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For democracy. For everyone.

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Geneva, 23 – 27.10.2016

Governing Council
Item 11(b)

CL/199/11(b)-R.2
26 October 2016

NON-EDITED VERSION

Decisions of the Committee on the Human Rights of Parliamentarians

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Democratic Republic of the Congo

DRC/32 - Pierre Jacques Chalupa

The Committee,

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

The Governing Council of the Inter-Parliamentary Union,

Referring to the case of Mr. Pierre Jacques Chalupa, a former member of the National Assembly of the Democratic Republic of the Congo, and to the decision it adopted at its 198th session (March 2016),

Referring to letters from the Speaker of the National Assembly of 21 April, 3, 13 and 19 October 2016 and information provided by the complainants,

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

Recalling that Mr. Chalupa, a former member of the majority who joined the opposition at the 2011 elections, was: (i) arrested on 2 February 2012 by soldiers from the President's military guard, after having been given a bogus appointment by telephone, just as the strongly contested election results were being proclaimed; (ii) accused of having fraudulently obtained Congolese nationality and charged with forgery and the use of falsified documents; (iii) remanded in custody and then sentenced to three years in prison and deprived of his Congolese nationality,

Recalling that it had observed that the judicial proceedings were marred by flaws; that many of the items in the file tended to indicate that the case was political in nature and that it could not rule out that the judicial proceedings initiated against Mr. Chalupa were intended to neutralize him politically as a result of his having joined the political opposition,

Recalling that Mr. Chalupa was released on 22 November 2013, having served over half of his sentence, following the adoption of a presidential pardon order by the Head of State as part of measures taken to ease political tensions after national consultations in October 2013,

Further recalling that Mr. Chalupa suffers from serious health problems, which worsened while he was in detention; that he failed to receive appropriate treatment while in detention or after his release for want of specialist services in the DRC; that in November 2015, doctors stated that, given the time lapse since the appearance of the first symptoms, the advanced stage of the illness is life threatening for Mr. Chalupa and recommended an urgent transfer abroad for specialist treatment; that Mr. Chalupa was unable to travel abroad for treatment because his passport had been confiscated; and that the question of his nationality had not been settled by the Congolese authorities,

Recalling lastly that no progress has been made towards recognition of Mr. Chalupa's Congolese nationality since 2013, even though the latter has no other nationality and is therefore a stateless person; that the issue of the forfeiture of his nationality was not considered to be covered by the presidential pardon process; and that the following facts were provided in the file on this issue:

- Mr. Chalupa's nationality was never contested before he joined the opposition during the 2011 elections;
- Mr. Chalupa was elected a member of parliament of the Democratic Republic of the Congo and undeniably has long ties with that country (place of birth, residence, married to a Congolese national, etc.);

- Mr. Chalupa considers that he is Congolese because he was born in the Democratic Republic of the Congo and was unable to obtain Portuguese nationality through his father because of Portuguese nationality law; such cases are covered by article 9(2) of the 2004 nationality law, which stipulates that "... children born in the Democratic Republic of the Congo to foreign parents who cannot transmit their nationality to the child because their State of origin recognizes only *jus soli* or does not allow natural parents to transmit nationality";
- Portugal's Basic Law No. 2/2006 on nationality recognizes only *jus soli*; article 1(c) provides that, in exceptional cases, "children with one Portuguese parent, if they are born abroad and provided that they declare their wish to be Portuguese or register the birth with the Portuguese civil register" may request Portuguese nationality; according to Mr. Chalupa, his parents did not register his birth at the consulate and he never wrote to the Portuguese authorities declaring that he intended to acquire Portuguese nationality, as the Portuguese authorities have officially confirmed; Mr. Chalupa therefore does not have Portuguese nationality and explicitly renounced the possibility of acquiring it in 1992 in order to obtain recognition of his Congolese nationality at birth, which is unique and exclusive under article 10 of the Constitution of the Democratic Republic of the Congo;
- Mr. Chalupa applied for nationality in 1992; according to the Minister of Justice, the attestation of nationality issued to Mr. Chalupa in 2001 (and deemed a forgery by the Congolese courts during the above-mentioned judicial proceedings) did not confer citizenship on him; the procedure for obtaining nationality requires a decree from the Council of Ministers to be successful and the application for citizenship was therefore still pending with the Congolese authorities, which had failed to complete the procedure;
- In its appeal ruling of 23 January 2013, the Supreme Court found that Mr. Chalupa was born in Burundi and not in the DRC, even though neither the court of first instance ruling nor the parties had challenged his birthplace; the Court held that nothing in his birth certificate indicated that his parents had Congolese nationality and that he had made several applications for citizenship, but had yet to obtain Congolese nationality;
- During the hearing organized at the 130th IPU Assembly (March 2014), the delegation of the Democratic Republic of the Congo stated the following: Mr. Chalupa was not a Congolese citizen by birth because his parents were not Congolese; Congolese law did not recognize *jus soli*, only *jus sanguine*; Mr. Chalupa therefore had only one option, namely to request Congolese nationality by applying for citizenship; it would appear, but had not been confirmed, that Mr. Chalupa's dual citizenship was the cause of the current situation; in view of the principle of the separation of powers, parliament could not intervene in a matter that came under the jurisdiction of the executive; the Congolese authorities have repeatedly stated that it was up to Mr. Chalupa to initiate a citizenship application procedure according to the law;
- The nationality law and its implementing decrees do not provide for a specific procedure for recognizing or establishing proof of Congolese nationality at birth in the case cited by Mr. Chalupa – which is different from an application for naturalization; the clarifications sought since January 2014 from the Congolese authorities regarding the procedure applicable to this case have not been provided as yet,

Considering the following new information supplied by the parties:

- Following the Speaker of the National Assembly's intervention, the authorities granted a passport to Mr. Chalupa in late April 2016, for humanitarian reasons, to allow him to seek treatment abroad; this passport, which is valid until 2021, states that Mr. Chalupa has Congolese nationality; Mr. Chalupa was thus able to begin chemotherapy overseas;
- In August 2016, Mr. Chalupa was informed of the adoption by the Council of Ministers of Decree No. 16/026 of 22 July 2016; this decree rejects Mr. Chalupa's application to obtain citizenship by naturalization on the grounds that "the applicant has provided no proof of having rendered outstanding services to the Democratic Republic of Congo, and granting him naturalization would not be of interest, as it would not have a visible impact (...)" and that "on the contrary, his behaviour and conduct are a sign of lack of respect for the institutions", without giving further clarification; the decree does not specify the date or the reference number for the application for naturalization;

- The complainant stated that Mr. Chalupa feared that the passport could be confiscated on the basis of this decree,
- The Speaker of the National Assembly sought clarification from the Minister of Justice on the potential possibilities for appeal against the decree of 22 July and concerning Mr. Chalupa's fears about confiscation,

Recalling the following: the right to nationality is set out in many international instruments, notably article 24(3) of the International Covenant on Civil and Political Rights and article 5(d)(iii) of the International Convention on the Elimination of All Forms of Racial Discrimination, both of which the DRC has ratified; Human Rights Council resolution 20/5 of 16 July 2012, on human rights and arbitrary deprivation of nationality, calls on "States to observe minimum procedural standards in order to ensure that decisions concerning the acquisition, deprivation or change of nationality do not contain any element of arbitrariness", "[r]eaffirms that the right to a nationality of every human person is a fundamental human right" and "[r]eiterates that arbitrary deprivation of nationality, especially on discriminatory grounds such as political or other opinion (...) is a violation of human rights and fundamental freedoms",

Bearing in mind the recommendations adopted in November 2015 at the conclusion of a world conference on the right to nationality in order to address statelessness, organized jointly by the IPU, the Parliament of South Africa and the United Nations High Commissioner for Refugees (UNHCR),

Taking into account that article 2 of the 2004 law on nationality stipulates that the law applies "subject to the application of the international treaties and principles of law recognized with regard to nationality" and that article 12 of the DRC Constitution provides that all Congolese are equal before the law and have the right to equal protection,

1. *Notes with satisfaction* that a passport has been issued to Mr. Chalupa for humanitarian reasons, which has enabled him to begin appropriate medical treatment, and *thanks* the Speaker of the National Assembly for his intervention; *wishes* to receive confirmation as soon as possible that this passport remains valid and that Mr. Chalupa can continue his medical treatment abroad without fear;
2. *Deeply regrets* that the issuance of the passport has not also led to the settlement of the question of Mr. Chalupa's nationality once and for all; *again urges* the relevant authorities to recognize Mr. Chalupa's nationality as soon as possible, in accordance with articles 2 and 9(2) of the law on nationality;
3. *Once again emphasizes* that Mr. Chalupa's nationality had never been contested before he joined the opposition and that he has undeniable ties with the DRC, particularly as a former member of parliament; *recalls* that it considers that Mr. Chalupa was wrongfully deprived of his nationality and left stateless by the Congolese authorities after a conviction for forgery and the use of falsified documents, following a trial marred by serious flaws and in the absence of any form of appeal;
4. *Is, as a result, dismayed and deeply disturbed* by the Council of Minister's decree and the reasons behind it; *wishes* to receive further clarifications on the decree, including whether it was issued in response to the application for naturalization filed in 1992 and whether there are any forms of appeals process against this decree;
5. *Requests* the Secretary General to convey this decision to the parliamentary authorities, the Minister of Justice and any third party likely to be in a position to supply relevant information;
6. *Requests* the Committee to continue examining this case and to report back to it in due course.

Democratic Republic of the Congo

DRC/85 - Martin Fayulu

The Committee,

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

The Governing Council of the Inter-Parliamentary Union,

Referring to the case of Mr. Martin Fayulu, a member of the National Assembly of the Democratic Republic of the Congo, and to the decision it adopted at its 198th session (March 2016),

Referring to the letters from the Speaker of the National Assembly of 21 April and 3, 13 and 19 October 2016, and information provided by the complainant,

Considering that Mr. Fayulu, an opposition member of parliament and leader of the political party *Engagement for Citizenship and Development* (ECIDé), was arrested by intelligence service officers on 14 February 2016 and that the following has been placed on the file regarding the incident:

- According to the complainant, Mr. Fayulu was assaulted, arrested and arbitrarily detained by the aforementioned officers before being released the same evening; his vehicle and personal belongings were seized and never returned back to him; Mr. Fayulu filed a complaint against his arbitrary arrest and violation of his rights and parliamentary immunity, but there has been no progress in the legal proceedings to date;
- According to the complainant, this incident was intended to prevent a day of national protest scheduled for 16 February 2016 ("Dead City Day"), which was being jointly organized by opposition parties;
- According to the complainant, the Public Prosecutor had initiated proceedings against Mr. Fayulu (file reference: RMP V/039/PGR/SMM) and requested the National Assembly to lift his parliamentary immunity; Mr. Fayulu had not been informed of the charges laid against him, or of the lifting of his immunity;
- The Speaker of the National Assembly stated that he had intervened immediately to secure Mr. Fayulu's release, referring the matter to the Public Prosecutor to ensure compliance with the Constitution and his parliamentary immunity, and publicly expressing his position in a tweet; he believed that, as the case had been referred to the courts, the National Assembly was no longer responsible for the matter; he recommended that Mr. Fayulu should hire the services of a lawyer and use the procedure provided for in Congolese law (*procédure de prise à partie*), instead of relying on the Bureau of the National Assembly's intervention; he has not confirmed whether legal proceedings were initiated against Mr. Fayulu, or a request submitted for the lifting of his parliamentary immunity;

Considering that, on 19 September 2016, Mr. Fayulu sustained a serious head injury during a protest organized by the opposition in Kinshasa, and that the following allegations and information have been placed on file concerning the incident:

- The complainant alleges that a police officer deliberately targeted Mr. Fayulu, firing a rubber bullet at him at point-blank range; he stated that six young people surrounding the member of parliament at the protest were themselves hit by live bullets; he criticizes the National Assembly for not denouncing the incident and failing to provide assistance to Mr. Fayulu; the complainant further expresses concern following the announcement by the Public Prosecutor of charges being brought against the organizers of the protest and several members of the opposition following the demonstrations, and a foreign travel ban

