red notices had been issued against Mr. Tarique Rahman, Mr. Al Haj Mawlana Mohammad Tajuddin Mia, Mr. Harris Chowdhury, and Mr. Kazi Shah Mofazzal Hossen Kaykobad, with red notices for other absconded individuals currently under process; the trial was delayed for six months due to some of the accused having appealed to the higher court, without any grounds, as a means to delay the trial,

Considering that the Deputy Speaker of the Bangladeshi Parliament affirmed, during a hearing held at the 132nd IPU Assembly (Hanoi, March 2015), that the case was on the right track and the Government was committed to completing the trial quickly; he fully acknowledged that justice delayed was justice denied and emphasized that transparency of the proceedings and due process were essential to a satisfactory outcome; he stated that, even without the full roster of witnesses heard, the case could advance and reach its conclusion if the prosecution and the court agreed that sufficient evidence had been received; the attack and the circumstances contributing to the long delays in the investigation and trial were influenced by political factors; the Bangladeshi Government was in discussions with the authorities of the United Kingdom to facilitate the extradition of Mr. Tarique Rahman,

Bearing in mind the striking similarities between the grenade attack on Mr. Kibria and that on Sheikh Hasina and others five months earlier; both attacks targeted key members of the opposition at the time, and the same type of grenade was used both times; in both cases the investigation has revealed an alleged conspiracy between members of the then ruling party and Islamist extremists and, in this respect, several of the persons charged stand accused in both cases,

Also bearing in mind that Article 35 of the Bangladeshi Constitution provides that “every person accused of a criminal offence shall have the right to a speedy and public trial by an independent and impartial court or tribunal established by law”; the International Covenant on Civil and Political Rights – to which Bangladesh is a party – also affirms the right to be tried without undue delay; at its universal periodic review (UPR) before the United Nations Human Rights Council, Bangladesh accepted recommendations made to end impunity and to take necessary measures to ensure that perpetrators of human rights violations are prosecuted,

1. *Thanks* the parliamentary authorities for the information provided and for their renewed cooperation;

2. *Notes with interest* the ongoing progress in the number of witness depositions made before the court, but *remains deeply concerned* at the slow pace of the judicial proceedings considering that, more than 11 years after the attack, none of the perpetrators has yet been held responsible in a court of law; *hopes* that the trial will proceed swiftly and that further progress will promptly be made towards full accountability for this serious crime; *wishes* to send an observer to the trial and to be kept informed of new developments in the case*;*

3. *Observes with concern* that several suspects remain at large; *urges* the authorities to pursue all necessary efforts to apprehend them; *wishes* to be kept informed of progress in this regard, including on the measures already taken by the authorities to obtain the extradition of some of the absconded suspects;

4. *Notes with appreciation* that the Parliament of Bangladesh continues to monitor the case, and *trusts* that it will continue to keep the Committee regularly apprised of any significant developments;

5. *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, and to organize a trial observation mission;

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

Malaysia

MAL/15 - Anwar Ibrahim

Decision adopted by consensus by the IPU Governing Council at its 197th session (Geneva, 21 October 2015) [2]

The Governing Council of the Inter-Parliamentary Union,

Referring to the case of Dato Seri Anwar Ibrahim, a member of the Parliament of Malaysia, and to the decision adopted at its 194th session (March 2014),

Taking into account the report of the Committee delegation (CL/197/11(b)-R.1) which, at the invitation of the Malaysian parliamentary authorities, went to Malaysia (29 June–1 July 2015) to gain a better understanding of the issues at hand in the Malaysian cases, raise existing concerns and examine possible avenues for progress; *considering* that the delegation was allowed to meet with Mr. Anwar Ibrahim in prison; *also taking into account* the information provided by the leader of the Malaysian delegation to the 133rd IPU Assembly (October 2015) and by one of the complainants at two separate hearings with the Committee on 17 and 18 October 2015 respectively,

Recalling the following information on file:

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

Considering that, on 10 February 2015, the Federal Court upheld the conviction and sentence, which Mr. Anwar Ibrahim is currently serving in Sungai Buloh Prison in Selangor; as a result of the sentence, he will not be eligible to run for parliament for six years after he has completed his sentence, ie until July 2027,

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

Taking into account the report of the IPU observer, Mr. Mark Trowell, QC, (CL/197/11(b)-R.2), who attended most of the hearings in the case in 2013 and 2014 and the final hearing on 10 February 2015; the rebuttal of his report by the authorities and the response to the rebuttal by Mr. Trowell,

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

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

Considering that, on 30 April 2015, Mr. Anwar Ibrahim applied for a fresh judicial review of his conviction, under Rule 137 of the Federal Court rules, on grounds of unfairness, with the applicant asking for the adverse judgement to be set aside and a new bench constituted to rehear the appeal; in his nine-page affidavit, Mr. Anwar Ibrahim listed a number of grounds warranting a review of his case; he alleged, among other things, that the extraordinary swiftness, timing and content of the statement made by the Prime Minister's Office (PMO) on the day of his conviction gave the impression that it knew of the result of the case even before the court's ruling, which is normally subject to secrecy; the affidavit also points out that it is not the practice of the PMO to issue such a statement in any other criminal appeal; in the grounds to support his application, Mr. Anwar Ibrahim claimed that the judgement ought to be reviewed because the release of the PMO's statement on the date of judgement which sought to justify his conviction rendered the judgement objectively deficient; the affidavit also criticized the conduct of lead prosecutor Mr. Muhammad Shafee Abdullah who, according to Mr. Anwar Ibrahim, had conducted a "road show" following his conviction, thereby lending weight to his claim that his trial was backed by UMNO and that he was the victim of a political conspiracy,

Considering also that, on 10 June 2015, Mr. Anwar Ibrahim's lawyers filed an application to have the Federal Court hear retired senior police officer Mr. Ramli Yusuff's testimony to the alleged conspiracy to cover up the infamous "Black Eye" incident in 1998 during Mr. Anwar Ibrahim's detention before his first sodomy trial ("Sodomy I"); Mr. Ramli Yusuff had given evidence on 27 May 2015 in a separate case about his refusal to aid the then Assistant Inspector-General of Police, Tan Sri Musa Hassan, in a purported bid to fabricate evidence falsely showing that Mr. Anwar Ibrahim had self-inflicted his injuries; Mr. Ramli Yusuff had also said that he refused to lodge a police report falsely claiming that Mr. Anwar Ibrahim had lodged a false report of an assault by the then Inspector-General of Police, Mr. Tan Sri Rahim Noor; Mr. Ramli Yusuff claimed that the then Inspector-General of Police had said that he had been sent by the then Attorney General, Tan Sri Mohtar Abdullah and the then lead prosecutor of the case, Mr. Abdul Gani Patail, who subsequently became, and until very recently was, the Attorney General of Malaysia; Mr. Anwar Ibrahim said that the police officer's evidence was credible and of crucial importance, adding that the Federal Court would not have rejected his defence of a political conspiracy had the additional testimony been available to him earlier,

Considering that, on 24 February 2015, Mr. Anwar Ibrahim's family submitted an application for a royal pardon; on 16 March 2015 the Pardons Board rejected the application unofficially through an affidavit in reply; the family again submitted a petition for a royal pardon on the basis of a transgression of justice on 12 October 2015,

Considering that, since his imprisonment on 10 February 2015, Mr. Anwar Ibrahim has been examined by Dr. Jeyaindran Tan Sri Sinnadurai, who is also the Deputy Director General of Health; Mr. Anwar Ibrahim had been complaining to Dr. Jeyaindran about the pain in his right shoulder since early March 2015; however, according to his family, he was only sent to hospital in Kuala Lumpur after four months, namely on 2 June 2015; although the physician who examined him recommended intensive physiotherapy, this recommendation was not implemented, except for a few days from 7 to 12 July 2015; currently, according to Mr. Anwar Ibrahim's family, physiotherapy rarely takes place – once every few weeks, despite the constant pain; Mr. Anwar Ibrahim's medical report

had been referred to Prof. Dr. Ng Wuey Min, Associate Professor at the University Malaya Medical Centre, an orthopaedic shoulder specialist who had treated him before; he concluded that the problem affecting Mr. Anwar Ibrahim's right shoulder was serious and may require arthroscopic surgery to ensure long-term healing; Mr. Anwar Ibrahim's family affirms that, on 21 August 2015, Mr. Anwar Ibrahim's family was informed that, on that very same day, the orthopaedics specialist, Dr. Fadhil, had met Mr. Anwar Ibrahim in prison and merely prescribed strong painkillers to manage the pain, the dose subsequently being doubled by Dr. Jeyaindran,

Considering that Mr. Anwar Ibrahim's family consider that Dr. Jeyaindran should not be in charge of Mr. Anwar Ibrahim's health treatment for the following reasons: (i) he was a witness who testified during the trial against Mr. Anwar Ibrahim; (ii) he is also the personal physician to the current Prime Minister of Malaysia; (iii) he has failed to implement any necessary treatment, which he personally recommended, namely intensive physiotherapy; (iv) he lacks the expertise in the area of Mr. Anwar Ibrahim's health problems; (v) the family affirms that Dr. Jeyaindran has taken three months to allow Mr. Anwar Ibrahim to be examined and for an MRI of his right shoulder to be taken, which has contributed to the pain becoming chronic and affecting his left shoulder; (vi) the family considers that Mr. Anwar Ibrahim needs to be taken immediately to the University Malaya Medical Centre hospital for a thorough examination by Prof. Dr. Ng Wuey Min of his right and left shoulder problems, including all tests such as MRI, etc, so that he can give an authoritative judgement as to effective treatment,

Recalling that, while in detention during the first sodomy trial ("Sodomy I"), Mr. Anwar Ibrahim suffered a severe spinal injury and developed symptoms of spinal cord compression; his plea for medical help then was not heeded,

1 *Thanks* the IPU trial observer and the parliamentary authorities for their extensive comments on the trial against Mr. Anwar Ibrahim;

2 *Thanks also* the Malaysian authorities, in particular the parliamentary authorities, for receiving the on-site mission and for facilitating the fulfilment of its mandate; *appreciates* that the mission was given the opportunity to meet with Mr. Anwar Ibrahim, albeit – contrary to its procedure – not alone;

3 *Is deeply concerned* about the trial observer's conclusion that, in light of the procedural irregularities and the evidence available, Mr. Anwar Ibrahim should have been acquitted; *considers* in this regard that the detailed official rebuttal does not dispel the serious concerns about the credibility of the alleged victim, the DNA evidence and the dubious circumstances surrounding the alleged sodomy;

4 *Fears* that Mr. Anwar Ibrahim's conviction, which precluded him from participating in parliamentary life for more than a decade, deprived the opposition of its main leader and ultimately led to the disintegration of the united opposition, may be based on considerations other than legal;