- being imposed against them; the complainant stated that it was not known whether these measures had been taken against Mr. Fayulu;
- The President of the National Assembly underscored that the 19 September 2016 protest had had "no direct impact" on the authority of Mr. Fayulu as an elected representative, and reiterated that the National Assembly had condemned the acts of violence committed during the public protests of 19 and 20 September 2016; he reported that criminal investigations were under way and that the National Assembly could not interfere in the conduct of the case; he expressed the hope that the investigations would proceed quickly and that the identified perpetrators of these acts of violence would be brought to justice; he reaffirmed his commitment to the protection of human rights and the rights of parliamentarians "provided they also prove themselves to be exemplary models in respecting the rights of others and the laws of the Republic";
 - The President of the National Assembly emphasized that he had instructed the 2nd Deputy Speaker to enquire about Mr. Fayulu's situation following the protest and to take appropriate measures; he affirmed the Bureau's willingness to provide Mr. Fayulu with support, while recalling that the process to provide medical care was subject to fulfilling certain normal administrative formalities; he pointed out that it was Mr. Fayulu's responsibility to inform the Bureau of the circumstances and place of his hospitalization, so that the assistance mechanism could be activated, as the Bureau did not have the authority to do so on its own,

Considering that the complainant alleges that the two incidents that took place in 2016 against Mr. Fayulu came after a number of previous tactics had been used to impede his political activities and to weaken the opposition; that these tactics were orchestrated against him because of his role in coordinating an opposition platform, his stance in favour of the Head of State stepping down at the end of his term of office, and the announcement of his intention to run in the presidential elections,

Considering that these successive incidents occurred at a time of political tension and mounting repression of the opposition because of the elections initially scheduled for the end of 2016, which had been postponed despite objections from the opposition,

Considering that the preliminary investigation report published on 20 October 2016 by the United Nations Joint Human Rights Office in the DRC on the acts of violence committed during the protests in Kinshasa from 19 to 21 September 2016 concluded that more than 422 people had been victims of human rights violations by State agents (with at least 48 killed, 75 injured and nearly 300 persons illegally arrested and detained by State agents); that the report states that security forces are responsible for most of the violations committed during the protests and that they used excessive force to prevent the protesters from peacefully exercising their freedom of assembly and protest; the report confirms that the Government announced that charges were being brought against the "organizers of the protest, those involved in the acts of violence and the masterminds" and that a travel ban was being imposed; that the report recommends, in particular, that the Congolese authorities promptly carry out independent, thorough, credible, transparent and impartial investigations into the violations committed by State agents and to bring the alleged perpetrators to justice, regardless of their ranks and positions, and to guarantee the protection of the fundamental rights of the political opponents; that the report further confirms that the protesters are also to blame for several instances of violence, including the death of four police officers and the destruction and looting of numerous public buildings, and also recommends investigations and the imposition of sanctions against those responsible for the acts of violence,

1. *Thanks* the Speaker of the National Assembly for the information provided and his cooperation;
2. *Expresses its concern* about the violence to which Mr. Fayulu was subjected during the 19 September 2016 protest and the inaction of the Congolese courts with respect to the incidents of February 2016, even more so given the worsening political situation in the DRC;

3. *Urges* the relevant authorities to bring the perpetrators to justice as soon as possible following independent, credible, transparent and impartial investigations, and to return the belongings illegally seized back to Mr. Fayulu as a matter of urgency;
4. *Recalls* that impunity constitutes a threat both to parliamentarians and to those they represent and therefore assaults against parliamentarians, if they remain unpunished, not only violate the fundamental rights of those concerned, but affect the ability of parliament to fulfill its institutional mission; *stresses* that parliament has an obligation to ensure that no effort is spared in holding the perpetrators accountable and *urges* the National Assembly to take all appropriate steps as soon as possible, and to keep the Committee informed in that regard;
5. *Also wishes to know* whether Mr. Fayulu: (i) is currently subject to legal proceedings, a request to lift his parliamentary immunity and/or a travel ban; (ii) filed a formal complaint following the 19 September 2016 protest; (iii) submitted a formal request for medical assistance to the National Assembly, in accordance with the normal procedure; and (iv) used the *procédure de prise à partie* with respect to the incidents of February 2016;
6. *Requests* the Secretary General to convey this decision to the relevant authorities, the Minister of Justice 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.

Ecuador

EC/68 - José Cléver Jiménez Cabrera

The Committee,

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

The Governing Council of the Inter-Parliamentary Union,

Referring to the case of Mr. José Cléver Jiménez, a former member of the National Assembly of Ecuador, which has been examined by the Committee on the Human Rights of Parliamentarians pursuant to the Procedure for the examination and treatment of complaints (Annex I of the Revised Rules and Practices),

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

- Following a complaint filed in August 2011 by President Rafael Correa, Mr. Jiménez, together with adviser and journalist Fernando Alcibíades Villavicencio and union leader Carlos Eduardo Figueroa, was prosecuted for criminal judicial defamation against the President;
- The defamation case stems from a complaint filed in 2011 by Mr. Jiménez, Mr. Villavicencio and Mr. Figueroa before the Public Prosecutor, claiming that on 30 September 2010 President Rafael Correa had allegedly committed crimes against humanity, as well as other offences under the Ecuadorian Criminal Code, such as inciting political chaos and civil discord. It should be noted that unrest broke out that day as police protested against cuts to their benefits. After Mr. Correa personally visited Quito's main barracks in an attempt to defuse the situation, the tension rose further, and he was forced to flee the scene and taken to hospital, where he was besieged for 12 hours and declared a state of emergency, before finally escaping with the help of an elite squad. The complaint alleges that the President ordered that shots be fired during his escape and is responsible for what ensued that day;
- The National Court of Justice ordered the closing of the case, classifying the complaint as "malicious and reckless". Following these events, the President filed a complaint against the applicants for criminal judicial defamation;
- On 16 April 2013, the National Court of Justice convicted and sentenced Mr. Jiménez and Mr. Villavicencio to a year and a half of imprisonment and the payment of financial compensation equivalent to the monthly salary of President Rafael Correa, for each month since the date when the complaint was filed (August 2011) and the notification of the judgment. The Court ruled that the allegations of serious crimes against President Correa evidently lacked foundation, that they were made knowing their falsehood and with intent to cause harm to his reputation. The ruling provided that the defendants must offer a public apology to President Rafael Correa by print media, television and radio and publish an excerpt of the judgment in four media outlets, in addition to the payment of the President's attorney fees. On 24 July 2013, the National Court of Justice rejected the applications for annulment and appeal filed by the defendants. The Court upheld the first-instance ruling, whereupon the applicants filed a cassation appeal. On 14 January 2014, the National Court of Justice of Ecuador rejected that appeal and upheld the decision. Mr. Jiménez and Mr. Villavicencio were never detained, as they went into hiding and were not found;
- The complainant states that Mr. Jiménez's prosecution is politically motivated and is due to the fact that he has denounced corruption as part of his oversight responsibilities and because he has expressed critical views against the President. According to the complainant, the proceedings were marred by lack of due process, in particular the failure

to lift the parliamentary immunity and impediments to a fair trial, which would enable the accused to refute the charges against him,

Considering that, on 24 March 2014, the Inter-American Commission on Human Rights (IACHR) requested that precautionary measures be adopted for Mr. Villavicencio, Mr. Jiménez, and Mr. Figueroa, and requested the State of Ecuador to immediately suspend implementation of the 14 January 2014 decision issued by the National Court of Justice; and *bearing in mind* that, according to the complainant, the Ecuadorian Government has rejected the request because it believes that the IACHR lacks the power to issue such measures,

Considering that, on 5 May 2014, Mr. Jiménez presented a legal action before the Constitutional Court for non-observance of the IACHR precautionary measures, in conformity with article 436.5 of the Ecuadorian Constitution and that, according to the complainant, this action is still pending,

Considering that, according to media reports, on 23 March 2015, judge Luis Enríquez of the National Court of Justice declared that the statute of limitations under recently adopted legislation put an end to the carrying out of the sentence and therefore ordered the police not to arrest Mr. Jiménez,

Considering that, the Committee received a new communication that affirms that Mr. Jiménez is currently facing charges of espionage, divulgence of secret information and attempting to stage a coup d'état, all of which allegedly relate to the same offences as those for which he was tried by the National Court of Justice in 2013; moreover, the complainant reports that President Correa has initiated a new legal action to obtain financial compensation based on the sentence of 16 April 2013,

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

Also bearing in mind that Articles 11.3, 11.9 and 128 of the Constitution of Ecuador stipulate that rights and guarantees established in the Constitution and in international human rights instruments will be of direct and immediate application, that the State will be responsible for arbitrary detention, unjustified delay or inadequate administration of justice, violation of the right to effective judicial protection, and violations of the principles and rules of due process, and that parliamentarians are not liable for opinions expressed in the exercise of their duties, within or outside parliament,

1. *Is deeply concerned* that Mr. Jiménez was sentenced and convicted for criminal judicial defamation against President Rafael Correa in connection with what appears to be the legitimate exercise of his rights to freedom of expression; *is unclear* as to the status of the application of the sentence in light of contradictory information; *wishes* therefore to receive official information, in particular relevant legal documentation, as to whether the National Court of Justice did indeed consider the application of the sentence moot and, if so, if this also means that the petition before the Constitutional Court for non-observance of the IACHR precautionary measures is no longer pending, or whether to the contrary, President Correa's legal action means that the original sentence remains applicable;
2. *Notes with concern* the allegation that Mr. Jiménez is now subject to new criminal accusations in connection with the same facts that formed the basis of his conviction in 2013; *wishes* to receive clarifications from the relevant authorities in this regard, including

copies of legal documents that would explain the facts and legal provisions underpinning such accusations, as well as the status of the legal action should it exist;

3. *Stresses* that reprisals against members of parliament for expressing their views, as part of their oversight responsibility, undermine their ability to exercise their parliamentary mandate and have a chilling effect on other parliamentarians and affect the ability of parliament as an institution to fulfil its role;
4. *Considers* therefore the Parliament of Ecuador has a vested interest in using its powers to the fullest to help ensure that the concerns and questions regarding Mr. Jiménez are addressed; *wishes* to receive official information from the parliamentary authorities on any action that parliament has taken to this effect;
5. *Requests* the Secretary General to convey this decision to the competent authorities, the complainant and any third party likely to be in a position to supply relevant information;
6. *Requests* the Committee to continue examining this case and to report back to it in due course.

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
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VEN/23 - María Mercedes Aranguren (Ms.)

VEN24 - Nirma Guarulla (Ms.)
VEN25 - Julio Ygarza
VEN26 - Miguel Tadeo

VEN27 - Rosmit Mantilla
VEN28 - Enzo Prieto
VEN29 - Gilberto Sojo

The Committee,

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

The Governing Council,

Referring to the existing cases under file name VEN/10-23, which concern allegations of human rights violations affecting members from the coalition of the former opposition, the Democratic Unity Round Table (MUD), in the previous Venezuelan legislature, and the decision adopted on their cases by the Governing Council at its 194th session (March 2014); *noting* that of these members, Mr. Pillieri, Mr. Sánchez, Mr. Alemán, Mr. Blanco, Mr. Borges, Ms. Bracho, Mr. García and Mr. Dávila were re-elected in the parliamentary elections of 6 December 2015, in which the MUD obtained a majority of seats,

Having before it the new cases of Ms. Nirma Guarulla, Mr. Julio Ygarza and Mr. Miguel Tadeo, who were elected as titular members in the parliamentary election on 6 December 2015, and Mr. Rosmit Mantilla, Mr. Enzo Prieto and Mr. Gilberto Sojo, elected as alternate deputies in those elections, which have been examined by the Committee on the Human Rights of Parliamentarians pursuant to the Procedure for the examination and treatment of complaints (Annex I of the Revised Rules and Practices),

Recalling the following information on file with regard to the previous cases:

- **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 their 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, then 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, following accusations that were levelled against him by the then Speaker of the National Assembly which, according to the complainant, were based on falsified cheques and forged receipts; according to the authorities, Mr. Mardo was officially charged on 25 June 2014;
 - There is no information on file to show that the authorities have advanced with the criminal proceedings;
- **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 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; the authorities stated that, on 10 December 2014, the court in charge of the case ordered her arrest;
 - There is no information on file to show that the authorities have advanced with the criminal proceedings;
- **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 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;
 - Two criminal investigations were subsequently initiated against her; the complainant states 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 state 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 maintain that it derives from a complaint presented by several members of the National Assembly at the time, in which they asked for an investigation into the possible commission by Ms. Machado of several criminal offences; on 3 December 2014, formal charges were reportedly brought by the prosecutor's office; no information is on file with regard to the current status of the proceedings;

- 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 totally disproportionate and unconstitutional and a violation of human rights;
- **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 claims that, contrary to the Court's ruling, the acts for which Mr. Caldera is to be investigated are not crimes; the complainant states 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;
- **With regard to Mr. Ismael García:**
 - In November 2014, the Supreme Court upheld 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 facts was considered by the Supreme Court before upholding the request,

Further recalling the concerns expressed by the complainant in several of these cases about the lifting of parliamentary immunity which, while it has the effect of suspending the parliamentary mandate, requires a three-fifths majority vote in the National Assembly, whereas the parliamentary authorities state that a simple majority is sufficient,

- **With regard to the new cases of Ms. Nirma Guarulla, Mr. Julio Ygarza and Mr. Miguel Tadeo:**
 - On 30 December 2015, the Electoral Chamber of the Supreme Court ordered the suspension of a number of acts of proclamation issued by the Electoral Council for the state of Amazonas. The judgment related to allegations of fraud during the election of Ms. Nirma Guarulla, Mr. Julio Ygarza and Mr. Miguel Tadeo (all from the coalition of the former opposition, the MUD) and Mr. Romel Guzamana (from the PSUV);
 - On 5 January 2016, the National Assembly decided to disregard this judgement and resolved that the deputies from Amazonas should take their seats. On 11 January 2016, the Supreme Court determined that any decision taken by the National Assembly would be invalid as long as the members of parliament whom the Court had suspended remained in their seats. The MUD coalition parties in parliament first decided to continue legislating in defiance of the court ruling, but on 13 January 2016, the suspended members requested to leave the legislature, "without losing their status of members of parliament and in expectation of more favourable conditions in resuming their seats";
 - On 21 July 2016, the suspended members of parliament from the State of Amazonas decided to retake their seats at the National Assembly, despite the Supreme Court's earlier decision to suspend their election;
 - On 1 August 2016, the Supreme Court declared again that any decision taken by the National Assembly would be invalid as long as the members of parliament remained in their seats, and declared that the suspended members of parliament and the opposition

(new majority) members of parliament were in contempt of court, and therefore could be liable to criminal prosecution;

- **With regard to the new cases of Mr. Rosmit Mantilla, Mr. Enzo Prieto and Mr. Gilberto Sojo:**
 - Mr. Rosmit Mantilla, Mr. Enzo Prieto and Mr. Gilberto Sojo, elected as alternate members of parliament in the parliamentary election on 6 December 2015, have been deprived of their liberty since 2014 in connection with ongoing legal proceedings, according to the complainant for political reasons, and have therefore been unable to exercise their parliamentary mandate. The complainants state that the National Assembly granted authorization for the installation of alternates. In this regard, the National Assembly had asked the General Prosecutor and the corresponding judges for the release of the three alternate deputies in order to allow their installation in parliament. However, this request was refused;
 - The complainants state that, according to article 200 of the Venezuelan Constitution, parliamentary immunity is acquired by deputies from the moment of their proclamation as elected members of the National Assembly and that, with respect to alternate deputies, immunity is effective as soon as their installation is required in parliament;
 - On 22 April 2015, the United Nations Working Group on Arbitrary Detention considered that the detention of Mr. Mantilla constituted arbitrary detention,

Recalling that a delegation of the Committee on the Human Rights of Parliamentarians was due to travel to Venezuela in June 2013 to address, among other things, the issues that had arisen in these cases, but that the mission was postponed at the last minute in order to allow the parliamentary authorities more time to organize the meetings requested,

Taking into account the extensive letters from the current Speaker of the National Assembly, including his most recent letter of 17 October 2016, in which he expressed full support for the mission by the Committee and underscored the need for it to take place as soon as possible, all the more so in light of his concerns about increased encroachment by the executive and judicial authorities on the powers of the National Assembly,

Taking into account the official visit to Venezuela by the Secretary General in late July 2016, during which he met, amongst others, with the President of Venezuela, the Speaker of the National Assembly, the Ombudsman, parliamentarians from majority and opposition parties, and that his visit laid the groundwork for the organization of the mission by the Committee,

1. *Thanks* the Speaker of the National Assembly for the extensive information provided and for his continued readiness to receive the mission by the Committee;
2. *Is concerned* that more than 10 months after the election, there is still no clarity on the status of three individuals whose election was suspended by the Supreme Court; *reaffirms* that this situation not only directly affects their individual political rights, but also deprives their constituencies from representation in parliament; *calls on* the Supreme Court to rule on the matter as quickly as possible, with due consideration for all the facts and with full respect for the right to defence of those concerned;
3. *Notes* that three alternate members of parliament remain in preventive detention and that the allegation that they are detained arbitrarily has been confirmed in the case of Mr. Mantilla by the UN Working Group on Arbitrary Detention following a complaint submitted by the individual concerned; *is keen therefore to have* full details on the legal grounds and facts that underpin the accusations against them and the stage reached in the legal proceedings; *is also eager* to hear from the authorities why these parliamentarians should not be allowed to exercise their parliamentary mandate, in particular to attend parliamentary sessions, as this would be in line with the fundamental principle of presumption of innocence;

4. *Recalls* its previous questions, as well as earlier preliminary concerns, regarding the cases of the other current and former parliamentarians whose cases were already under examination by the Committee before the elections of December 2015, and which relate primarily to the legal and factual justification for the legal proceedings brought against them individually and for the lifting of their parliamentary immunity;
5. *Requests* the Secretary General to liaise with the parliamentary authorities with a view to the swift organization of the mission, which would have as its mandate to address the current concerns and questions in the aforesaid cases, bearing in mind, where relevant, the current political context in which they have to be seen; *trusts* that the delegation will be able to meet with the relevant judicial and executive authorities and other entities that may be of help in the fulfilment of its mandate as well as the current and former parliamentarians directly concerned;
6. *Requests* the Committee to continue examining this case and to report back to it in due course.

Cambodia

CMBD/27- Chan Cheng
CMBD/48 - Mu Sochua (Ms.)
CMBD/49 - Keo Phirum
CMBD/50 - Ho Van
CMBD/51 - Long Ry
CMBD/52 - Nut Romdoul
CMBD/53 - Men Sothavarin
CMBD/54 - Real Khemarin
CMBD/55 - Sok Hour Hong
CMBD/56 - Kong Sophea
CMBD/57 - Nhay Chamroeun
CMBD/58 - Sam Rainsy
CMBD/59 - Um Sam An
CMBD/60 - Kem Sokha
CMBD/61 - Thak Lany (Ms.)

The Committee,

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

The Governing Council of the Inter-Parliamentary Union,

Referring to the cases of the following 12 parliamentarians from the opposition Cambodian National Rescue Party (CNRP): (i) Mr. Chan Cheng; (ii) Ms. Mu Sochua, Mr. Keo Phirum, Mr. Ho Van, Mr. Long Ry, Mr. Nut Romdoul, Mr. Men Sothavarin and Mr. Real Khemarin; (iii) Mr. Sok Hour Hong; (iv) Mr. Kong Sophea and Mr. Nhay Chamroeun; and (v) Mr. Sam Rainsy, leader of the opposition and the decision adopted at its 198th session (Lusaka, March 2016),

Having also before it the cases of Mr. Um Sam An, Mr. Kem Sokha and Ms. Thak Lany, members of the National Assembly and the Senate of Cambodia from the CNRP, which were considered by the Committee on the Human Rights of Parliamentarians pursuant to the Procedure for the examination and treatment of complaints (Annex 1 of the Revised Rules and Practices),

Referring to the final report on the visit of the Committee conducted to Cambodia in February 2016 (CL/199/11(b)-R.1),

Taking into account the letters dated 11 July and 11 October 2016 of the Secretary General of the National Assembly of the Kingdom of Cambodia, and the information submitted by the complainant and reliable third parties,

Referring to the hearings held with the Cambodian delegation to the 135th IPU Assembly and Mr. Sam Rainsy (Geneva, October 2016),

Recalling the following information already on file regarding the cases of the following 12 opposition parliamentarians:

- Mr. Chan Cheng, a member of the National Assembly, was convicted to two years' imprisonment on 13 March 2015 after long-dormant proceedings, which were believed to have been dismissed in 2012 and were suddenly re-activated in mid-2014 amid a tense

political standoff between the ruling and opposition party. Mr. Chan Cheng has appealed the court ruling and the appeal is pending. His parliamentary immunity has not been lifted. He is free;

- Ms. Mu Sochua, Mr. Keo Phirum, Mr. Ho Van, Mr. Long Ry, Mr. Nut Romdoul, Mr. Men Sothavarin and Mr. Real Khemarin, all members of the National Assembly, were arrested on 15 July 2014, with other opposition activists, after a demonstration calling for the reopening of the Phnom Penh protest site known as Freedom Park (or Democracy Plaza) had turned violent. They were charged as criminal instigators by a Phnom Penh court for leading an insurrectional movement, committing aggravated intentional violence and inciting others to commit an offence, and face up to 30 years in prison. The Committee received clear video evidence that the members of parliament had tried to prevent and stop the violence (although protesters did not listen to them), while no evidence has been submitted to prove their alleged direct involvement in the violence, or that the violence fitted the legal requirements of the crime of insurrection. Their parliamentary immunity has not been lifted. The members of parliament concerned were released on bail on 22 July 2014, after the announcement of a political agreement between the Government and the opposition to end the political crisis. The charges, however, remain pending against them. A confidential judicial investigation is still ongoing and no date has been set for a trial. They are free;
- Mr. Sok Hour Hong, a senator, was arrested and charged after a video clip was posted on the Facebook page of the leader of the opposition, Mr. Sam Rainsy, on 12 August 2015. The video clip featured Mr. Sok Hour Hong discussing his views about the Vietnamese-Cambodian border, a controversial and sensitive issue in Cambodia, and showing a copy of an article of a 1979 Vietnam–Cambodia treaty, providing that the border would be dissolved and re-delineated, which proved to be incorrect. On 13 August 2015, the Prime Minister of Cambodia accused the senator of treason and ordered his arrest. The senator was subsequently detained on 15 August 2015 and charged with forging a public document, using a forged public document and inciting social disorder. He could incur up to 17 years of imprisonment. His immunity was not lifted because the authorities considered that he had been arrested in *flagrante delicto*. He remains in detention, as his requests for pretrial release have been systematically rejected by the court. The trial, which had started in October 2015, has since been suspended on repeated occasions;
- Mr. Kong Sophea and Mr. Nhay Chamroeun, members of the National Assembly, were dragged from their cars and violently beaten as they were leaving the National Assembly on 26 October 2015. An anti-opposition protest organized by the ruling party was in progress in front of the National Assembly at that time. Neither security officers of the National Assembly, nor police officers present, took any action before, during or after the assault, as shown on video clips of the incident. The assault left both members of parliament with significant injuries. The attack was condemned by the National Assembly and an investigation was initiated, leading to the arrest of three suspects in November 2015, after they reportedly confessed to being involved in the violence. No further action has been taken against the other assailants or the instigator(s), despite complaints lodged by the members of parliament concerned and clear video records of the assault showing the identity of the attackers and the fact that they were communicating to others through walkie-talkies;
- Mr. Sam Rainsy, the leader of the opposition and a member of the National Assembly, has been targeted by an ever-increasing number of court cases initiated against him since November 2015 (including one related to the case of Senator Sok Hour Hong for posting the video clip on his Facebook page). His immunity was not lifted, but his parliamentary mandate was revoked in connection with the first court case. He has been forced to go into exile to avoid imprisonment since November 2015,