5 *Sincerely hopes* therefore, all the more so in light of new facts presented by his legal counsel and family, that the efforts to obtain a judicial review or royal pardon will bear fruit; *wishes* to be kept informed of progress in this regard;

6 *Is deeply concerned* that Mr. Anwar Ibrahim may not be receiving the treatment he needs in an effective and timely manner; *calls* on the authorities to do everything possible to address this situation, including by allowing him to be cared for by a doctor of his own choice and to receive the recommended long-term treatment to avoid irreparable damage to his health, if need be through surgery abroad; *wishes to receive* the views of the authorities on this point;

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

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

Malaysia

MAL/21 - N. Surendran
MAL/22 - Teresa Kok (Ms.)
MAL/23 - Khalid Samad
MAL/24 - Rafizi Ramli
MAL/25 - Chua Tian Chang
MAL/26 - Ng Wei Aik
MAL/27 - Teo Kok Seong
MAL/28 - Nurul Izzah Anwar (Ms.)
MAL/29 - Sivarasa Rasiah
MAL/30 - Sim Tze Sin
MAL/31 - Tony Pua

Decision adopted by consensus by the IPU Governing Council at its 197th session (Geneva, 21 October 2015) [3]

The Governing Council of the Inter-Parliamentary Union,

Referring to the aforesaid cases and to the decisions it adopted at its 195th session (March-April 2015),

Taking account of the report of the Committee delegation (CL/197/11(b)-R.1) which, at the invitation of the Malaysian parliamentary authorities, went to Malaysia (29 June – 1 July 2015) to gain a better understanding of the issues at hand in the Malaysian cases, discuss the Committee's existing concerns and examine possible avenues for reaching a satisfactory solution,

Taking into account also the information provided by the leader of the Malaysian delegation to the 133rd IPU Assembly (October 2015) at the hearing held with the Committee; *also taking into account* the information provided by one of the complainants at the hearing held with the Committee on 18 October 2015 and the information regularly provided by other complainants,

Having before it the cases of Mr. Sivarasa Rasiah, Mr. Sim Tze Sin and Mr. Tony Pua, which have been examined by the Committee on the Human Rights of Parliamentarians pursuant to the Procedure for the examination and treatment of complaints (Annex I of the revised rules and practices),

Considering that all the parliamentarians, with the exception of Mr. Teo Kok Seong and Mr. Sim Tze Sin, have been charged since May 2013 with sedition or are being investigated under (a), (b) and (c) of section 4(1) of the Sedition Act (1948) for exercising their freedom of speech, primarily to voice criticism of the Government and/or the judiciary,

Considering that Mr. Chua Tian Chang was reportedly arrested on 20 March 2015 in connection with his involvement in the KitaLawan rally on 7 March in 2015 in protest against Mr. Anwar Ibrahim's conviction on a sodomy charge; Mr. Teo Kok Seong and Mr. Rafizi Ramli are also being investigated regarding their involvement in the same rally; Mr. Sim Tze Sin was charged for organizing or taking part in the KitaLawan rally; according to the complainants, the arrests and investigations infringe the rights of members of parliament to freedom of assembly; the complainants point out that this legal action is based on the Peaceful Assembly Act and section 143 of the Criminal Code, which states that, "whoever is a member of an unlawful assembly shall be punished with imprisonment for a term that may extend to six months, or with a fine, or with both",

Recalling that the Sedition Act dates from colonial times (1948) and originally sought to suppress dissent against the British rulers; it was seldom used in the past and was never invoked between 1948 and Malaysia's independence in 1957; only a handful of cases were pursued between 1957 and 2012; since then, however, hundreds of cases have been initiated under the Sedition Act,

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

Recalling that in 2012, Prime Minister Najib Razak announced publicly that the Sedition Act would be repealed. The discussions subsequently set in motion, however, explored its abolition as only one of four options, namely: (i) maintaining the Sedition 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 Bill,

Considering that the option finally chosen by the Government was to amend the Sedition Act and to pursue discussions on the adoption of a National Harmony and Reconciliation Bill; the official interlocutors told the Committee delegation that the Sedition Act remained necessary to promote national harmony and tolerance, and that the new legislation struck the right balance between protecting stability and social harmony on the one hand and freedom of expression on the other; members of the opposition, however, provided the following explanation to the Committee delegation for the Government's decision to keep and further tighten the Sedition Act: in the general elections in 2008, UMNO (United Malays National Organisation), which had been ruling Malaysia since independence in 1957, lost its two-thirds majority in parliament for the first time; in 2013 the opposition won the popular vote in the general elections, although it obtained only a minority number of seats in parliament; the opposition considered that those in power, in particular the radical elements, made their case for keeping the Sedition Act as a useful tool to ensure that UMNO's dominance would not be challenged in the future,

Considering that in April 2015 the House of Representatives and Senate passed most of the proposed amendments, notably the following:

- criticism of the Government or the administration of justice is no longer considered seditious;
- promoting hatred between different religions is now seditious;
- sedition is no longer punishable with a fine but carries a mandatory minimum three-year prison term;
- sedition is punishable with up to 20 years' imprisonment if the seditious acts or statements lead to bodily harm and/or damage to property;
- The Act empowers the court to order the removal of seditious material on the Internet,

Considering that, well before the passage of the amendments to the Sedition Act, the sedition charges and investigations against the parliamentarians had been put on hold pending a ruling by the Federal Court on the petition challenging the constitutionality of the original Sedition Act (1948); after reserving judgement on the matter on 24 March 2015, the Federal Court ruled on 7 October 2015 that the Sedition Act was constitutional; the complainants fear that the investigations and charges against the members of parliament will now be reactivated as the amendments will not be retrospective, even though, under the current Sedition Act, criticism of the judiciary and the Government is no longer punishable; *considering* that, according to the leader of the Malaysian delegation, the matter was entirely in the hands of the Attorney General, as he had the power to discontinue the proceedings at any time; he also stated that none of the proceedings had been reactivated, given that the Federal Court's ruling on constitutionality had been adopted only recently and that it might be several months before the Attorney General took a decision on how to proceed; the leader of the delegation offered to ask the Speaker of the House of Representatives formally to request the Attorney General to discontinue, in the public interest, any legal action against the parliamentarians under the old Sedition Act inasmuch as criticism of the Government and judiciary was concerned; *considering also* that the amendments have still not been gazetted and therefore have not yet come into effect,

Considering the information presented by the one of the complaints on 18 October 2015 with regard to developments in the legal proceedings against the cases of the parliamentarians:

- **Case of Ms. Teresa Kok**: the Court of Appeal has fixed 17 November 2015 to continue hearing on her appeal to transfer her trial to the High Court from the current Sessions Court;
- **Case of Mr. N. Surendran**: his cases under the Sedition Act are pending trial;
- **Case of Mr. Khalid Samad**: the sedition case is still ongoing and the hearing is set for 31 October 2015. Furthermore, in March 2015, he was investigated again for sedition for his involvement in the KitaLawan rally calling for the Prime Minister to step down;
- **Case of Mr. Teo Kok Seong**: he is investigated under section 143 of the Penal Code and section 9 (5) of the Peaceful Assembly Act, but has not been formally charged;

- **Case of Mr. Tian Chua**: the trial relating to his speech on 13 May 2013, challenging the election results and calling on people to protest, is due to proceed; he won the other "Lahat Datu" sedition case, but the Government has appealed the decision; Mr. Tian Chua is also being investigated under the Peaceful Assembly Act for specifically wearing a yellow T-shirt with the official wording of "bersih4", which represents the Clean and Free Election movement;
- **Case of Mr. Rafizi Ramli**: he was initially investigated under the Sedition Act for criticizing the demonstration in front of a place of worship - a church - but later charged under section 504 of the Criminal Code (uttering words with the intention to create public disorder); the submission is due for October 2015 after which sentencing is expected;
- **Case of Mr. Sivarasa Rasiah**: he is due to be charged under the Sedition Act for allegedly saying during the 7 March KitaLawan rally that the judiciary had been used by UMNO to incriminate Mr. Anwar Ibrahim;
- **Case of Mr. Sim Tze Sin**: he was charged this year under the Peaceful Assembly Act, section 4(2)(c), for organizing or taking part in the KitaLawan rally;
- **Case of Mr. Tony Pua**: he faces investigations under section 143 of the Penal Code and a travel ban as a consequence of his outspoken criticism against the 1MDB scandal; Mr. Tony Pua also faces defamation suits by the Prime Minister,

Considering that Malaysian politics has been engulfed in a scandal related to the 1Malaysia Development Berhad (1MDB), a debt-laden state investment fund; the Prime Minister has faced calls to resign over 1MDB's struggles in meeting obligations from a RM42 billion (US$14 billion) accumulated debt in the last five years; the calls for his resignation grew louder after it was revealed in July 2015 that US$700 million (RM 2.6 billion) allegedly linked to the firm, whose advisory board the Prime Minister chairs, was allegedly deposited into his private accounts; the complainants fear that in the current political climate the authorities will only tighten the screws on the opposition,

Considering that in the face of mounting protests against the scandals, scores of people have recently been arrested under sections 124B and 143 of the Criminal Code addressing "unlawful assemblies"; considering that Section 124B of the Criminal Code, which has never before been used, states: "Whoever, by any means, directly or indirectly, commits an activity detrimental to parliamentary democracy shall be punished with imprisonment for a term which may extend to twenty years"; *considering* also in this regard that Ms. Nurul Izzah Anwar was first investigated under the Sedition Act but now also under section 124 B and J of the Criminal Code, which covers the offence of "being detrimental to parliamentary democracy"; she has not been formally charged,

1. *Thanks* the Malaysian authorities, in particular the parliamentary authorities, for receiving the on-site mission and for facilitating the fulfilment of its mandate;

2. *Fully endorses* the mission's findings and recommendations*;*

3. *Deeply regrets* that a golden opportunity was missed this year to abolish the Sedition Act, following the Prime Minister's earlier remarks in this regard in 2012;

4. *Welcomes* the fact that the amended Sedition Act no longer punishes criticism of the Government and the judiciary; *yet is deeply concerned* that its provisions remain excessively vague and broad, thus leaving the door open to abuse and setting a very low threshold for the type of criticism, remarks and acts that are criminalized, and that it includes a mandatory minimum three-year prison sentence for sedition;

5. *Deeply regrets* that the Federal Court ruled to uphold the constitutionality of the Sedition Act; *sincerely hopes* that the authorities, as some intimated in the course of the on-site mission, will initiate, in recognition of the fact that the amended Sedition Act is too repressive, a review of the Act with a view to bringing it into line with relevant international human rights standards;