Further recalling the following information in relation to the prior treatment of the cases:

- The Committee decided at first, on an exceptional basis, to treat the cases as confidential in order to give an opportunity to the parties to find a solution through political dialogue, given that such dialogue resumed between the ruling Cambodian People's Party (CPP)

and the CNRP following a July 2014 agreement. This agreement put an end to the 2013 post-election crisis and established a mechanism for dialogue between the two main political parties represented in parliament, known as the “culture of dialogue”. The culture of dialogue was seen by both parties as crucial to ending the past prevailing culture of violence. It opened more space for political dialogue within the parliamentary institution and allowed the parties to achieve progress on some issues of national interest between July 2014 and mid-2015;

- The Cambodian delegation to the 133rd IPU Assembly (Geneva, October 2015) welcomed the Committee’s proposal to conduct a visit to Cambodia. The visit was conducted from 15 to 17 February 2016 by its members, Mr. Ali A. Alaradi and Mr. Alioune Abatalib Gueye. The visit had two main objectives: first, for the Committee to gain a better understanding of the cases of the 12 opposition parliamentarians concerned, and of the political and human rights context in which they occurred; second, to help promote satisfactory solutions in the cases at hand, in line with Cambodia’s constitutional framework and international human rights law. The Committee considered its visit as a “visit of last resort”, after extensive time had repeatedly been given by the Committee to both parties to find negotiated solutions,

Considering that the Governing Council subscribed to the Committee’s preliminary observations and recommendations on the visit at the 134th IPU Assembly (Lusaka, March 2016), which have now been fully confirmed. The final report of the visit has further included specific conclusions on each individual case before it and found that the 12 parliamentarians have been victims of violations of their fundamental rights. It made concrete recommendations to resolve their situation in compliance with the relevant national and international legal framework,

Considering that the official observations of the National Assembly of Cambodia on the report of the visit, shared in a letter dated 11 July 2016, have further confirmed the positions previously expressed by the authorities during the visit and have been duly annexed to the final report; that the authorities deny that any violations of human rights have been committed in the cases at hand and continue to claim that all opposition parliamentarians concerned are criminals who must be punished in accordance with the law; that accordingly this is a purely judicial matter for the court to decide and not a political matter that can be resolved through the culture of dialogue, as political dialogue cannot replace or violate the law in their view,

Considering that, following the visit of the Committee, both parties expressed their wish to resume the political dialogue, but that it has remained stalled to date. No progress has been made on the cases under examination. The situation has further deteriorated according to the following information and allegations submitted by the complainant and reliable third parties, on which the observations of the authorities have not been received,

- **Deterioration of the situation of Mr. Sam Rainsy:**
 - On 28 July 2016, Mr. Sam Rainsy was found guilty of defaming the President of the National Assembly, according to the complainant. The trial was held in the absence of the defendant and of his lawyers. The verdict was delivered after merely 10 minutes of deliberation. The court decision made no reference to the right to freedom of expression or parliamentary immunity. Mr. Sam Rainsy has appealed the conviction;
 - A series of new criminal cases have also been brought against Mr. Sam Rainsy, according to the complainant, including: (i) new defamation charges brought in early August 2016 by the Prime Minister in relation to remarks made by Mr. Sam Rainsy that allegedly suggested the involvement of the Prime Minister in the murder of political analyst Kem Ley; (ii) a new arrest warrant issued against Mr. Sam Rainsy in late August 2016 accusing him of complicity in forgery, using fake public documents and incitement in relation to yet another case related to the Cambodia-Vietnam border controversy; (iii) another defamation complaint filed by the CPP website administrator after Mr. Sam Rainsy claimed that that the CPP had created fake Facebook accounts to “like” Mr. Hun Sen’s page so as to obtain more “likes” than Sam Rainsy’s; (iv) a new complaint was allegedly lodged on 20 October 2016 by the Minister of Interior in relation to a call for mass protests made by Mr. Sam Rainsy in September;

- The complainant alleges that, on 18 October 2016, the Prime Minister issued instructions to all relevant authorities to “use all ways and means” to prevent Mr. Sam Rainsy from returning to Cambodia after the latter had announced his wish to return from exile in order to participate in the upcoming elections.
- **Investigations into the October 2015 attack against Mr. Kong Sophea and Mr. Nhay Chamroeun**
 - Reliable third parties have indicated that the three suspects arrested after confessing the crime were convicted to four years’ imprisonment (including three years suspended) on 27 May 2016. Neither the complainant, nor the authorities, have shared any information to date on this significant development;
 - The international NGO Human Rights Watch (HRW) stated, in a report published in late May 2016 after conducting thorough investigations into the incident, that the suspects admitted that they were members of the Prime Minister’s bodyguard’s unit, but maintained that they had not acted on orders from superiors but solely out of individual personal anger. HRW, however, concluded that the trial was designed to cover up the ultimate responsibility for the crime, rather than uncover it, on the grounds that: (i) the attack had all the hallmarks of an operation carried out by the Cambodian State security forces; (ii) the confessions of the suspects took place in dubious circumstances and were not consistent with the clear video evidence recorded; (iii) the suspects refused to answer questions about their chain of command during the public trial hearings; (iv) the judges blocked all attempts by the lawyers of the two members of parliament to question the suspects about the role of their superiors and whether they had received orders to participate in the attack. The judges and the prosecution argued that these lines of inquiry were outside the scope of the trial and the evidence showing the direct involvement of many others in the attack was ignored during the trial; (v) investigations into the instigators, planners and other participants in the attack against the members of parliament were blocked despite clear evidence;
 - The European Parliament resolution dated 9 June 2016 has called on the Cambodian government to ensure full and impartial investigations into the attacks, with the participation of the United Nations.
- **New cases referred to the Committee on the Human Rights of Parliamentarians**
 - According to the complainant, the three following parliamentarians of the CNRP have also been targeted by politically motivated prosecutions, violations of parliamentary immunity and of their fundamental rights to freedom of expression and association, non-discrimination and to standards of due process;
 - **Mr. Um Sam An**, a CNRP member of the National Assembly, was arrested on 11 April 2016 upon his return to Cambodia and convicted on 10 October 2016 to two and a half years of imprisonment for inciting violence and discrimination. According to the complainant, the case was triggered following comments and videos he posted on Facebook in 2015 about the Cambodian-Vietnamese border issue, in particular assertions that the Government used “fake maps” to delineate the border. His parliamentary immunity was not lifted. According to the complainant, the authorities have argued that he was arrested *in flagrante delicto* because the crime continued as long as his comments were not removed from Facebook (although the court denied him bail on the grounds that there was a risk that he would destroy evidence by removing the comments from Facebook if he was granted a provisional release);
 - **Mr. Kem Sokha** is Vice President of the CNRP and its acting President since Mr. Sam Rainsy went into exile again in October 2015. He was the first Vice President of the National Assembly of Cambodia until October 2015 and remains a member of the National Assembly to date. According to the complainant, Mr. Kem Sokha has allegedly been the victim of the following harassment since April 2015: repeated threats (particularly from April to October 2015); an attack on his residence (October 2015); his removal from office as first Vice President of the National Assembly (October 2015); and the “Mon Srey” case, which has been ongoing since late February 2016. In that case, it is claimed that Mr. Kem Sokha

had an affair with his hairdresser and gave her expensive gifts. Although his immunity has not been lifted, an attempt to arrest Mr. Kem Sokha was made in May 2016 and he has been holed up at the CNRP headquarters since that date under de facto house arrest, according to the complainant. Mr. Kem Sokha was also convicted to a six-month prison term on 9 September 2016 for refusing to appear for questioning;

- **Ms. Thak Lany**, a CNRP member of the Senate, was accused by the Prime Minister of slander and incitement in early August 2016, after a video was posted online in which she appears to be suggesting that the Prime Minister was involved in the murder of political analyst Kem Ley. According to the complainant, the senator has denied making such a statement and claims that the video has been edited. The senator was summoned to appear before the prosecutor twice before her parliamentary immunity was lifted on 1 September 2016. Ms. Thak Lany is currently in exile. Her trial is due to take place on 28 October 2016.

Considering that the authorities of Cambodia have not provided any official information or their observations on the new cases and allegations submitted to the Committee,

Considering further that the complainant claims that the cases of the 15 CNRP members of parliament under examination demonstrate that the ruling party is attempting to weaken and silence the opposition in order to derail the upcoming 2017 and 2018 local and national elections by excluding the leaders and key members of the main opposition party in Cambodia from standing in the elections and campaigning freely, including by putting them in jail, in exile or by maintaining dangling charges and permanent threats of arrest against them; that the CNRP continues to boycott parliamentary work and has submitted a petition to the King to facilitate a solution to the ongoing political crisis,

Considering that, in the past few months, an increasing number of States and international organizations, including the United Nations, have expressed deep concern about the deterioration in the political and human rights situation in Cambodia, in particular the worsening climate for opposition politicians and human rights activists in Cambodia given the escalation of politically motivated charges, judicial harassment and acts of violence. They have urged the Government of Cambodia to ensure full respect for human rights, including the freedoms of expression, association and assembly, and to adhere strictly to international fair trial standards, thus ensuring that the law is applied without discrimination on any ground. They have called for the urgent resumption of political dialogue between the CPP and the CNRP and for the creation of a political environment in which opposition parties and civil society can all function freely and without fear of arrest or persecution, so that Cambodia is able to conduct free and fair elections which would ensure the legitimacy of the next government. In a resolution adopted on 9 June 2016, the European Parliament has recalled that a non-threatening environment of democratic dialogue is essential for political stability, democracy and a peaceful society, and urged the Government to take all necessary measures to ensure the security of all democratically elected representatives of Cambodia, irrespective of their political affiliation. It has urged the Cambodian authorities to revoke the arrest warrant for and drop all charges against the opposition leaders and CNRP parliamentarians, as well as to reinstate them immediately and restore their parliamentary immunity,

Considering that two separate hearings were held with the Cambodian delegation to the 135th IPU Assembly, on the one hand, and with the leader of the Cambodian opposition, Mr. Sam Rainsy, on the other hand; that they reaffirmed their previous positions on the cases; that they stated their respective will to work in the best interests of the Cambodian people and to resume the political dialogue; that they both appealed to the IPU to assist them to that end; that furthermore:

- Mr. Sam Rainsy confirmed that he had been banned from returning to Cambodia and participating to the upcoming electoral process by the Prime Minister and expressed concern at the fairness of the upcoming electoral process if the CNRP is unable to participate fully and freely;
- The delegation stated that it hoped that progress could be achieved on the cases by the next IPU Assembly. It observed that the CNRP was among the 58 political parties registered for the upcoming elections and could participate to the electoral process; only the members who had committed crimes were prevented from participating and the party was free to appoint new leaders who would be able to stand in the elections. No court

decision prevented Mr. Kem Sokha from leaving the CNRP headquarters and he had been able to do so to register as a voter. Freedom of speech in Cambodia was different from other western countries and needed to be balanced with the need for stability in the country. Only “genuine criticism” of the Prime Minister was authorized. The opposition party would not be in the current situation if it stopped “putting gas into the fire” and adopted a more constructive stance, going beyond constant criticism of the Prime Minister and of the Royal Government of Cambodia,

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

- As a party to the International Covenant on Civil and Political Rights, Cambodia is bound to respect international human rights standards, including the fundamental rights to freedom of expression, freedom of assembly, equality before the law and to a fair trial conducted by an independent and impartial court and to participate in public affairs. Restrictions on freedom of expression and freedom of association are only permitted when they are absolutely necessary to protect the rights of others or in case of a serious threat to public security, and such restrictions should be proportionate to their purpose, limited in scope and duration, and subject to independent judicial review, in line with article 19 of the International Covenant on Civil and Political Rights and the IPU resolution on freedom of expression and the right to information adopted at the 120th IPU Assembly (Addis Ababa, 10 April 2009);
- Following the second cycle of the universal periodic review (UPR) of Cambodia, conducted by the United Nations Human Rights Council in 2014, the Cambodian authorities accepted, inter alia, recommendations to “promote a safe and favourable environment that allows individuals and groups to exercise the freedoms of expression, association and peaceful assembly and put an end to harassment, intimidation, arbitrary arrests and physical attacks, particularly in the context of peaceful demonstrations” and “take all necessary measures to guarantee the independence of justice without control or political interference” (Report of the Working Group on the UPR of Cambodia A/HRC/26/16),

Also bearing in mind Chapter 3 of the Constitution of Cambodia on the rights and obligations of Khmer citizens, in particular article 31, which states that “The Kingdom of Cambodia recognizes and respects human rights as stipulated in the United Nations Charter, the Universal Declaration of Human rights and the covenants and conventions related to human rights (...)” as well as article 80 and 104, which provide that: (1) members of the National Assembly and the Senate shall enjoy parliamentary immunity; (2) no member of parliament shall be prosecuted, detained or arrested because of opinions expressed in the exercise of his/her duties; (3) a member of parliament may only be prosecuted, arrested or detained with the permission of parliament; (4) in cases of *flagrante delicto* offences, the competent authority shall immediately report to parliament and request permission; (5) such permission requires the lifting of parliamentary immunity by a two-thirds majority vote; and (6) parliament can request the suspension of the detention or prosecution of any member of parliament following a three-quarters majority vote,

1. *Thanks* the Committee for the final report of its visit to Cambodia and *endorses* its conclusions and recommendations; *notes* the observations conveyed by the Cambodian authorities and *further thanks* both parties for sharing their respective views with the Committee;
2. *Notes with consternation* that no progress has been made in resolving the cases and that the situation has further escalated;
3. *Is deeply concerned* that a total of 15 opposition parliamentarians, including the leaders of the main opposition party, continue to face serious violations of their fundamental rights and are therefore being prevented from effectively playing their role as parliamentarians and members of the opposition freely without fear of persecution, particularly given the fast-approaching local and national elections;

4. *Once again urges* the Cambodian authorities to ensure full respect for human rights and that the law is applied without discrimination; *renews its call* on all branches of power and all political parties to work hand in hand to ensure that:
 - (i) There is full respect for parliamentary immunity and for the parliamentary mandate conferred upon members of parliament by the Cambodian population, as well as for their rights to freedom of expression and peaceful assembly, the right to an independent judiciary and to fair judicial proceedings – including by bringing relevant legislation and regulations in line with international standards and the practices of democratic parliaments;
 - (ii) Persons who have instigated and perpetrated attacks, threats and intimidation against parliamentarians are held accountable and that, in the future, systematic protection measures are promptly granted and effectively put in place by the relevant authorities whenever parliamentarians feel under threat;
 - (iii) Ongoing judicial processes against the parliamentarians concerned are completed without undue delay in a fair, independent, impartial and transparent manner, including – when warranted by exculpatory evidence and mitigating circumstances – by decisions to drop or requalify charges, discontinue proceedings or acquit the suspects, in line with the relevant provisions of the Code of Criminal Procedure and the Constitution of Cambodia, which require respect for the presumption of innocence and the rights of the accused;
5. *Continues to consider* that it is critical for the ruling party and the opposition to resume the political dialogue towards building a stable political environment in which there is sufficient space for dissent and for the peaceful exercise of the freedoms of expression, association and peaceful assembly in the context of the fast-approaching elections; *is convinced* that making progress towards sustainable solutions on the individual cases in compliance with human rights standards would pave the way for the resumption of a constructive political dialogue and contribute to creating a political environment conducive to the conduct of free and fair elections; *reiterates* the availability of the IPU to facilitate the political dialogue and to provide technical assistance to the Cambodian parliament;
6. *Requests* the Secretary General to convey this decision to the competent authorities, the complainant and any third party likely to be in a position to supply relevant information;
7. *Requests* the Committee to continue examining this case and to report back to it in due course.

Maldives

MLD/16 - Mariya Didi*	MLD/45 - Ahmed Sameer
MLD/28 - Ahmed Easa	MLD/46 - Afrasheem Ali
MLD/29 - Eva Abdulla*	MLD/48 - Ali Azim*
MLD/30 - Moosa Manik*	MLD/49 - Alhan Fahmy
MLD/31 - Ibrahim Rasheed	MLD/50 - Abdulla Shahid*
MLD/32 - Mohamed Shifaz	MLD/51 - Rozeyna Adam*
MLD/33 - Imthiyaz Fahmy*	MLD/52 - Ibrahim Mohamed Solih
MLD/34 - Mohamed Gasam	MLD/53 - Mohamed Nashiz
MLD/35 - Ahmed Rasheed	MLD/54 - Ibrahim Shareef*
MLD/36 - Mohamed Rasheed	MLD/55 - Ahmed Mahloof*
MLD/37 - Ali Riza	MLD/56 - Fayyaz Ismail*
MLD/39 - Ilyas Labeeb	MLD/57 - Mohamed Rasheed Hussain*
MLD/40 - Rugiyya Mohamed	MLD/58 - Ali Nizar*
MLD/41 - Mohamed Thoriq	MLD/59 - Mohamed Falah*
MLD/42 - Mohamed Aslam*	MLD/60 - Abdulla Riyaz*
MLD/43 - Mohammed Rasheed*	MLD/61 - Ali Hussain*
MLD/44 - Ali Waheed	

The Committee,

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

The Governing Council,

Referring to the cases of the above-mentioned current and former parliamentarians and to the decision adopted at its 196th session (April 2015),

Recalling that most of the above-members of the People's Majlis belong to the opposition Maldivian Democratic Party (MDP) and that the case before the Committee on the Human Rights of Parliamentarians was initiated following their brief arrest at demonstrations in February 2012, during which the police used excessive force. However, the case has since evolved to include other instances of alleged arbitrary arrest and detention, frivolous legal proceedings, and acts of threat and violence, including murder in the case of Mr. Afrasheem Ali, a former member of the ruling Progressive Party of Maldives (PPM),

Recalling that threats intensified in the lead-up to and aftermath of the 2014 parliamentary elections, as exemplified by the stabbing attack on the then member of parliament, Mr. Alhan Fahmi, in February 2014. Since then, the complainant claims that at least seven parliamentarians have been the subject of physical attacks and death threats, as well as unlawful arrests and ill-treatment by the police. Moreover, several parliamentarians were said to be facing criminal charges allegedly for conducting peaceful protests,

Considering that member of parliament, Mr. Ahmed Mahloof, was convicted and sentenced on 18 and 25 July 2016 on two consecutive charges to a prison term of 10 months and 24 days for "obstructing police officers in the execution of their duties",

* (Re-)elected to Parliament in the elections of March 2014.

Taking into account that a delegation of the Committee on the Human Rights of Parliamentarians, comprising its President, Mr. Fazle Chowdhury, and one of its members, Ms. Fawzia Koofi, conducted an on-site mission to the Maldives from 10 to 12 October 2016; its full mission report will be presented to the Governing Council at its next session (April 2017), after being shared with all parties for their observations; the delegation wishes to share the following preliminary observations on its mission:

- The delegation was pleased to be able to meet with the relevant legislative, judicial and executive authorities, in particular the Speaker of the People's Majlis, parliamentarians belonging to all political parties represented in the People's Majlis, the parliamentary Privilege Committee, the Minister of Home Affairs, the Chief Justice, the Attorney General, the Prosecutor General and senior police officers. The delegation also met 10 of the current and former members of parliament concerned, as well as the wife of Mr. Ahmed Mahloof. He is currently serving a prison sentence;
- **Death threats against members of parliament**
 - The delegation is concerned about death threats targeting several prominent parliamentarians from the MDP and the fact that apparently no one has been held to account for these threats. The delegation is also concerned about reports that the special security arrangement in place for Mr. Abdulla Shahid was withdrawn, despite his entitlement to such protection as a former Speaker and in light of the multiple threats he has faced. The delegation notes that the authorities maintain that they are doing everything possible to protect the members of parliament at risk and to look into the threats, but that it is often difficult to identify the culprits and the victims sometimes fail to cooperate. The delegation is keen to receive details from the authorities on the precise steps taken to investigate the threats brought to their attention. It is also keen to know the precise protection measures in place for each of the members of parliament under threat and to receive clarification regarding the alleged withdrawal of former Speaker Shahid's security detail;
- **Murder of Mr. Afrasheem Ali**
 - With regard to the murder of Mr. Afrasheem Ali, a member of the People's Majlis, on 2 October 2012, the delegation notes the fact that the conviction of Mr. Humaam, on the basis of his own confession along with other evidence, including forensic reports, was upheld by the Supreme Court on 24 June 2016. A second suspect, Mr. Ali Shan, was acquitted in September 2015 for want of sufficient evidence to sustain a conviction. The delegation was told that the authorities are still investigating the identity of the mastermind(s) of the murder;
- **The stabbing of former member of parliament Mr. Alhan Fahmy in February 2014**
 - The delegation notes that, according to the Prosecutor General, charges were pressed in March 2014 against one suspect, who is serving a sentence for a drug-related crime until March 2017, and that the trial was about to be completed;
- **Ill-treatment of members of parliament at the hands of police officers**
 - The delegation expresses concern that, more than four years after the events, there has apparently been no accountability for the ill-treatment by law enforcement officers of parliamentarians on 8 February 2012, which include Ms. Mariya Didi, Ms. Eva Abdulla, Mr. Imthiyaz Fahmy and Mr. Ibrahim Rasheed. The delegation considers that, although the officers may not be easily identifiable, the authorities can, and should, redouble their efforts – in particular where concrete video evidence is available, as in the case of Mr. Ibrahim Rasheed – to take decisive measures against those responsible. The delegation is therefore pleased that the authorities have undertaken to provide further information in this regard;
 - The delegation is also concerned about repeated reports of continued intimidation and harassment by the police against opposition members of parliament, including by summoning them for questioning in connection with their legitimate exercise of freedom of expression and the use of pepper spray at close range during police interventions;

- **Legal status of specific criminal cases initiated against three (former) members of parliament**
 - The delegation notes that, in September 2015, the Prosecutor General withdrew the legal case against Mr. Ibrahim Rasheed for obstructing police officers in the execution of their duties, and that the investigation by the police against Mr. Mohamed Shifaz for producing pornographic cards had not been forwarded for action to the Prosecutor General. The delegation trusts that the authorities will inform the persons directly concerned that they are no longer subject to any legal action. The delegation notes that the legal case against Mr. Mohamed Rasheed, on charges of terrorism in connection with acts of arson in February 2012, during which public buildings were burnt down or damaged, is still ongoing. It welcomes the initiative by the Prosecutor General to ask the court to speed up consideration of this case. The delegation hopes that this will happen and with full respect for due process;

- **The conviction of Mr. Ahmed Mahloof in July 2016**
 - The delegation notes the contradictions presented by the authorities, Mr. Mahloof's wife and others with regard to the facts and legal basis underpinning Mr. Mahloof's conviction and sentence to 10 months and 24 days of imprisonment, on two charges of obstructing police officers in the execution of their duties, for allegedly crossing a protest barricade and trying to flee the scene after leaving the court house following a hearing to extend his detention. The delegation is concerned about the severity of the sentence and reports that basic fair-trial standards were not respected. The delegation fails to understand how it can be argued that Mr. Mahloof would have tried to flee from the police in the presence of a sizeable police force at the court building. The delegation would greatly appreciate receiving a copy of the lower court verdict in order to clarify this and other matters related to his prosecution. The delegation hopes that the appeal proceedings, to which it proposes sending an observer, will take place smoothly and with respect for the right to a fair trial. In the meantime, it hopes that the authorities will allow him to serve his sentence in the form of house arrest, in light of reports about Mr. Mahloof's poor health;