6. *Recalls* the important principle in criminal law that if a lighter penalty is provided for after the offence occurs, that lighter penalty shall apply retroactively; *sincerely hopes* therefore that the present Attorney General will decide to discontinue the proceedings against the

parliamentarians under the old Sedition Act in connection with criticism of the Government and the judiciary; *wishes* to receive the views of the Attorney General on this point;

7. *Is deeply concerned* about the continued arrests and investigations of opposition members and vocal critics under legislation, be it the Sedition Act, the Criminal Code or the Peaceful Assembly, that appears to be clearly at odds with respect for their right to freedom of expression and assembly; *is particularly worried* that the authorities are now resorting to Section 124B of the Criminal Code, which is overtly vague and broad in its language and carries a disproportionately harsh penalty;

8. *Wishes* to receive details from the authorities regarding the facts in support of the legal steps taken against the parliamentarians in relation to their participation in demonstrations;

9. *Calls on* the authorities, in particular Parliament, to make serious efforts towards swiftly ratifying the International Covenant on Civil and Political Rights and to make use of the expertise of the United Nations special procedures, in particular the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on freedom of peaceful assembly and association, to ensure that existing legislation is amended or repealed so as to comply with relevant international human rights standards;

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

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

Mongolia

MON/01 - Zorig Sanjasuuren

Decision adopted unanimously by the IPU Governing Council at its 197th session (Geneva, 21 October 2015)

The Governing Council of the Inter-Parliamentary Union,

Referring to the case of Mr. Zorig Sanjasuuren, a member of the State Great Hural of Mongolia, who was murdered on 2 October 1998, and to the decision adopted at its 196th session (Hanoi, April 2015),

Referring to the letters of 21 April and 3 July 2015 from the Vice-Chairman of the State Great Hural and Chairman of the Executive Committee of the Mongolian Inter-parliamentary Group,

Recalling that Mr. Zorig Sanjasuuren, a leader of the democracy movement in Mongolia in the 1990s, was assassinated in October 1998 and that neither the culprits, nor the instigators, have been identified to date, despite uninterrupted investigations since his death,

Taking into account that a delegation of the Committee on the Human Rights of Parliamentarians led by Ms. Kiener-Nellen conducted a mission to Mongolia from 16-19 September 2015,

Considering that, during the mission, the delegation met parliamentary, government and judicial authorities, as well as political parties, law enforcement agencies, human rights organizations, family members and diplomats; it welcomed the authorities' cooperation and willingness to engage and noted that all Mongolian authorities, starting with the State Great Hural, shared their dissatisfaction and disappointment that the crime had not been resolved after such a long time and reaffirmed their continued commitment to shed light on the assassination and hold the culprits to account,

Further considering that the final mission report will be presented to the Governing Council at its next session (March 2016), after being shared with all parties for their observations, but that the Committee wishes to share the following preliminary observations and recommendations of the delegation on its mission:

- **Status of the investigation on the assassination of Mr. Zorig Sanjasuuren:**

- The delegation was able to verify that a judicial investigation is still effectively ongoing, although no suspect has been charged to date; the investigative working group is composed of nine persons working full time on the investigation under the direction and supervision of the Deputy Prosecutor General; the current group has been operating since the appointment of the current Deputy Prosecutor General in December 2013; the delegation took note that the investigation is particularly difficult in light of the initial deficiencies of the investigation (including the contamination of the crime scene) and the passing of time; a significant focus on investigative efforts has therefore been on forensic analysis in recent years; the delegation received confirmation in that respect that past IPU assistance had been valuable in establishing contact with foreign forensic experts and that further assistance would be useful, as new forensic technologies have emerged; the delegation, however, questioned the value of forensic evidence on the premises that, even if forensic analysis eventually led to the identification of the direct perpetrators, it was unlikely that the evidence would stand up in court, due to the initial crime scene contamination and the conditions in which the forensic samples were collected and stored for 17 years; the delegation further questioned the value of concentrating investigative efforts on the identification of the killers rather than on the instigator(s) of the assassination;
- Aside from the forensic activities, the delegation was unable to assess the overall progress made in the investigation in recent years, or its timeline for the coming months because of its high threshold of confidentiality; it obtained no new information on the identity of potential suspects, or on the motives of the assassination; the delegation, however, was told by

many of its interlocutors that it is widely believed, among the general public, that Mr. Zorig Sanjasuuren's assassination was a political contract killing, which was most likely related to his upcoming appointment as Prime Minister at the time of his death,

- **Confidentiality of the investigation**

- The delegation was able to clarify that the "wall of secrecy" surrounding the case is essentially due to the classification of the case under the State Secret Law; the case was classified because of the involvement of the intelligence agency in the investigation under article 81 of the Criminal Code and article 27 of the Code of Criminal Procedure; this involvement was justified by the fact that Mr. Zorig Sanjasuuren was an official figure at the time of his assassination, as he was a member of parliament as well as the Minister of Infrastructure at that time; the confidentiality is also due to the fact that the criminal investigation is still ongoing and that, until charges are brought against identified suspects, the prosecutor's office has no obligation to disclose the case file; therefore, even if the case was declassified, it would remain confidential, with the exception of any information that the head of the investigative working group may decide to disclose;
- The delegation understands that, like in any criminal investigation, there is a need for a measure of confidentiality to be maintained, in particular due to the political sensitivity of the case; it does not, however, find it appropriate that the case continues to be classified 17 years later; it also finds it very unusual that intelligence services would play such an important and lasting role in a criminal investigation; it observes that the uninterrupted involvement of the intelligence agency in the investigation and the ensuing lack of transparency, combined with alleged dubious methods of questioning and investigation at times, were also raised by many as a concern;
- The delegation considers that the confidentiality of the case is excessive and that it is not conducive to progress or accountability; it emphasizes that the high level of confidentiality prevents any effective oversight of the investigation, which is happening behind closed doors with no public scrutiny; the delegation wishes to remind the Mongolian authorities that justice needs to be done, but it also needs to be seen to be done; the very fact that it also prevents any debate on the case in parliament, or in any other public spheres, is very striking; so is the fact that the IPU Committee on the Human Rights of Parliamentarians has been unable to receive substantive information on the investigation, or to obtain responses to its information queries on the repeated grounds of the classified status of the case,

- **Political will and ways forward**

- It was important for the delegation to find out whether there was a still some political will on the part of the Mongolian authorities to resolve the case; it noted with satisfaction that all authorities reaffirmed their will to bring about progress; the delegation considers that there are many combined factors that are likely to account for the lack of results in the investigation after 17 years, including:
    - the initial investigative deficiencies (particularly the contamination of the crime scene);
    - issues related to the training and competence of the investigators, as well as forensic technologies available;
    - the endless replacement of the investigators;
    - the ongoing involvement of the central intelligence agency and excessive secrecy created by the classified status of the case;
    - the political dimension of the case and its subsequent political instrumentalization by political parties;
    - the time elapsed and its consequences;
    - the lack of accountability of the competent authorities despite the absence of results in the investigation,
- The delegation is not in a position to conclude that, among the various factors, political interference may have played a significant role, but it can also not exclude it; this is particularly true considering the lack of results in resolving the case after 17 years of full-time uninterrupted investigations and corresponding political commitments by the successive authorities to establish the truth;

- The delegation furthermore noted that secrecy and lack of progress in the investigation have strongly eroded the trust and confidence of the general public that there was ever any real political will to establish the truth; while all authorities, including the investigative working group, asserted that they had encountered no political hurdles or interference, the delegation could not fail to note that it was repeatedly told by its interlocutors that the general public is generally convinced of the contrary and believes that the case has been covered up; the repeated political instrumentalization of the case by all political parties for electoral gain has further given weight to the current perception of the public that law enforcement agencies are serving political interests; the renewed commitments to shed light on Mr. Zorig Sanjasuuren's assassination are therefore widely seen today as empty political promises,

- **Preliminary recommendations**

- On the basis of the above preliminary findings, the delegation is of the view that only tangible progress and transparency in the investigation can effectively demonstrate that strong political will to find out who killed Zorig Sanjasuuren still exists today in Mongolia; renewed impetus in the investigation is therefore urgently needed; the delegation calls on the Mongolian authorities to redouble their efforts to resolve what is widely believed to have been a political assassination; it urges them to establish clear priorities and a timeline to that end;
- The delegation also believes that the investigative group could benefit from specialized assistance and training on investigation methodology related to contract killings; it also suggests that the investigative team invests more time in examining witness statements, public records and open source materials instead of essentially focusing on forensic analysis, which, in the view of the delegation, is unlikely to prove conclusive and will, in any case, not help establish the motives of the assassination or the identity of the instigators;
- The delegation further calls on the Mongolian authorities to strike an appropriate balance in the treatment of the case between the need for a reasonable measure of confidentiality and the pressing need for increased transparency and regular public communication on the investigation; the delegation recommends that the case be promptly declassified and that the State Secret Law be amended to avoid similar situations in the future; it calls upon the competent authorities, in particular the National Security Council and the State Great Hural, to take prompt action to that end; it also recommends that a system of public reporting on the investigation be promptly established and that opportunities for public debate be created to boost public confidence that appropriate action is being taken by the competent authorities;
- Furthermore, the delegation expects that the investigative working group will continue to report quarterly on its latest investigative activities (including breakthrough and challenges) to the special oversight subcommittee of the State Great Hural and that the latter will effectively exercise its oversight function;
- The delegation urges the Mongolian authorities, particularly the investigative working group and the special oversight subcommittee of the State Great Hural, to keep the Committee on the Human Rights of Parliamentarians apprised of their efforts, including recent investigative steps taken, their outcome and outstanding challenges; to that end, it wishes to receive periodic reports on the investigation at least twice a year before each IPU Assembly;
- The delegation further invites the State Great Hural to organize a public debate on the case in parliament; it calls on all political parties to adopt a joint resolution by consensus in support of the resolution of the case; it is convinced that it would be an important step forward for all political forces to acknowledge the existing concerns and commit themselves, in the common interest of the nation, to taking and supporting all appropriate measures to bring about progress, including increased transparency, effective oversight and a commitment to stop resorting to the case for political gain; the delegation suggests that such a joint resolution should also include a public apology to Mr. Zorig Sanjasuuren's family for the State's failure to bring those responsible for his killing to justice,

1. *Thanks* the Mongolian authorities for their cooperation and assistance;

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

3. *Notes with satisfaction* the authorities' willingness to engage and their continued commitment to shedding light on the assassination and holding the culprits and the instigators to account; *urges* them to redouble their efforts to resolve the crime and to take prompt action to strike a more appropriate balance between the need for a reasonable measure of confidentiality and the pressing need for increased transparency and public communication on the investigation; particularly *calls upon* the President, the Prime Minister and the Speaker of the State Great Hural, as members of the National Security Council, to declassify the case;

4. *Notes with interest* that the investigative working group has been authorized to report quarterly to the parliamentary oversight subcommittee; *trusts* that the special oversight subcommittee of the State Great Hural will be kept informed of ongoing investigative activities and their outcome and will be able to exercise its oversight function effectively;

5. W*ishes* to be kept apprised of future developments related to the case through bi-annual periodic reports focusing in particular on: (i) recent investigative activities, including their outcome and outstanding challenges; (ii) the assessment and recommendations made by the special oversight subcommittee of the State Great Hural; (iii) and progress made in implementing the recommendations arising out of the Committee's mission to Mongolia;

6. *Requests* the Secretary General to convey this decision to all relevant parliamentary, executive and judicial authorities, including the Speaker of the State Great Hural, the President and the Prime Minister of Mongolia, the Minister of Justice, the Prosecutor General and the Deputy Prosecutor General, the Chairman and members of the special parliamentary oversight subcommittee, the chairmen of the parliamentary caucuses of political parties, as well as the complainant and any other 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.