- **Undue restrictions on freedom of expression and assembly**
 - The delegation is concerned about human rights developments that have a direct impact on the cases at hand. This concerns the recent adoption of the Protection of Reputation and Good Name and Freedom of Expression Act and the recent amendment to the Peaceful Assembly Act. Although the delegation agrees that freedom of expression is not absolute, it considers that the new legislation overly restricts the exercise of this right, due to its scope, the vagueness of some of its key provisions and the hefty fine imposed as punishment. Similarly, although it understands that Male is a small island prone to congestion, it also believes that the right to freedom of assembly can never be devoid of real practical meaning. The delegation considers in this regard that the very limited designated areas for demonstrations and the fact that prior police authorization is required unduly restrict the exercise of this right;

- **Limited space for the opposition to contribute meaningfully to the work of parliament**
 - Although the delegation appreciates that the current People's Majlis has adopted an impressive number of bills, it feels that this output should not come at the expense of the need for a substantive and meaningful discussion of each piece of legislation. The delegation is therefore concerned about reports that the adoption of important legislation has been fast-tracked and adopted without any changes and proper discussion or consultation with stakeholders outside of parliament. Likewise, the delegation is concerned about reports that parliament, drawing on the majority of its members belonging to the ruling coalition parties, has not carried out any serious oversight, even in the face of serious issues warranting public scrutiny. The delegation is also concerned in this regard about allegations of strong ties between the Government and members of independent oversight institutions, such as the Elections Commission and the National

Human Rights Commission, as well as the improper dismissal of the Auditor General, all of which hamper effective oversight;

- **The occurrence of unacceptable behaviour in parliament and the handling of such incidents**
 - The delegation notes that the parliamentary authorities and the opposition acknowledge that there has been unruly behaviour in parliament on both sides. The delegation believes that the Speaker fulfils a paramount function in making sure that unacceptable behaviour, such as the spitting incident in February 2016, is immediately reprimanded and that all sides in parliament respect one another. It is absolutely crucial that the Speaker treats all sides impartially and is perceived as being above parties. Here, it is also important that the Speaker allows the opposition to make a meaningful contribution to the work of parliament and that the opposition respects his authority;
 - **Importance of dialogue between the majority and the opposition and of engagement with the international community**
 - The delegation strongly believes that the cases at hand have to be seen in the context of the ongoing political polarization in the Maldives. It believes that it is vital for all sides to redouble their efforts to engage in meaningful dialogue, with the help of the international community, to produce effective and inclusive institutions and long-term political solutions that enjoy the trust of all Maldivians. The delegation therefore deeply regrets the recent decision by the Maldivian authorities to leave the Commonwealth, and hopes that the authorities will re-consider this decision,
1. *Thanks* the Maldivian authorities for their cooperation and assistance;
 2. *Takes note* of the preliminary observations of the Committee's mission and *eagerly awaits* the final mission report at the next IPU Assembly (April 2017);
 3. *Notes* the preliminary concerns, in particular with regard to the death threats against several opposition members of parliament, the lack of accountability for the ill-treatment of members of parliament by law enforcement officers, the reduced space for freedom of expression and assembly and for the opposition to meaningfully contribute to the work of parliament;
 4. *Expresses concern* about the severity of the sentence against Mr. Mahloof; *fails* to understand the justification for his conviction and sentence; *calls on* the relevant authorities to address his appeal swiftly and with full respect for fair-trial standards; *decides* to send a trial observer to follow the appeal proceedings; *calls on* the authorities, in the meantime, to allow Mr. Mahloof to serve his sentence in the form of house arrest;
 5. *Looks forward* to receiving further official information on the various pending issues that the authorities undertook to provide;
 6. *Requests* the Committee to continue examining this case and to report back to it in due course.

Turkey

TK69 - GÜLSER YILDIRIM (Ms.)	TK97 - ALI ATALAN
TK70 - SELMA IRMAK (Ms.)	TK98 - ALICAN ÖNLÜ
TK71 - FAYSAL SARIYILDIZ	TK99 - ALTAN TAN
TK72 - İBRAHİM AYHAN	TK100 - AYHAN BILGEN
TK73 - AYCAN İRMEZ (Ms.)	TK101 - BEHÇET YILDIRIM
TK74 - AYŞE AÇAR BAŞARAN (Ms.)	TK102 - BERDAN ÖZTÜRK
TK75 - BEDIA ÖZGÖKÇE ERTAN (Ms.)	TK103 - DENGİR MIR MEHMET FIRAT
TK76 - BESİME KONCA (Ms.)	TK104 - ERDAL ATAŞ
TK77 - BURCU ÇELİK ÖZKAN (Ms.)	TK105 - EROL DORA
TK78 - ÇAĞLAR DEMİREL (Ms.)	TK106 - ERTUĞRUL KÜRKCÜ
TK79 - DİLEK ÖCALAN (Ms.)	TK107 - FERHAT ENCÜ
TK80 - DILAN DIRAYET TAŞDEMİR (Ms.)	TK108 - HIŞYAR ÖZSOY
TK81 - FELEKNAS UCA (Ms.)	TK109 - İDRIS BALUKEN
TK82 - FIGEN YÜKSEKDAĞ (Ms.)	TK110 - İMAM TAŞÇIER
TK83 - FILİZ KERESTECIOĞLU (Ms.)	TK111 - KADRI YILDIRIM
TK84 - HÜDA KAYA (Ms.)	TK112 - LEZGIN BOTAN
TK85 - LEYLA BIRLIK (Ms.)	TK113 - MEHMET ALI ASLAN
TK86 - LEYLA ZANA (Ms.)	TK114 - MEHMET EMİN ADIYAMAN
TK87 - MERAL DANIŞ BEŞTAŞ (Ms.)	TK115 - NADİR YILDIRIM
TK88 - MIZGIN IRGAT (Ms.)	TK116 - NİHAT AKDOĞAN
TK89 - NURSEL AYDOĞAN (Ms.)	TK117 - NİMETULLAH ERDOĞMUŞ
TK90 - PERVIN BULDAN (Ms.)	TK118 - OSMAN BAYDEMİR
TK91 - SAADET BECERİKLİ (Ms.)	TK119 - SELAHATTİN DEMİRTAŞ
TK92 - SİBEL YİĞİTALP (Ms.)	TK120 - SIRRI SÜREYYA ÖNDER
TK93 - TUĞBA HEZER ÖZTÜRK (Ms.)	TK121 - ZİYA PİR
TK94 - ABDULLAH ZEYDAN	TK122 - MİTHAT SANÇAR
TK95 - ADEM GEVERİ	TK123 - MAHMUT TOĞRUL
TK96 - AHMET YILDIRIM	

The Committee,

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

The Governing Council,

Having before it the case of the above-mentioned 55 members of the Grand National Assembly of Turkey (GNAT), which were considered by the Committee on the Human Rights of Parliamentarians pursuant to the Procedure for the examination and treatment of complaints (Annex 1 of the Revised Rules and Practices),

Taking into account the letter dated 13 October 2016 of the President of the Turkish IPU Group and the allegations submitted by the complainant,

Referring to the hearing held with the complainant,

Pointing out that the possibility of a hearing was also offered to the Turkish delegation at the 135th IPU Assembly,

Referring to the mission report on the mission conducted to Turkey by the Committee in February 2014 (CL/195/11(b)-R.1),

1. *Notes with deep concern* that 55 of the 58 parliamentarians of the People's Democratic Party (HDP) are facing over 600 terrorism charges in prosecutions initiated throughout Turkey, after they were stripped of their parliamentary immunity following the adoption of a constitutional amendment on 20 May 2016, which suspended the ordinary procedure for the lifting of immunity and authorized a blanket removal of immunity for a total of 139 members of parliament from all political parties;
2. *Further notes with concern* that the complainant alleges that the evidence adduced to support the charges against the 55 members of parliament relates to public statements, rallies and other peaceful political activities that they carried out in furtherance of their parliamentary duties and of their political party programme, such as mediating between the Kurdistan Workers' Party (PKK) and the Turkish Government as part of the peace process between 2013 and 2015, advocating publicly in favour of political autonomy, and criticizing the policies of President Erdogan in relation to the current conflict in South-Eastern Turkey (including denouncing the crimes committed by the Turkish security forces in that context);
3. *Is concerned* furthermore that the need to respond to the many charges and likely court hearings across the country will make it impossible for many members of parliament to devote themselves meaningfully to their parliamentary responsibilities;
4. *Recalls* that the fundamental rights of parliamentarians must be upheld at all times, that members of parliament should be able to speak freely without fear of reprisals, that parliamentary immunity is crucial to protect members of parliament from politically motivated allegations but also to protect the independence and integrity of the institution of parliament as a whole;
5. *Reaffirms* its long-standing position that parliament should set aside the necessary time to consider requests for the lifting of parliamentary immunity, and to apply the basic principles of due process, including a hearing of the parliamentarian(s) affected and that a decision to lift immunity should always be agreed by a parliamentary vote on a case-by-case basis, and should require valid and credible allegations supported by serious evidence;
6. *Observes* that these requirements were all the more important at a time of increased polarization, when the Grand National Assembly of Turkey should have carefully checked that peaceful and legal political activities by Turkish members of parliament were not presented as evidence of criminal and terrorist acts, given the serious allegations made in the present case and the long-standing concerns expressed over freedom of expression and association in relation to anti-terrorist legislation;
7. *Considers* that the developments in Turkey since the failed coup d'état of 15 July 2016 make it all the more necessary to monitor extremely closely the ongoing judicial proceedings related to the 55 HDP parliamentarians; *refers* in this regard to the numerous reports pointing to the summary dismissal of prosecutors and judges and the increasingly limited space available for journalists, civil society and others to voice any criticism of the authorities;
8. *Considers* that the magnitude and seriousness of the cases at hand may well make it essential to promote a comprehensive solution that goes beyond the consideration of the concerns in each individual case; *requests* that the Committee enhances its contacts with the parliamentary authorities, in tandem with the executive and judicial authorities, in order to examine all possible avenues to reach such a solution;
9. *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;
10. *Requests* the Committee to continue examining this case and to report back to it in due course.

Oman

OMN/01 - Talib Al Mamari

The Committee,

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

The Governing Council,

Referring to the case of Mr. Talib Al Mamari, a former member of the *Majlis A'Shura* (the Lower House of Parliament) of Oman, to the decision it adopted at its 193rd session (October 2014) and to the public decision adopted by the Committee on the Human Rights of Parliamentarians on 30 November 2015,

Taking into account the letter of 12 May 2016 from the Chairman of the *Majlis A'Shura*,

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

- Mr. Al Mamari, then a member of the *Majlis A'shura* of Oman, was sentenced on 10 October 2013 to a seven-year prison term and a fine of 1,000 riyals in connection with his participation in a demonstration on 22 August 2013 calling on the Government to adopt measures to combat pollution; he was convicted on charges of: (i) participating in a "riotous assembly" of more than 10 persons with intent to disrupt public order; (ii) deliberately obstructing public highways; and (iii) inciting the people of Liwa to demonstrate in front of Sohar port, and deliberately spreading biased reports violating the dignity of the State;
- Mr. Al Mamari was released on bail on 11 October 2013 pending the appeal, but rearrested later that same day on accusations that he was responsible for incitement during Friday prayers at the mosque; brief video material, presumably linked to the incident, was presented by the Chairman of the *Majlis A'Shura* to the Committee and shows Mr. Al Mamari saying: "If the government policy towards citizens does not change in the coming five years there will be a storm";
- On 16 December 2013, the Court of Appeal sentenced Mr. Al Mamari to three years in prison and a 500-riyal fine for impairing the honour of the State, as well as one year in prison and a 500-riyal fine for "disturbing public order" and "obstructing traffic"; in the whole period preceding the appeal, Mr. Al Mamari's lawyer was denied access to his client; the Supreme Court overturned the appeal decision against him in February 2014 and ordered a retrial in the Court of Liwa – the town in which the alleged crime took place – as opposed to the Court in Muscat; despite that ruling, the retrial was held in Muscat, with Mr. Al Mamari continuously detained for several months without the possibility of bail; after a series of proceedings, where several violations of due process and a lack of judicial independence were alleged by one of the complainants, Mr. Al Mamari was sentenced on 6 August 2014 to one year's imprisonment and a 200-riyal fine for participating in the demonstration and three years' imprisonment and a 500-riyal fine for organizing the demonstration; the court also ruled that the sentences would be served consecutively; the verdict was upheld on 30 October 2014, but the sentence was reduced to three years in prison; the verdict was confirmed by the Supreme Court on 24 February 2015,

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

- The demonstrations in which Mr. Al Mamari participated were peaceful and were held in protest against pollution in Liwa; the demands of the demonstrators were not political, as they merely requested the Government to protect the health of Liwa inhabitants affected by the pollution; according to the complainants, Mr. Al Mamari was arrested and sentenced on account of his having exercised his freedom of peaceful assembly; they emphasize that

many people reported that he attended the demonstration as a mediator and was carrying out his duty as a member of parliament, concerned by public demands;

- On 23 August 2013, Mr. Al Mamari held meetings with other parliamentarians and security authorities about the protests and the security forces' response; at the end of the meeting, Mr. Al Mamari returned to his brother's house, where he was staying after being injured by the police intervention in the demonstration; Mr. Al Mamari was arrested by security forces after they raided his brother's house in the early hours of 24 August 2013;
- In the course of the demonstrations, members of the security forces fired tear gas and used water cannons to disperse the crowd and Mr. Al Mamari was among those injured by the violent police intervention; the Chairman of the *Majlis A'Shura* noted in his letter of 6 March 2014, however, that the *Majlis* could not review the medical report on injuries of the citizens concerned, as none had lodged official complaints; however, according to the Chairman, members of the *Majlis* did not notice any injuries requiring medical treatment on the day following the event,

Recalling the following information provided by the Chairman of the *Majlis A'Shura*:

- The region of Liwa had received large-scale investments, which had been very beneficial to the people; while there may have been some pollution, the Government ensured that acceptable limits were not exceeded and five ministers had gone to the area to set such limits; if there was any serious concern about pollution parliament would have been the first to know about it and to adopt a critical position;
- Mr. Al Mamari had not discussed the issue of pollution with him before his arrest, or raised it at the appropriate parliamentary committee; Mr. Al Mamari's colleagues in parliament had advised him not to take to the streets and instead to use his powers in parliament to plead his cause;
- Mr. Al Mamari was prone to grandstanding, had an agitated personality and had caused trouble on previous occasions; he had been involved in the demonstrations in retaliation for the Sohar Port authorities' having withdrawn funding to his constituency, as attested by a letter from Mr. Al Mamari to those authorities,

Considering that the video footage provided by the Chairman of the *Majlis A'Shura* regarding the demonstration shows a group of some 100 individuals marching peacefully in the surroundings of Sohar Port in the presence of a large number of riot police, with part of the footage filmed from one of the vehicles equipped with a high-pressure water cannon as it shot water at the crowd; the film also briefly features some individuals throwing rocks, including members of the riot police,

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

Considering that the United Nations Special Rapporteur on the rights to freedom of peaceful assembly and of association conducted a mission to Oman between 8 and 13 September 2014 and that he was not permitted to meet with Mr. Al Mamari; *considering* that in his report on the mission (A/HRC/29/25/Add.1), the Special Rapporteur concludes the following:

- The legal environment for the exercise of the rights to freedom of peaceful assembly and of association in Oman is problematic and needs to be strengthened with reference to international human rights standards. The country's impressive achievements in building

the economy, maintaining stability and modernizing society are threatened in the long term by a climate in which the populace is not free to associate and organize itself to address its concerns or pursue its own interests. Silencing voices of dissent is not a viable approach going forward. When a Government fails to provide an outlet for popular sentiment, it loses a valuable opportunity to feel the pulse of the nation, and effectively creates a sealed vessel under pressure that will eventually explode with dire consequences,

Considering that the case of Mr. Al Mamari had been referred to the United Nations Working Group on Arbitrary Detention and, upon examination of all the information made available from the complainants and the authorities, it had concluded on 21 November 2014 that Mr. Al Mamari's detention had been arbitrary and called on the authorities to release him immediately; with regard to the legal provisions criminalizing the harming of the dignity of the State with the gathering of at least 10 individuals intending to breach public order, it was the opinion of the working group that, "The law allows a broad interpretation which may result, as it occurred in the case under consideration, in a violation of the right to freedom of peaceful assembly and association",

Recalling that the Omani parliamentary authorities have repeatedly claimed that freedom of opinion and expression and freedom of peaceful assembly are fully protected in Oman, including for members of parliament,

Considering that a Committee delegation, which visited Oman in May 2015 and was allowed to meet Mr. Al Mamari in detention, understood from the meetings with the Omani authorities that a clear consensus emerged that he should and would be released soon,

Considering that Mr. Al Mamari received a special royal pardon and was released on 4 May 2016,

1. *Thanks* the Chairman of the *Majlis A'Shura* for his continuous personal commitment to promoting a satisfactory solution to the case of Mr. Al Mamari;
2. *Notes* that Mr. Al Mamari was finally released;
3. *Deeply regrets* that the release came only four months before he had served all of his three-year prison term and that his conviction was based on charges and legal provisions that infringed his legitimate rights to freedom of assembly and freedom of expression;
4. *Decides to close* further examination of the case, in the light of his release;
5. *Requests* the Secretary General to convey this decision to the authorities and the complainants.

Fiji

FJI/02 - Tupou Draunidalo

The Committee,

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

The Governing Council of the Inter-Parliamentary Union,

Having before it the case of Ms. Tupou Draunidalo, a member of the Parliament of Fiji, which has been examined by the Committee on the Human Rights of Parliamentarians pursuant to the Procedure for the examination and treatment of complaints (Annex I of the Revised Rules and Practices),

Considering the following information provided in writing by the parliamentary authorities and the complainant, as well as at the hearing that the Committee on the Human Rights of Parliamentarians held on 24 October 2016 with the Fijian delegation, led by the Speaker,

Considering that, on 3 June 2016, the Parliament of Fiji decided to suspend Ms. Draunidalo for the remainder of her term in light of the following remarks she made in Parliament on 1 June 2016 as part of an exchange, as recorded in the *Daily Hansard*:

“Hon. Dr. M. Reddy (Minister for Education): Madam Speaker, we have also recognized our toppers¹, our great minds who are the ones who will be pushing the frontier, Madam Speaker. Therefore, we have got a policy for them, to look after these people who will come and push the frontier in this country, Madam Speaker. I cannot see any toppers from the other side, Madam Speaker, I cannot see, Madam Speaker.

(Laughter)

If there was any toppers from the other side, Madam Speaker, they would not have raised this issue of petition, Madam Speaker, unfortunately, there are no toppers there, Madam Speaker, I tell you in another ten years' time, five years' time, there will be some toppers sitting that side but they will be part of this side, Madam Speaker.

Hon. T. Draunidalo: fool...

Hon. A Sayed-Khaiyum²: Hey, do not call him a fool. Do not call him a fool.

Hon. Dr. M. Reddy: Madam Speaker, as the Finance Minister has said, is the last... Madam Speaker, I was a topper.

Hon. A Sayed-Khaiyum: Madam Speaker, a point of order. Hon. Draunidalo called the Minister for Education “a fool”.

Hon. T. Draunidalo: And he provided worse in his speech, calling us “dumb natives, you idiot”,

Considering the following information on file regarding the complaint which was subsequently submitted to the Privileges Committee:

- On 2 June 2016, a matter of privilege was raised with the Speaker pursuant to Standing Order No. 134(1). In response, the Speaker ruled that, in her opinion, there had been a *prima facie* breach of privilege, and so she referred the matter to the Privileges

¹ Tertiary Scholarship (TOPPERS) Programme

² He is also Fiji's Attorney General

Committee and ordered a report to be tabled in parliament no later than the following day, 3 June 2016;

- The opposition insisted that Ms. Draunidalo should attend. The Attorney General proposed that both he and Ms. Draunidalo should withdraw as members of the Privileges Committee and allow substitutes in their place. Both sides sought time to secure substitutes and the Chairperson also took the opportunity to seek the advice of the Speaker. The Committee reconvened at 5.50 pm. Mr. Karavaki advised the Committee that, unfortunately, a substitute could not be arranged and indicated that he would not participate in the proceedings, as he believed that there was little point in continuing and the opposition would raise their view in the House, considering that the Committee had prejudged Ms. Draunidalo, which is denied by the parliamentary authorities, including during the hearing on 24 October 2016 with the Committee on the Human Rights of Parliamentarians;
- The Attorney General presented his views to the Committee on the witness evidence. He tendered as evidence a copy of the audio recording of the exchange in parliament, previous cases from the High Court of the Republic of Fiji³ and social media postings. Ms. Draunidalo was invited to present her views on the matter. She asked to be excused because she had chosen to exercise her right to silence and believed that she would not receive a fair hearing;
- The Secretariat provided collated precedents from Fiji and other relevant jurisdictions to enable the Committee to consider the available sanctions, ranging from the mild to the most severe. The research team were asked to find similar offences in other jurisdictions and were given an hour to research. After reconvening, the Committee was informed that there was very little that could be gathered specific to the members' request – with the only similar circumstance being the suspension of a British Labour member of parliament from her party duties for anti-Semitic statements on social media;
- The Committee, after deliberating, was able to reach a consensus and resolved unanimously to endorse the following findings and recommendations:
 - (i) “What you say in parliament is subject to the standing orders. The dignity and respect of this House must at all times be upheld:
 - (ii) In this regard, Standing Order No. 62(4) states: It is out of order for a member, when speaking, to use – (a) offensive words against parliament or another member; (b) treasonable words; (c) seditious words; or (d) words that are likely to promote or provoke feelings of ill-will or hostility between communities or ethnic groups within Fiji;
 - (iii) The use of the words “fool” and “dumb natives” and “you idiot” are matters that are out of order in this parliament. The words “dumb natives” and “you idiot” are clearly offensive to any member of this House and has the potential to promote or provoke feelings of ill-will or hostility between communities or ethnic groups and constitute a *prima facie* breach of privilege”;
- In Fiji, there is a pressing need to strengthen institutions, and in particular parliament or the legislature, which was directly and physically attacked in the coups of 1987 and 2000;
- As the Committee noted in its report last year, given the implementation of the Constitution, which has been internationally recognized, and the fact that Fiji finally has true democracy, contempt for matters such as this must be taken seriously to protect the dignity of the legislature;
- The comments by Ms. Draunidalo have led to a flurry of social media responses that bring parliament into serious disrepute. It is not the example to be set as the standard or acceptable pattern of behaviour for members of parliament, and equally for the Fijian population, because it will undermine the very institution that the Constitution and all

³ This concerns the cases of Mr. Sakeasi Butadroka and Mr. Anand Baba, who were suspended in the 1990s from parliament for two consecutive meetings and, in the second case, for three sittings and subsequently for two months.