Sri Lanka

SRI/49 - Joseph Pararajasingham
SRI/53 - Nadarajah Raviraj
SRI/61 - Thiyagarajah Maheswaran
SRI/63 - D.M. Dassanayake
SRI/69 - Sivaganam Shritharan

Decision adopted unanimously by the IPU Governing Council at its 197th session (Geneva, 21 October 2015)

The Governing Council of the Inter-Parliamentary Union,

Referring to the cases of the first four above-mentioned parliamentarians, who were all assassinated between December 2005 and January 2008, and the case of Mr. Shritharan, who was the victim of an attempt on his life in March 2011, and to the resolution adopted at its 193rd session (October 2013),

Taking into account the information provided by the Deputy Speaker and other members of the Sri Lankan delegation to the 133rd IPU Assembly (October 2015) at the hearing held with the Committee on 16 October 2015; *taking into account as well* the communication from the Chief Parliamentary Protocol Officer, dated 13 October 2015, forwarding reports from the Central Investigation Department, Colombo, and the information regularly provided by the complainants,

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

- Mr. Pararajasingham, a member of the Tamil National Alliance (TNA), was shot dead on 24 December 2005 during the Christmas Eve mass at St. Mary's Church in Batticaloa, which was located in a high-security zone between two military checkpoints; the murder took place at a time when additional security forces were on duty;
- The complainants have always affirmed that Mr. Pararajasingham was killed by the Sri Lankan Government with the help of the Tamil Makkal Viduthalai Pulikal (TMVP, also known as the “Karuna group”), a faction led by Mr. V. Muralitharan (alias “Karuna”), which split from the Liberation Tigers of Tamil Eelam (LTTE) in 2004 over grievances that the LTTE gave priority to the situation of the Tamils in the north and disregarded the Tamils in the east; during that time, the Karuna group reportedly asked Mr. Pararajasingham to support the split; his refusal to do so became a problem, given that the Government had wanted the Tamils to divide over the north and east;
- According to the authorities, one of the main problems in the pursuit of justice in the case was the availability of witnesses, as they were afraid to come forward,

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

- Mr. Raviraj, a member of the TNA, was shot dead on 10 November 2006, along with his security officer, while travelling along a main road in Colombo, the gunman escaping on a motorcycle; the complainants refer to information which shows that the circumstances of the murder point to State responsibility and that the immediate purpose of Mr. Raviraj's killing was to silence the Civil Monitoring Committee, which he had set up and whose reports on abductions, killings and extortions had created significant commotion;
- A Scotland Yard team arrived in Sri Lanka in January 2007 and took swabs of the bloodstain in the bag in which the firearm used for Mr. Raviraj’s assassination had been hidden and transported, and which had been found at the crime scene;
- Investigations into the ownership of the motorcycle used by the gunman led to persons referred to as “Arul” and “Ravindra” who, according to the police progress report forwarded in April 2009, were strongly suspected of having gone to the areas then controlled by the LTTE; the Criminal Investigation Department recorded statements of the family members of the suspects in the Gramaniladhari of Kotahena and Aluthkade areas between July 2013 to February 2014 with regard to their whereabouts, but no useful information was revealed,

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

- The complainant in this case has from the outset emphasized that Mr. Maheswaran voted against the budget on 14 December 2007 and that, soon after the vote, the number of security guards assigned to him was cut from 18 to two; Mr. Maheswaran had openly made statements to the effect that the reduction of his security detail put his life seriously at risk and repeatedly requested the Government to enhance his security, but to no avail; on 1 January 2008, he was shot and died soon after; according to the complainant, the attack came after Mr. Maheswaran had said in a television interview that, when parliamentary sittings resumed on 8 January 2008, he would describe in detail the terror campaign that the Government was pursuing in Jaffna, particularly how abductions and killings were managed;
- In the months following the murder, the authorities arrested Mr. Johnson Collin Valentino from Jaffna, who was identified as the gunman on the basis of a DNA analysis; the investigators concluded that he was an LTTE activist who had been trained and sent to Colombo to kill Mr. Maheswaran; Mr. Valentino confessed to the crime and was found guilty on 27 August 2012 and sentenced to death,

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

- Mr. Dassanayake was killed on 8 January 2008; the arrest of a key LTTE suspect operating in Colombo led to the arrest of other suspects; one of the suspects, Mr. Hayazinth Fernando, pleaded guilty and was sentenced on 1 August 2011 to two years' rigorous imprisonment, a 10-year suspension and the payment of a fine of Rs. 30,000 for refusing to provide information to the investigators; two other accused, namely Mr. Sunderam Sathisha Kumaran and Mr. Kulathunga Hettiarachchige Malcom Tyron, stood indicted in the High Court of Negombo on nine counts; these counts included conspiracy to commit murder and abetment to commit murder,

Recalling that, with regard to the case of Mr. Sivaganam Shritharan, he is a member of parliament belonging to the TNA; on 7 March 2011, Mr. Shritharan was travelling from Vavuniyaa to Colombo to attend parliament the following day; around 6 pm, when his vehicle was passing Nochchiyagama, three persons got out of a vehicle parked on the roadside without a number plate, opened fire at the vehicle and hurled two hand grenades under it; thanks to the skills of the driver, Mr. Shritharan escaped unscathed and the vehicle was only lightly damaged; thus far, no one has been held to account for the attempt on Mr. Shritharan's life,

Considering that, on 16 September 2015, the United Nations High Commissioner for Human Rights released his report (A/HRC/30/CRP.2) on his Office's (OHCHR) comprehensive investigation into alleged serious violations and abuses of human rights and related crimes by both parties (that is the Government and related institutions, on the one hand, and the LTTE on the other) in Sri Lanka between 2002 and 2011; the report concludes that:

- There are reasonable grounds to believe that gross violations of international human rights law and serious violations of international humanitarian law were committed by all parties during the period under review;
- There are reasonable grounds to believe the Sri Lankan security forces and paramilitary groups associated with them were implicated in widespread and unlawful killings of civilians and other protected persons; Tamil politicians, humanitarian workers and journalists were particularly targeted; the LTTE also unlawfully killed civilians perceived to hold sympathies contrary to the LTTE, or suspected of being informers, as well as rival Tamil political figures, public officials and academics;
- The sheer number of allegations, their gravity and recurrence and the similarities in their modus operandi, as well as the consistent pattern of conduct they show, all point to systematic crimes, which cannot be treated as ordinary crimes;
- Sri Lanka's criminal justice system is not currently equipped to conduct an independent and credible investigation into allegations of this breadth and magnitude, or to hold accountable those responsible for such violations;
- It is therefore necessary to establish an ad hoc hybrid special court, which would include international judges, prosecutors, lawyers and investigators, mandated to try notably war

crimes and crimes against humanity, with its own independent investigative and prosecuting organ, defence office and witness and victim protection programme,

Considering that on 1 October 2015, the United Nations Human Rights Council adopted a resolution, supported by Sri Lanka, in which the Council: (i) welcomed the recognition by the Government of Sri Lanka that accountability is essential to uphold the rule of law and to build confidence in the people of all communities of Sri Lanka in the justice system; (ii) notes with appreciation the proposal of the Government of Sri Lanka to establish a judicial mechanism with a special counsel to investigate allegations of violations and abuses of human rights and violations of international humanitarian law, as applicable; (iii) affirms that a credible justice process should include independent judicial and prosecutorial institutions led by individuals known for their integrity and impartiality; and (iv) affirms in this regard the importance of Commonwealth and other foreign judges, defence lawyers and authorized prosecutors and investigators participating in Sri Lankan judicial mechanisms, including working with the special counsel's office,

Considering that presidential elections took place in Sri Lanka on 8 January 2015 and parliamentary elections on 17 August 2015, that the new President has put in place a national union government and that, fulfilling an election promise, he worked with parliament to bring about the adoption, on 28 April 2015, of the Nineteenth Amendment aimed to reduce the powers of the presidency and to re-empower independent oversight commissions in Sri Lanka; President Sirisena, along with other high-ranking government officials, have repeatedly emphasized the need for reconciliation and accountability in public statements; the Minister of Foreign Affairs announced in this regard to the United Nations Human Rights Council on 14 September 2015 that the authorities intended to set up a Commission for Truth, Justice, Reconciliation and Non-recurrence, an Office on Missing Persons, a judicial mechanism, with a special counsel to be set up by law and an Office for Reparation; he also said that all mechanisms would be set up through a wide process of consultation involving all victims and other interested parties; moreover, each mechanism was intended to have the freedom to obtain financial, material and technical assistance from international partners, including the OHCHR; the Minister also stated that, in order to guarantee non-recurrence, a series of measures would be undertaken, including administrative and judicial reform, and the adoption of a new Constitution; additionally, the Minister said, the Government was committed to, inter alia, reviewing and repealing the Prevention of Terrorism Act and replacing it with anti-terrorism legislation that was in line with contemporary international best practices, reviewing the Public Security Ordinance Act and reviewing the Victim and Witness Protection Act, which was adopted this year,

Considering the extensive new information as presented by the Deputy Speaker of Parliament to the Committee on 16 October 2015, as well as the information contained in the United Nations High Commissioner's report, with regard to progress in the four murder cases:

- **The case of Mr. Pararajasingham**: On 4 October 2015, three suspects, including the former Chief Minister of Eastern Provincial Council, the leader of Tamil Makkal Viduthalai Pulikal (TMVP), were arrested; the involvement of four others, all members of the TMVP, had also been established, two of whom were said to be in Dubai and India; as regards the motive, the UN report stated that Mr. Pararajasingham had declined to support Karuna after his split from the LTTE and had previously been threatened by members of the Karuna group; family members of the victim suffered further threats after the attack and fled the country; the UN investigators considered that, based on the information obtained, "there are reasonable grounds to believe that the Karuna Group killed Joseph Pararajasingham, and that it was aided and abetted by security and army personnel";
- **The case of Mr. Raviraj**: seven persons were arrested, four of whom in March 2015, namely two Lt. Commanders of the Sri Lankan Navy and two other navy and police officers; four of the seven suspects, namely those arrested in 2006 and one of the Lt. Commanders arrested in March 2015, were released on bail; the investigation has also pointed to the complicity in the crime of Mr. Sivakanthan Vivekanandan (alias Charan), a TMVP member, who is said to be in Switzerland; his extradition process has been initiated; the Sri Lankan authorities have also formulated a Mutual Legal Assistance request to the United Kingdom authorities to enlist the support of the Metropolitan Police Service (MPS), New Scotland Yard, of the United Kingdom, which had been able to develop DNA profiles and fingerprints from the exhibits found at the murder scene and which they had taken back to the United Kingdom for examination at the time; the United Nations report stated that Mr. Raviraj was widely known for his moderate views and critical statements of both the LTTE and the Government, particularly in the weeks

leading up to his murder. Along with other parliamentarians, he had set up the Civilian Monitoring Committee, which alleged the Government was responsible for abductions, enforced disappearances and unlawful killings. The UN report also points to the fact that, the day before he was killed, Mr. Raviraj and other TNA parliamentarians took part in a demonstration in front of the United Nations offices in Colombo to protest against the killing of Tamil civilians by the military in the east and the increasing abductions and extrajudicial killings;

- **The case of Mr. Maheshwaran**: an appeal regarding the sentence against Mr. Johnson Collin Valentino in is pending; the case is next to be called for hearing on 11 November 2015;
- **The case of Mr. Dassanayake**: the trial against Mr. Hayazinth Fernando was closed; with regard to the other two accused, namely Mr. Sunderam Sathisha Kumaran and Mr. Malcom Tyrone, the first had fallen sick in remand prison and died in hospital on 14 May 2015, whereas the case against the other was ongoing and scheduled for trial on 20 October 2015,

Considering also that the Sri Lankan Prime Minister was intent on setting up a parliamentary select committee to monitor the investigations into the assassinations of parliamentarians,

1. *Thanks* the Deputy Speaker and the other members of the Sri Lankan delegation for their cooperation and the extensive information they provided;

2. *Welcomes* the ambitious initiatives which the current authorities have set in motion to promote truth, justice and reparation for crimes that took place in connection with the internal conflict in Sri Lanka that ended in May 2009; *wishes to be kept informed* of how these initiatives, as well as the announced constitutional and institutional reform, are taking concrete form; *also wishes* to know in what ways the authorities aim to strengthen the Victim and Witness Protection Act, so as to offer the best protection for witnesses in and outside of Sri Lanka;

3. *Considers* that the Sri Lankan authorities stand much to gain from cooperating with the international community and making use of relevant international expertise and advice to shed full light on past human rights violations; *notes* in this regard the particular concerns expressed by the United Nations High Commissioner for Human Rights about the capacity of the current Sri Lankan justice system to address the full complexity and gravity of those violations; therefore *calls on* the authorities to work closely with the Office of the United Nations High Commissioner for Human Rights, the United Nations Human Rights Council and its special procedures, so as to enhance the effectiveness of the accountability process and to promote trust among the population, the victims in particular, about the credibility of its outcome;

4. *Appreciates* the significant progress recently made to hold to account the alleged culprits of the murders of Mr. Pararajasingham and Mr. Raviraj; *expresses deep concern* nevertheless at the fact that the identity of those arrested confirms the concerns originally voiced by the complainants and the recent conclusions by the United Nations High Commissioner for Human Rights about State responsibility in collusion with paramilitary groups in the murders;

5. *Trusts* that, in light of the seriousness of the situation and the potential hurdles that the prosecution of high-profile suspects may bring, the authorities will do everything possible to sustain the current momentum for shedding full light on these crimes and establishing full accountability; *wishes to be kept* informed of progress with regard to the legal action against those under arrest or released on bail, including as to if and when charges are brought, and to receive, when available, information on the motives and modus operandi for the crimes; *also wishes* to be informed of progress in the efforts to locate and extradite the suspects who are abroad;

6. *Appreciates* the Deputy Speaker's undertaking to provide copies of the verdict against the culprits in the cases of Mr. Dassanayake and Mr. Maheswaran; *sincerely hopes* that the

verdict in the case of Mr. Maheswaran will shed light on whether the timing of his killing and the reduction of his security detail was taken into account; *trusts* that trial proceedings against the one remaining suspect in the case of Mr. Dassanayake will soon be completed; *wishes* to receive further information on this point;

7. *Notes with concern* that there appears to be no progress in holding to account those responsible for the attack on Mr. Shritharan's life in 2011; *trusts* that the authorities will also include this crime as a priority in their efforts to establish truth and justice;

8. *Trusts* that the announced parliamentary select committee to monitor the investigations into the assassinations of former members of parliament will be set up as a matter of urgency and vested with a strong mandate and powers; *hopes* that the committee will also include in its remit oversight of the investigation into the attack on Mr. Shritharan's life in 2011; *wishes* to be kept informed of developments regarding the establishment of the committee and its work;

9. *Requests* the Secretary General to convey this decision and the request for information to the relevant 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.

Russian Federation

RUS/01 - Galina Starovoitova

Decision adopted unanimously by the IPU Governing Council at its 197th session (Geneva, 21 October 2015)

The Governing Council of the Inter-Parliamentary Union,

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

Recalling the following information on file provided over several years:

- In June 2005, two men, Mr. Akishin and Mr. Kolchin, were found guilty of Ms. Starovoitova's murder, with Mr. Akishin sentenced to 23 and a half years in prison, and Mr. Kolchin sentenced to 20 years, both by the St. Petersburg City Court, which, in its judgment, concluded that the murder had been politically motivated; in September 2007, two others were found guilty of complicity in the murder and sentenced to 11 and 2 years' imprisonment respectively; four other suspects were acquitted and released; there are open national and international arrest warrants for three other individuals; in its report of April 2008, the Prosecutor General's Office stated that the investigation and search operations to identify the other individuals involved in Ms. Starovoitova's murder were ongoing;
- Ms. Starovoitova was a prominent Russian human rights advocate and had denounced instances of high-profile corruption shortly before her assassination; in November 2009, the United Nations Human Rights Committee expressed "its concern at the alarming incidence of threats, violent assaults and murders of journalists and human rights defenders in the Russian Federation, which has created a climate of fear and a chilling effect on the media ...", and urged the Russian Federation "to take immediate action to provide effective protection and ensure the prompt, effective, thorough, independent, and impartial investigation of threats, violent assaults and murders and, where appropriate, prosecute and initiate proceedings against the perpetrators of such acts"; many States made similar recommendations during the first and second universal periodic reviews of the Russian Federation's compliance with its human rights obligations before the United Nations Human Rights Council (February 2009 and April 2013),

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

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

Recalling that, according to the complainants, Mr. Glushchenko was eventually charged as one of the organizers of the crime, and entered a plea bargain by agreeing to provide the name of the person who had ordered him to organize the killing in exchange for a reduced sentence,

Considering that, on 27 August 2015, Mr. Glushchenko was convicted to 17 years in prison as one of the organizers of the assassination; Mr. Glushchenko pleaded guilty and stated that he was acting under orders from Mr. Vladimir Barsukov (aka Kumarin), a former leader of the "Tambov criminal syndicate", who is already serving a prison term on a prior conviction; Mr. Glushchenko has appealed the sentence,

Considering that the complainant hopes that the investigation will now proceed to examine Mr. Barsukov's role in the assassination and will lead to the identification and prosecution of all other individuals involved, including the mastermind(s),

Further considering that the complainant found credible that Mr. Barsukov may have been involved in the assassination in some way, but believed that he most likely acted on orders from one or more other persons because there was no personal motive for him to have instigated the murder,

Taking into account that the State Duma has not provided information on the case since March 2012 and has not responded to repeated information requests, or to invitations to meet with the Committee,

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

2. *Deeply regrets* the lack of response from the State Duma, and *recalls* that the Committee strives to foster dialogue and cooperation with the authorities of Russia, first and foremost with parliament, its primary interlocutor pursuant to its procedure; therefore, *sincerely hopes* that constructive dialogue is resumed shortly;

3. *Reaffirms* its conviction that the State Duma's continued interest in the case of a former colleague killed for having exercised her right to freedom of speech is critical to helping ensure that justice is done; and *urges* it to resume the monitoring of the proceedings and to keep the Committee apprised of future developments;

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

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

Iraq

IQ/59 - Mohammed Al-Dainy

Decision adopted unanimously by the IPU Governing Council at its 197th session (Geneva, 21 October 2015)

The Governing Council of the Inter-Parliamentary Union,

Referring to the case of Mr. Mohammed Al-Dainy, a member of the Council of Representatives of Iraq at the time of the communication's submission, and to the resolution adopted by the Governing Council at its 192nd session (March 2013),

Referring to the hearing conducted with two members of the delegation of Iraq to the 133rd IPU Assembly (Geneva, October 2015), and to information provided by one of the complainants and other sources of information,

Recalling the following information on file:

- Mr. Al-Dainy, a member of the Council of Representatives of Iraq for the legislative period 2006-2010, is known to have investigated conditions of detention in Iraq and the existence of secret detention facilities; on 25 February 2009, parliament lifted his immunity on account of an accusation that he had masterminded the 12 April 2007 suicide bombing of parliament; Mr. Al-Dainy fled abroad for fear of his life;
- Ten members of Mr. Al-Dainy's family and nine members of his staff (mainly escorts) were arrested in 2009; detailed information was provided by the complainant about the circumstances of their arrest without warrants, their ill-treatment and the ransacking of their homes; when some of them were released later in 2009 and 2010, ample evidence came to light that they had been tortured in secret detention centres to implicate Mr. Al-Dainy in the commission of crimes, in particular: (i) the bombing of the Council of Representatives in April 2007; (ii) the launch of mortar shells into the Green Zone during the visit of the Iranian President in 2008, and the murder of one of the inhabitants of the neighbourhood from which the shells were launched; (iii) the killing of 155 people from Al-Tahweela village, who were allegedly buried alive; and (iv) the murder of Captain Ismail Haqi Al-Shamary;
- On 24 January 2010, Mr. Al-Dainy was sentenced to death in absentia; the verdict runs to a little more than one page (French translation), contains two paragraphs dealing with the suicide bombing of parliament and one paragraph on the shelling of the Green Zone, six lines on the storing of weapons and the founding of a terrorist organization linked to the Ba'ath party, and, to prove that Mr. Al-Dainy committed these crimes, relies heavily on the testimony of three members of his security staff (Mr. Riadh Ibrahim, Mr. Alaa Kherallah, Mr. Haydar Abdallah) and a secret informant; it does not refer to any of the other accusations;
- In December 2010, the Court of Cassation quashed the judgement handed down regarding two of Mr. Al-Dainy's escorts who had testified against him;
- On 24 July 2011, the Speaker of the Council of Representatives set up an ad hoc committee of inquiry of five parliamentarians to examine Mr. Al-Dainy's case; following in-depth inquiries, that committee concluded on 15 March 2012 that: (i) the lifting of Mr. Al-Dainy's parliamentary immunity had violated the applicable rules, as it had been decided in the absence of a quorum and was therefore unlawful; (ii) as regards the allegation that Mr. Al-Dainy had killed more than 100 villagers in Al-Tahweela village, the on-site investigation revealed that no crime had taken place; (iii) Mr. Al-Dainy was in Amman at the time of the firing of mortar shells into the Green Zone during the visit to Baghdad of the Iranian President, a fact borne out by stamps in his passport; (iv) as to the allegation concerning Captain Haqi Al-Shamary's murder, the committee found that the Captain was still alive; the committee issued its final report, recommending inter alia: (a) that the case of Mr. Al-Dainy be promptly reviewed in the interests of truth and justice; and (b) that the perpetrators of the acts of torture committed against Mr. Al-Dainy's family members and escorts during their detention in Al-Sharaf prison be held accountable;

- The Speaker of the Council of Representatives submitted the final report of the ad hoc parliamentary committee on Mr. Al-Dainy's case to the Higher Judicial Council on 17 July 2012 and requested it to take all necessary measures in view of the Committee's findings and recommendations; the conclusions of the parliamentary committee, including its official request for Mr. Al-Dainy's retrial, were broached, including in direct meetings, with the Higher Judicial Council, the Prime Minister and other competent authorities,

Considering that, during a hearing held during the 130th IPU Assembly (March 2014), a member of the Iraqi delegation affirmed that there had been an agreement for a retrial, but that, according to Iraqi law, it could only take place if Mr. Al-Dainy was physically present in Iraq; however, given the high like lihood that Mr. Al-Dainy would be arrested upon arrival, should he decide to return to Iraq, the retrial could not proceed,

Considering that, according to the information recently conveyed by one of the complainants and by other sources, Mr. Al-Dainy voluntarily returned to Iraq in April 2015 and surrendered himself to the Iraqi authorities for a retrial in the hope of being proven innocent; he has been held in detention in Al Muthana prison since that date; the retrial has taken place and was completed about three months ago,

Considering the following information shared by the two members of the Iraqi delegation during the hearing held during the 133rd IPU Assembly (October 2015):

- Mr. Al-Dainy voluntarily returned to Iraq on 27 April 2015 to face justice and confront the false accusations that had been made against him; the judicial proceedings have been fully completed after a three-month retrial, and the court concluded that Mr. Al-Dainy was not guilty of any of the charges brought against him and ordered his release;
- Mr. Al-Dainy has nevertheless not been released and remains in detention, in violation of the Iraqi Constitution and laws; the competent authorities have failed to execute the court order to date and have put his release on indefinite hold; Mr. Al-Dainy is indeed detained at the former Al-Muthanna military airport in Baghdad, a military intelligence detention centre;
- The reasons for Mr. Al-Dainy's continued detention pertain to persistent political divergences between the majority and the opposition parties along sectarian lines and the wish of certain political parties to sideline or eliminate political opponents such as Mr. Al-Dainy; this divide has become entrenched within the legislative, executive and judicial branches of power in Iraq and has hampered progress;
- Lack of judicial independence and the political instrumentalizing of Iraqi courts require urgent judicial reform, but the reforms initiated to date have not been conducive to any tangible progress;
- The Council of Representatives is concerned about the situation of Mr. Al-Dainy; members of parliament have called on the competent authorities to expedite his release and to restore his rights; they have also requested the authorization to visit Mr. Al-Dainy in detention, which has not been granted to date; the members of the Iraqi delegation expressed surprise and regret that no responses had been forthcoming from the Council of Representatives on this matter, despite repeated requests of the Committee on the Human Rights of Parliamentarians; they pledged to follow up with the Speaker on this matter upon their return to Iraq,

Bearing in mind as well that Iraq is a party to the International Covenant on Civil and Political Rights and to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; that the international community - through the reports of the United Nations Secretary-General, the United Nations Assistance Mission for Iraq, the Office of the High Commissioner for Human Rights, the United Nations Special Rapporteur on the independence of judges and lawyers and the Human Rights Council universal periodic review mechanism - has repeatedly voiced serious concerns regarding the lack of fair trial, the use of torture, the level of independence of the judicial system, and the use of the death penalty; particular concerns have been expressed in relation to the serious flaws of the Iraqi judicial system, including persistent serious violations of due process and fair trial rights in cases involving capital punishment and terrorism cases, together with the routine use of torture and coerced confessions, as recently reaffirmed in the concluding observations adopted in September 2015 by the United Nations Committee against Torture (CAT) on the initial report of Iraq; the CAT further made reference to the detention facility at the former

Al-Muthanna military airport in West Baghdad, as one of the irregular detention centres used to detain alleged terrorists or other high-security suspects, which continues to operate secretly under military control, and urged the authorities of Iraq to close such detention facilities, which are per se, a breach of the Convention against Torture,

1. *Thanks* the members of the Iraqi delegation for the information provided;

2. *Notes with satisfaction* that, upon Mr. Al-Dainy's voluntary return to Iraq, a retrial took place and he was finally proven innocent more than five years after being sentenced to death following a trial that had been a clear travesty of justice; *requests* the parliamentary authorities to convey a copy of the latest court decision at their earliest convenience;

3. *Is nevertheless dismayed* that Mr. Al-Dainy continues to be kept in detention, despite his acquittal, *and calls for* his immediate release;

4. *Deeply regrets* that the Council of Representatives has not responded to the Committee's requests for updated information or shared any official information on the latest developments; *notes* that the members of the delegation have stated that the Council of Representatives is concerned about the situation of Mr. Al-Dainy; therefore *expresses its perplexity* at the lack of official response; *calls on* the Council of Representatives to take urgent action to obtain Mr. Al-Dainy's release and ensure that his fundamental rights are fully respected by all relevant authorities; and *reiterates its wish* to be kept informed of the action taken to that end and its outcome; *stresses* that the Committee strives to foster dialogue and cooperation with the authorities of Iraq, first and foremost with the Council of Representatives, its primary interlocutor pursuant to its procedure;

5. *Recalls* that the protection of the rights of parliamentarians is the prerequisite to enable them to protect and promote human rights and fundamental freedoms in their respective countries; and *urges* the Council of Representatives of Iraq as a whole, including all of its individual members and their respective political parties, to overcome their existing divergences and stand united for the protection of the rights of all Iraqi parliamentarians in order to strengthen the parliamentary institution and its ability to protect the fundamental rights and freedoms of the Iraqi people;

6. *Considers* that, in light of the seriousness of the concerns at hand and the urgent need for increased dialogue with the Iraqi authorities, a mission to Iraq by a delegation of the Committee on the Human Rights of Parliamentarians would offer a timely opportunity to meet with senior officials of the legislative, executive and judicial branches, particularly the Speaker of the Council of Representatives, the Prime Minister, the Minister of Justice and the President of the Higher Judicial Council, so as to obtain first-hand information on the above-mentioned concerns and responses of the relevant Iraqi authorities;

7. *Requests* the Secretary General to seek the authorities' agreement for such a mission, and 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.

Iraq

IQ/62 - Ahmed Al-Alwani

Decision adopted unanimously by the IPU Governing Council at its 197th session (Geneva, 21 October 2015)

The Governing Council of the Inter-Parliamentary Union,

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

Referring to the hearing conducted with two members of the delegation of Iraq at the 133rd IPU Assembly (Geneva, October 2015), and to information provided by the complainant and other sources of information,

Recalling the following information on file:

- Mr. Al-Alwani was arrested on 28 December 2013 in Ramadi, in Al-Anbar Governorate, during a raid on his home carried out by Iraqi forces in the middle of the night; the gunfight resulted in casualties, including deaths, among the security forces; Mr. Al-Alwani's brother and members of his entourage were also killed; the circumstances of the raid, including the reasons why the Iraqi forces conducted it, remain unclear;
- Mr. Al-Alwani was detained, charged for terrorist-related crimes under the Iraqi Anti-Terrorism Law, and tried before the Central Criminal Court of Baghdad; he was sentenced to death on 23 November 2014;
- The complainant has stated that Mr. Al-Alwani was arrested in retaliation for his outspoken support for the grievances of the Sunni population; Mr. Al-Alwani was a member of the Al-Iraqiya political block and was serving his second parliamentary mandate; he was known to be a prominent critic of the Iraqi Prime Minister at the time, Nouri Al-Maliki, and a supporter of the demonstrations that started in Ramadi in December 2013 in protest against the perceived marginalization and persecution of Iraqi Sunnis by the central Government; the Prime Minister at the time was said to have publicly announced on 22 December 2013 that these protests had become a "headquarters for the leadership of Al-Qaida" and to have warned that the security forces would intervene; Mr. Al-Alwani had held meetings with the provincial authorities on 27 December 2013, the day before his arrest, in an effort to defuse the tension between the governorate and the central Government;
- The complainant alleges that, at the time of the raid, Mr. Al-Alwani and his entourage had no way of knowing whether they were engaged in a confrontation with Iraqi security forces, a terrorist group, or an armed militia, considering the precarious security situation at the time, and that the raid was conducted in the middle of the night; the complainant alleged that Mr. Al-Alwani's entourage only responded to the gunfire in self-defence;
- According to a member of the delegation of Iraq who appeared before the Committee at the 130th Assembly (Geneva, March 2014), the Council of Representatives had not received any information on the exact circumstances of, and grounds for Mr. Al-Alwani's arrest, which had been the subject of much speculation; there were, however, two opposing points of view in that respect within parliament: (i) one was that he was a terrorist and was caught in flagrante delicto by the Iraqi forces; and (ii) the other was that he was attacked by the Iraqi forces because he had supported the demonstrations, and was accused of terrorism because he and his bodyguards opened fire to defend themselves when the house was broken into by unknown armed forces in the middle of the night;
- During the same hearing held at the 130th Assembly, the same member of the delegation of Iraq indicated that the Council of Representatives had, at that time, not been able to obtain any information on the charges and proceedings against Mr. Al-Alwani, or on his conditions of detention or his health, and did not know whether he had been subjected to torture; the member, however, stated that torture in detention was a long-standing problem in Iraq, which had been documented, including in reports of the Parliamentary

Human Rights Committee; the member also noted that there were special procedures to respect under the Constitution and the laws of Iraq to arrest and prosecute members of parliament and that, regardless of the circumstances and grounds for his arrest, Mr. Al-Alwani was entitled to protection from torture and to a fair trial; he was then detained in Baghdad and had not been allowed to receive visits from family members, lawyers or from the parliamentary authorities pursuant to the terrorism law; a hearing had taken place in the main courtroom of Baghdad and the trial had been suspended after Mr. Al-Alwani requested the transfer of the proceedings to Al-Anbar Governorate according to the normal criminal procedure that provided him with the right to be tried in his province of origin; however, the member observed that this did not usually apply in terrorism cases and the current instability in Al-Anbar did not allow for such a transfer;

- According to the complainant, in the months following his arrest, neither Mr. Al-Alwani's relatives, nor his lawyers knew where he was being detained and were prevented from visiting him in detention; the complainant also stated that Mr. Al-Alwani was subjected to severe torture and forced to make false confessions that were used against him and led to his conviction;
- Mr. Al-Alwani was sentenced to death for murder and attempted murder as a result of the deaths of, and injuries sustained by, security forces during the gunfight; according to the complainant, he denied all charges and firmly denied opening fire on the security forces during the trial;
- According to the complainant, Mr. Al-Alwani was denied the right to a fair trial and the right to mount an adequate defence; he was denied the right to defend himself, the right to choose his lawyer and, on three occasions, the lawyers assigned to him were allegedly forced to resign by the judges for attempting to present their defence arguments effectively; one of his lawyers was harassed and arbitrarily arrested by Iraqi security forces, allegedly in reprisal for agreeing to represent Mr. Al-Alwani; Mr. Al-Alwani was also denied the right to meet with his lawyer during his detention, and was therefore unable to prepare his defence; several international human rights non-governmental organizations have corroborated that Mr. Al-Alwani was denied the right to a fair trial and, in particular, the right to a defence, and they have pressed for a stay of execution on these grounds;
- *A*ccording to a letter dated 31 December 2013 from the Speaker of the Council of Representatives at the time: (i) the Council of Representatives and its parliamentary investigative committee had been unable to visit Mr. Al-Alwani in detention or obtain any information on his place or conditions of detention, or even on his health; (ii) the Council of Representatives had not been apprised of the progress made in the investigation; (iii) Mr. Al-Alwani's parliamentary immunity had been violated and there were concerns with regard to respect for constitutional and legal safeguards; and (iv) Mr. Al-Alwani was protected by parliamentary immunity and should therefore be released,

Considering that no further information has been forthcoming from the Speaker of the Council of Representatives, despite repeated requests,

Considering that Mr. Al-Alwani has appealed the ruling, but the complainant does not expect the appeal process to be conducted in compliance with international standards of due process because of the lack of independence and impartiality of the judiciary,

Considering that, according to a source, he is also facing additional charges, including incitement to violence, also punishable by death; the status of these judicial proceedings is unknown; Mr. Al-Alwani's release had been discussed in the context of political negotiations between Prime Minister Al-Abadi and Sunni parliamentary blocs; however, these commitments have not been fulfilled; Mr. Al-Alwani has been held in solitary confinement and mistreated, and is in very poor health,

Bearing in mind that the case comes against a political backdrop of violent internal conflict and sectarian tensions; elections took place in 2014, resulting in the appointment of new parliamentary and executive authorities and bringing about what may be a new stage of political compromise and enhanced national dialogue, according to the United Nations; a draft amnesty law appears to currently be under consideration,

Bearing in mind that the 2005 Constitution guarantees the right to life, security and liberty (article 15), provides that homes may not be entered, searched or put in danger except by a judicial decision and in accordance with the law (article 17.2), guarantees the right to a defence in all phases

of the investigation and the trial (article 19.4), and prohibits unlawful detention and detention in places not designed for that purpose (article 19.12); that article 60 of the Constitution guarantees parliamentary immunity and prohibits the arrest of a member during the legislative term of the Council of Representatives, unless the member is accused of a crime and the Council decides by an absolute majority to lift the immunity, or if caught in flagrante delicto committing a crime,

Bearing in mind as well that Iraq is a party to the International Covenant on Civil and Political Rights and to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; that the international community - through the reports of the United Nations Secretary-General, the United Nations Assistance Mission for Iraq, the United Nations Office of the High Commissioner for Human Rights, the United Nations Special Rapporteur on the independence of judges and lawyers and the Human Rights Council universal periodic review mechanism - has repeatedly voiced serious concerns regarding the lack of fair trial, the use of torture, the level of independence of the judicial system, and the use of the death penalty; the United Nations Committee against Torture (CAT) also expressed concern at the lack of a clear provision prohibiting torture in Iraqi legislation and at reports of routine and widespread use of torture and ill-treatment of suspects in police custody, primarily to extract confessions or information to be used in criminal proceedings; the CAT called for the Iraqi authorities to ensure that all allegations of torture be investigated promptly, effectively and impartially and the perpetrators be held personally accountable; the CAT also expressed concern about the failure to fully respect and protect international and constitutional guarantees of due process and fair trial standards in death penalty cases and over both a consistent pattern of alleged terrorists being arrested and detained incommunicado in secret detention centres, as well as over the conditions of detention,

Considering that, according to the two members of parliament from the delegation of Iraq who appeared before the Committee at the 133rd IPU Assembly (Geneva, October 2015), the reasons behind Mr. Al-Alwani's arrest and the subsequent conviction pertain to persistent political divergences between the majority and the opposition parties along sectarian lines and the wish of certain political parties to sideline or eliminate political opponents, such as Mr. Al-Alwani; this divide has become entrenched within the legislative, executive and judicial branches of power in Iraq and has not been conducive to progress; Mr. Al-Alwani's house was raided by Iraqi forces on baseless grounds; his parliamentary immunity was violated; an appeal was lodged against Mr. Al-Alwani's conviction, but it has stalled due to political pressure; the lack of judicial independence and the political instrumentalization of Iraqi courts require urgent judicial reform, but the reforms initiated to date have not been conducive to any tangible progress; while in detention Mr. Al-Alwani was severely tortured; authorization for parliamentarians to visit him was denied, despite a request by the Speaker of the Council of Representatives; the authorities obfuscated the location of Mr. Al-Alwani's detention, but it was eventually established that he is currently being held in solitary confinement in a prison in Baghdad; he is in very poor physical and psychological health and is being denied access to medical treatment; the Council of Representatives remains concerned about his situation and the members of the Iraqi delegation expressed surprise and regret that no responses had been forthcoming from the Council of Representatives on this matter, despite repeated requests of the Committee on the Human Rights of Parliamentarians; they pledged to follow up on this matter with the Speaker upon their return to Iraq,

1. *Thanks* the members of the Iraqi delegation for the information provided;

2. *Continues to be appalled* that Mr. Al-Alwani was sentenced to death, given serious doubts that the case complied with basic fair trial and due process guarantees*; again urges* the judicial authorities to lift the death sentence passed against Mr. Al-Alwani, and *expects* appeal proceedings to take place promptly and in a manner which fully respects Mr. Al-Alwani's right to a fair trial;

3. *Is deeply concerned* by allegations that Mr. Al-Alwani was tortured, continues to be held in solitary confinement, and is in very poor physical and psychological health and denied access to medical treatment; *calls on* the authorities to investigate these allegations without further delay and ensure that he be urgently provided with medical care, permitted visitors, and can enjoy conditions of detention that comply with international standards; *wishes* to be kept informed of actions taken in this regard and their outcomes;

4. *Is further concerned* that Mr. Al-Alwani's parliamentary immunity may have been violated, given the circumstances of his arrest; *reiterates* its prior request to receive further information of the grounds and circumstances of the raid conducted against his home and of his arrest; *also requests* the parliamentary authorities to provide a copy of the court decision, as well as

further information on legal avenues of redress still available to Mr. Al-Alwani and on other charges that may still be pending against him;

5. *Deeply regrets* that the Council of Representatives has not responded to the Committee's requests for updated information, or shared any official information on the latest developments; *notes* that the members of the delegation have stated that the Council of Representatives is concerned about Mr. Al-Alwani's situation; therefore *expresses its perplexity* at the lack of official response; *calls on* the Council of Representatives to take urgent action to ensure respect for Mr. Al-Alwani's rights and to monitor the situation closely; and *reiterates its wish* to be kept informed of the action taken to that end and its outcome; *stresses* that the Committee strives to foster dialogue and cooperation with the authorities of Iraq, first and foremost with the Council of Representatives, its primary interlocutor pursuant to its procedure;

6. *Recalls* that the protection of the rights of parliamentarians is the prerequisite to enable them to protect and promote human rights and fundamental freedoms in their respective countries; and *urges* the Council of Representatives of Iraq as a whole, including all of its individual members and their respective political parties, to overcome their existing divergences and stand united for the protection of the rights of all Iraqi parliamentarians in order to strengthen the parliamentary institution and its ability to protect the fundamental rights and freedoms of the Iraqi people;

7. *Considers* that, in light of the seriousness of the concerns at hand, and the urgent need for increased dialogue with the Iraqi authorities, a mission to Iraq by a delegation of the Committee on the Human Rights of Parliamentarians would offer a timely opportunity to meet with senior officials of the legislative, executive and judicial branches, particularly the Speaker of the Council of Representatives, the Prime Minister, the Minister of Justice and the President of the Higher Judicial Council, so as to obtain first-hand information on the above-mentioned concerns and responses of the relevant Iraqi authorities;

8. *Requests* the Secretary General to seek the authorities' agreement for such a mission and to convey this decision to the relevant authorities, the complainants and any third party likely to be in a position to supply relevant information;

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

Palestine/Israel

PAL/02 - Marwan Barghouti

Decision adopted unanimously by the IPU Governing Council at its 197th session (Geneva, 21 October 2015)

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 195th session (October 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 information 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 most recent of which took place 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,

Recalling that Israel released 26 long-serving Palestinian prisoners each 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, scheduled for late March 2014, did not take place following disagreements between Israeli and Palestinian authorities about the peace talks,

Considering that, according to the latest information provided by the complainants, Mr. Barghouti was threatened before a disciplinary committee with solitary confinement should he publish another article like the one he published on 11 October 2015 in the Guardian newspaper, entitled: "There will be no peace until Israel's occupation of Palestine ends"; Mr. Barghouti ends his article with: "I joined the struggle for Palestinian independence 40 years ago, and was first imprisoned at the age of 15. This did not prevent me from pleading for peace in accordance with international law and United Nations resolutions. But Israel, the occupying power, has methodically destroyed this perspective year after year. I have spent 20 years of my life in Israeli jails, including the past 13 years,

and these years have made me even more certain of this unalterable truth: the last day of occupation will be the first day of peace",

1. *Deplores* the silence on the part of the Israeli Knesset in recent years in responding to the concerns and requests for information in this case;

2. *Remains* deeply concerned that 13 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;

3. *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;

4. *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;

5. *Is concerned* about the reported threat of reprisals against Mr. Barghouti in connection with his exercise of the right to freedom of expression; *wishes* to receive the official views on this matter;

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

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

Palestine/Israel

PAL/05 - Ahmad Sa'adat

Decision adopted unanimously by the IPU Governing Council at its 197th session (Geneva, 21 October 2015)

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 195th session (October 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",

Recalling 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, according to the information provided by one of the complainants, a complete ban on family visits was imposed on Mr. Sa'adat from July 2014, at a time when violence had flared up in the region, which was only lifted in September 2015,

1. *Regrets* the silence on the part of the Israeli Knesset in recent years in responding to the concerns and requests for information in this case;

2. *Deeply deplores* that nine 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;

3. *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; *is concerned* about the allegation that he was subject to a complete ban on family visits; *wishes* to enquire if the ban has indeed been fully lifted and to receive 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;

4. *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;

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

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

Palestine/Israel

PAL/28 - Muhammad Abu-Teir
PAL/29 - Ahmad Attoun
PAL/30 - Muhammad Totah
PAL/32 - Basim Al-Zarrer*
PAL/47 - Hatem Qfeisheh*
PAL/57 - Hasan Yousef*
PAL/61 - Mohd. Jamal Natsheh
PAL/62 - Abdul Jaber Fuqaha*
PAL/63 - Nizar Ramadan*
PAL/64 - Mohd. Maher Bader*
PAL/65 - Azzam Salhab*
PAL/75 - Nayef Rjoub*
PAL/78 - Husni Al Borini *
PAL/79 - Riyadgh Radad*
PAL/80 - Abdul Rahman Zaidan
PAL/82 - Khalida Jarrar (Ms.)

Decision adopted unanimously by the IPU Governing Council at its 197th session (Geneva, 21 October 2015)

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 196th session (March-April 2015),

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

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

Considering that, although by September 2014 the number had reached 25 to 26 PLC members in administrative detention, according to information provided in October 2015 by one of the complainants, the number now stands at one, with only Mr. Mohammad Jamal Al-Natsheh in administrative detention; according to the complainant, Mr. Al-Natsheh has been in administrative detention for two and a half years and has already spent 10 years (non-consecutively) in administrative detention without charge or trial,

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

- The Supreme Court of Israel has ruled that the exceptional measure of administrative detention, which is usually ordered for six months, but may, in fact, be prolonged indefinitely, can only be applied if there is current and reliable information to show that the person poses a specific and concrete threat, or if the confidential nature of the intelligence and security of the sources prohibit the presentation of evidence in an ordinary criminal procedure; according to the Israeli authorities, there are two avenues of judicial review, namely the independent and impartial military courts, which have the

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

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 lack access to the information on which the orders are based and are therefore unable to present a meaningful defence,

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

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

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

Considering that, according to one of the complainants, on 2 April 2015, Ms. Jarrar was arrested at her home and immediately put under administrative detention, without charge or trial, based on secret information; while she was under administrative detention, the Israeli military prosecution brought charges against her, according to the complainant, all 12 of which revolve around her work as a political figure and human rights activist; on 21 May 2015, the Ofer Military Court judge ruled for her release on a bail of NIS 20,000 during trial proceedings; however, the military prosecution appealed the decision of the court; on 28 May 2015, another military court judge overturned the previous court decision and accepted the appeal to keep Ms. Jarrar remanded until the end of trial proceedings; according to the complainant, the judge based his information on secret evidence, to which neither Ms. Jarrar nor her legal counsel had access, and on information already reviewed by the previous judge and found to be insufficient to continue her detention; on 24 August 2015, the first hearing for witness testimonies in the trial was held; according to the complainant, three of the prosecution's witnesses attended, and two did not present their testimonies owing to time constraints; the two witnesses spoke about the conditions in which their confessions were obtained, including torture and ill-treatment; subsequently, the prosecution requested the witnesses to be held as "hostile witnesses" and the court agreed to the request; this enabled the prosecution to ask leading questions and to claim that the confessions obtained initially were true, whereas the witnesses were making false statements in the court room; the counsel for defence, however, sought to prove the opposite – that their initial confessions were flawed, as they had been obtained under duress; according to the complainant, the witnesses spoke of pressure and ill-treatment during interrogation, including sleep deprivation, being tied up and held in positions to cause maximum pain and stress for long hours, and being threatened with further torture and the arrest of family members; additionally, according to the complainant, it was brought to light that witnesses were banned from lawyer visits for long periods, demonstrating that their confessions were made without legal counselling; a second hearing for witness testimonies was held on 20 September 2015; the complainant affirms that the court heard only one witness, currently held in prison by the Israeli authorities, whereas the military prosecution failed to ensure the attendance of the other witnesses; the complainant points out that the one witness who attended denied all the former allegations against Ms. Jarrar and that, as a result, the military prosecution declared him a hostile witness, which the military court approved; the military prosecution further requested the court to issue arrest warrants for the witnesses who did not attend, so that they would be in custody during the next hearing set for 12 October 2015; however, on 12 and 18 October 2015, the hearings were postponed as, again, none of the witnesses showed up; the next hearings are scheduled for 25 October and

1 November 2015 and the complainant has requested that the IPU send a trial observer to those and other hearings,

Considering that the complainant affirms that Ms. Jarrar suffers from multiple transient ischemic attacks and hypercholesterolemia and was hospitalized for epistaxis (nose bleeds), being treated to stop the continuous bleeding; according to the complainant, the transfer between court and prison is a physically exhausting process, with Ms. Jarrar having reported that the transfer from the prison to the court and back lasts approximately 16 hours in difficult conditions,

Recalling the following information on file with regard to the revocation of the residence permits of three PLC members: in May 2006, the Israeli Minister of the Interior revoked the East Jerusalem residence permits of Mr. Muhammad Abu-Teir, Mr. Muhammad Totah and Mr. Ahmad Attoun, arguing that they had shown disloyalty to Israel by holding seats in the PLC; the order was not implemented, owing to their arrest in June 2006; after their release in May/June 2010, the three men were immediately notified that they had to leave East Jerusalem; Mr. Abu-Teir was ordered to leave by 19 June 2010 and, refusing to do so, was arrested on 30 June 2010 and later deported to the West Bank; the other two parliamentarians were ordered to leave by 3 July 2010 and, likewise refusing to comply with the order, took refuge in the International Committee of the Red Cross (ICRC) building in Jerusalem, from which they were removed by the Israeli authorities on 26 September 2011 and 23 January 2012 respectively,

Bearing in mind that, in its concluding observations on the third periodic report of Israel under the International Covenant on Civil and Political Rights,[4] the United Nations Human Rights Committee recommended, inter alia, that all persons under Israel's jurisdiction and effective control be afforded full enjoyment of the rights enshrined in the Covenant,

Considering that, since September 2015, violence has flared up again in the region with both Palestinian and Israeli casualties,

1. *Takes* note of the information provided by one of the complainants that only one member of the Palestinian Legislative Council (PLC) is now in administrative detention in Israel;

2. *Regrets* that the Israeli authorities are not providing it with regular official updates on the status of PLC members in Israeli detention, as it is difficult without that information to crosscheck the substantively fluctuating unofficial details and figures provided by the complainants over time, and to decide whether or not to close further examination of the situations of those parliamentarians, who are no longer in detention or facing legal proceedings;

3. *Sincerely hopes*, therefore, that the Israeli authorities will provide such information, including confirmation or denial that the criminal proceedings against detained PLC members, Mr. Riyadgh Radad and Mr. Abdul Rahman Zaidan, have been dropped and that they were released as a result; *reiterates its wish* also in this regard 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;

4. *Is concerned* about Mr. Al-Natsheh's prolonged administrative detention; *considers* that, as his case history shows, even when PLC members are released, they remain subject to renewed arrest and can be placed in administrative detention again at any time, a practice which lends weight to claims that the use of such detention is arbitrary;

5. *Draws attention once again* to the need for further clarification as to how, given that administrative detention often relies on classified evidence, those so detained can fully enjoy due process in practice, and how far they can effectively challenge their deprivation of liberty, as the authorities affirm; *sincerely hopes*, therefore, that, with the assistance of the authorities of the recently elected Knesset, invitations to attend judicial reviews of PLC members in administrative detention will materialize soon; and *requests* the

4 CCPR/C/ISR/CO/3.

Secretary General to make the necessary arrangements for a Committee member to attend at least one such hearing in the case of Mr. Natsheh;

6. *Is deeply concerned* about the allegations regarding the nature of the charges brought against Ms. Jarrar and the claim that she and her defence counsel cannot effectively challenge the information on which they are based; *wishes* to receive the views of the authorities on this matter and, if possible, to receive a copy of the charge sheet; *decides* to send a trial observer to the proceedings in her case with a view to monitoring and reporting on respect for fair trial;

7. *Expresses also deep concern* at reports about Ms. Jarrar's frail health; *trusts* that the Israeli authorities are doing everything possible to ensure that she receives the treatment required; *wishes* to receive confirmation thereof and to obtain further information about the treatment itself, including through regular access to a doctor;

8. *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;

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

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

Palestine/Israel

PAL/83 - Aziz Dweik

Decision adopted unanimously by the IPU Governing Council at its 197th session (Geneva, 21 October 2015)

The Governing Council of the Inter-Parliamentary Union,

Referring to the case of Mr. Aziz Dweik, Speaker of the Palestinian Legislative Council (PLC), and to the decision it adopted at its 196th session (March-April 2015),

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

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

Considering that, on 25 May 2014, the Israeli military court in Ofer Prison sentenced Mr. Dweik to a one-year prison term and a fine on charges apparently related, according to the complainant, to a speech he made at a public gathering and other activities linked to his political work; on 9 June 2015, Mr. Dweik was released upon serving his sentence,

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

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

1. *Notes* that Mr. Dweik has been released;

2. *Deeply regrets* that the Israeli authorities have not seen fit to convey to the Committee a copy of the sentence handed down on Mr. Dweik; and hence *remains concerned* therefore, in the light of Mr. Dweik's case history and the allegations from the complainant, that his latest conviction may not have been based on formal charges of any specific criminal activity, but rather on his political affiliation, and that it therefore may have been carried out for non-judicial purposes;

3. *Requests* the Israeli authorities to provide a copy of the verdict as a matter of priority in order that it may carry out its own assessment of the case;

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

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