- people need to protect to ensure that there is sustained parliamentary democracy and respect for this very critical branch of the State;
- It is also critical that children and the younger population are not exposed to these types of racial slurs as the norm, or do not see that this parliament is condoning such behaviour by an honourable member of parliament;
 - It should be noted that under section 20(h) of the Parliamentary Powers and Privileges Act (Cap.5), any person who utters or publishes any false or scandalous slander or libel against parliament or any member of parliament is committing an offence, and such an offence warrants, inter alia, imprisonment for a maximum of two years;
 - Standing Orders Nos 62(4)(a) and (d) are progressive provisions, which seems to be quite rare and made it difficult to find contempt of a similar nature in other jurisdictions. However, the Committee was unanimous in its finding that contravention of the standing orders in question in these circumstances was not only a grave and serious breach of privilege, but a contempt of parliament;
 - Given that the Privileges Committee has unanimously found that Ms. Draunidalo has contravened Standing Order Nos 62(4)(a) and (d) in circumstances that were not only a grave and serious breach of privilege, but a contempt of parliament, the Privileges Committee strongly recommends that:
 - Ms Draunidalo must formally apologize in parliament, while under formal censure and before leaving the parliament precincts, to the following:
 - i. The Minister for Education, Heritage and Arts; and
 - ii. The people of Fiji.
 - The apology must reflect the severity of the breach and the fact that it has had far-reaching effects and gone viral on social media here and abroad. The apology should also recognize that the honourable minister did not, in fact, utter the words “dumb natives”;
 - Ms. Draunidalo should be suspended for the remainder of the term of parliament, with immediate effect from 3 June 2016, upon tendering of the apology and imposition of the censure by parliament;
 - During the period of suspension, Ms. Draunidalo is not allowed to enter the parliamentary precincts, including the Opposition Office. Immediately upon her suspension, Ms. Draunidalo must be ordered to leave the precincts of parliament and to remain outside of the parliament precincts; and
 - If Ms. Draunidalo fails to comply with any of the above, necessary enforcement measures must be imposed to ensure compliance,

Considering that the complainant disagreed with the Privileges Committee’s findings and recommendations for the following reasons, which were also stated on 3 June 2016 in parliament by Ms. Draunidalo and others:

- (i) The recording of the exchange in parliament was not heard in parliament. In this regard, Ms. Draunidalo claims that *Hansard* does not pick up all of the free-flowing discussions, interjections and words spoken at the time, with the audio recording being clearly different. She says that the recording underscores that, in response to the Attorney General’s complaint, she said, “And he implied worse in his speech”. Then she asked, “Calling us dumb natives?” before she said, “You idiot”. It was also pointed out that it is not clear to whom the words “idiot” or “dumb natives” were addressed;
- (ii) When Ms. Draunidalo made the alleged remarks addressed to Minister Reddy, the latter did not raise a point of order in that regard, as the Speaker had remarked during the debate, which is why the Speaker did not ask for a withdrawal of the comments, but allowed the debate to continue;
- (iii) The minister’s initial remarks were degrading for the opposition, which is composed almost exclusively of indigenous Fijians and iTaukei. The remarks are part of a pattern of

humiliation and mocking, through words and gestures, that the minister and Attorney General have used against the opposition in parliament;

- (iv) The recommended suspension for the remainder of Ms. Draunidalo's term is not provided for in law: Standing Order No. 76 provides for a maximum suspension of 28 days;
- (v) Ms. Draunidalo apologized in parliament by saying, "If anyone in this House or outside, or anyone else in Fiji, takes offence for what they think they have heard or manufactured to have heard, I unreservedly apologize",

Considering that, on 3 June 2016, parliament accepted the Privileges Committee's recommendations with 28 votes in favour and 16 against, after an amendment had first been defeated proposing that Ms. Draunidalo: (i) immediately withdraw the words "dumb natives"; (ii) apologize to the Honourable Minister, Dr Mahendra Reddy, the House and Fiji; (iii) be subject to a suspension from the House for a term that is allowed within Standing Order No. 76 and to the maximum of 28 days,

Considering the following relevant legal provisions in the Standing Orders:

"Article 75:

(1) The Speaker may order any member whose conduct is highly disorderly or repeatedly violates the standing orders to withdraw immediately from parliament or a period of time that the Speaker decides, being no more than the remainder of that sitting day.

Article 76: Naming of member and suspension for grossly disorderly conduct

(1) The Speaker may name any member whose conduct is grossly disorderly and call on parliament to judge the conduct of the member by immediately putting the question "That [member] be suspended from the service of parliament". There is no amendment or debate on the question.

...

(3) If the majority of all members vote in favour, the member is suspended, -

(a) on the first occasion, for three days (excluding the day of suspension);

(b) on the second occasion during the same session, for seven days (excluding the day of suspension); or

(c) on the third or any subsequent occasion during the same session, for 28 days (excluding the day of suspension).

...

(5) The fact that a member has been suspended under clause (3) or (4) does not prevent parliament from also holding the member's conduct to be in contempt",

Considering also that Article 73(2) of the Constitution states that: "(2) parliament may prescribe the powers, privileges and immunities of members of parliament and may make rules and orders for the discipline of members of parliament",

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

1. *Thanks* the parliamentary authorities for their cooperation and the information they provided, including during the hearing with the Committee;
2. *Is deeply concerned* about Ms. Draunidalo's suspension for the remainder of her term; *considers* that Article 73 of the Constitution, read together with Standing Order 76(5) of parliament, does not provide sufficient legal certainty and clarity as a basis for such a suspension; *considers* also that the suspension is wholly disproportionate, as it not only deprives Ms. Draunidalo of her right to exercise her parliamentary mandate, but also deprives her electorate from representation in parliament for a period covering half the term of parliament; *is also concerned* about what appears to be a recent trend in Fiji to

impose long-term suspensions on vocal opposition parliamentarians and the serious consequences this has for the opposition's ability carry out its work effectively;

3. *Reaffirms* that freedom of expression is absolutely essential to the parliamentary mandate and that the exercise of this right includes not only statements that are favourably received or regarded as inoffensive, but also those that may offend, shock or disturb others;
4. *Considers* in this regard that, although Ms. Draunidalo could have responded differently to the situation at hand, her words fall squarely within her right to freedom of expression; *considers* also that any concern about her words would have been best settled directly and immediately in the plenary of parliament;
5. *Believes* that, in light of the above, the best way forward is for parliament to swiftly lift Ms. Draunidalo's suspension; and *calls on* parliament to take the necessary action;
6. *Requests* the Secretary General to convey this decision to the competent authorities, the complainant and any third party likely to be in a position to supply relevant information;
7. *Requests* the Committee to continue examining this case and to report back to it in due course.

Fiji

FJI/03 - Ratu Isoa Tikoca

The Committee,

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

The Governing Council of the Inter-Parliamentary Union,

Having before it the case of Mr. Ratu Isoa Tikoca, a member of the Parliament of Fiji, which has been examined by the Committee on the Human Rights of Parliamentarians pursuant to the Procedure for the examination and treatment of complaints (Annex I of the Revised Rules and Practices),

Considering the following information provided in writing by the parliamentary authorities and the complainant, as well as at the hearing that the Committee on the Human Rights of Parliamentarians held on 24 October 2016 with the Fijian delegation, led by the Speaker,

Considering that, on 29 September 2016, the Parliament of Fiji decided to suspend Mr. Tikoca for the remainder of his term in light of the following remarks he made, and comments which ensued, in parliament on 5 July 2016, as recorded in the *Daily Hansard*:

- *"Fiji has recently adopted the title Minister of Economy. That is an appointment used in Arab countries, including Saudi Arabia, United Arab Emirates and Islamic State of Afghanistan. In the Fiji context, anything that is economy in Government, public and private enterprises comes under the Minister of Economy. This is unprecedented for Fiji. This self-proclaimed appointment will make the Minister of Economy the most powerful man in Fiji. He totally disregarded the democratic concern of the people of Fiji and of course this side of the House - a promotion of no separation of powers under the false pretence of a democratic Fiji. This was clearly demonstrated in the removal of two opposition members of parliament to the total disregard of their own Constitution and the standing orders of parliament. The Prime Minister must understand that such actions promote ill-will or hostility between communities in Fiji.*
- *Honourable Deputy Speaker, the Ministry of Economy has direct oversight over strategic sectors. One, sugar industry under the management of Mr. Abdul Khan. Two, the Fiji Hardwood and Fiji Pine under the management of Mr. Faiz Khan. Three, Fisheries PAFCO under the chairmanship of Mr. Iqbal Janiff and who is also the Vice-Chancellor of FNU. Four, Tourism, and I refer to Airports Fiji Limited by Mr. Faiz Khan as Board Chairman and CEO. Air Terminal Services chaired by Mr. Riyaz Sayed-Khaiyum. Border Security is managed by Mr. Xavier Khan. State broadcasting, managed by Riyaz Khaiyum, has been allocated \$6.7m for public service broadcast radio and public service broadcast TV \$4.6m. Seven, Commerce Ministry managed by Shaheen Ali. Eight, Commerce Commission has a board member, Mr. Feroz Ahmed Ghazali, who is a Pakistani deserter. The Central Bank is co-managed by Mr. Ariff Ali. Finance intelligence managed by Razim Buksh. Elections office is managed by Mr. Mohammed Saneem. Government ITC managed by Mr. Nisar Ali. They are also digitizing the Vola ni Kawa Bula and TLTB. Our Geneva mission, where the World Trade Organization is based, is managed by Mrs. Nazhat Shameem Khan. Hamid, founder of the road contractor Naim from Malaysia – a close friend of some people on that side.*
- *Recently, FTCAC laws were amended and given same powers as police. Now Fiji has two police forces. One controlled by the Commissioner of Police and one controlled by the AG himself.*

- *The recent bickering in parliament has drawn concerns of the Fijians and negative feeling against certain elite groups in Fiji being the minority group, however assuming critical chairmanship and CEO leadership positions in Fiji. Honourable Speaker, there appears to be rampant cronyism of the economy. Fiji faces the biggest threat since independence. We have never faced such threats before in our history. Our civilization, lifestyle and culture is under threat. The nation is under threat. Honourable Deputy Speaker, the sunset clause is fully operational. Honourable Deputy Speaker, I am concerned about this important issue. It's not a laughing matter. Government needs to address this immediately, as Fijians are disgusted about this. The concentration of economic power seems to be with a few elite. There is animosity growing within our various Fijian groups questioning why this elite group is being advanced over others. The fury with the stigma of one man leading the nation with his kind. People of Fiji have started to build misconception about others within this group, but have failed to identify that it is only one man that we need to isolate as the real dictator.*

[...]

- *What are you afraid of? What is quite clear is that we are witnessing a coup within a coup. Understand that."*
- Following these remarks, member of parliament Mr. Sudhakar raised a point of order. The Deputy Speaker, who was presiding at the time, made the ruling that Mr. Tikoca should continue, with a warning that he should consider his words carefully so as to "confine the debate to the budget and not make implications against any other member of parliament",

Considering the following with regard to the complaint, which was subsequently submitted to the Privileges Committee:

- According to the complainant, the Deputy Speaker's ruling was also in accordance with an earlier ruling by the Speaker that matters should be brought up immediately after the action giving rise to the complaint and not two or three days later. On 9 August 2016, the Speaker confirmed the Deputy Speaker's ruling and that such rulings were not subject to appeal except by motion of parliament. Nevertheless, much later, the Prime Minister submitted an official complaint to the Speaker, asking that she refer the matter to the Privileges Committee, which she did in a letter of 27 September 2016. The Privileges Committee met in the afternoon of the following day and concluded the following in its report:
- "On Tuesday, 5 July 2016, the Hon. Ratu Isoa Tikoca made certain statements, which quite clearly and selectively and more importantly intentionally targeted Fijians who are Muslims or adherents of Islam, contrary to Standing Order No. 62(4)(a) and (d).
- Privilege is afforded to all honourable members as a matter of right. Standing Order No. 133, however, makes it clear that freedom of speech and debate in parliament is subject to standing orders. Therefore, any member can say whatever they wish in the House, but subject to the standing orders. The dignity and respect for the House must at all times be upheld.
- In this regard, Standing Order No. 62(4) states:
"It is out of order for a member, when speaking, to use: offensive words against parliament or another member; treasonable words; seditious words; or words that are likely to promote or provoke feelings of ill-will or hostility between communities or ethnic groups within Fiji."
- The selective naming of Arab countries in reference to the usage of the name Ministry of the Economy, the naming of only Muslim officials serving in the offices of State listed, the use of the words "my kind" and "this elite group" make it clear that Mr. Tikoca was not only in breach of Standing Order No. 62(4) but that this breach was an intentional abuse of the parliamentary privilege of freedom of speech that this parliament cannot ignore, and he must therefore be dealt with decisively.
- In Fiji, there is a pressing need to strengthen institutions, and in particular parliament or the legislature, which was directly and physically attacked in the coups of 1987 and 2000.

- As this Committee had noted in both its previous reports, given the implementation of the Constitution, which has been internationally recognized, and the fact that Fiji finally has true democracy, contempt matters such as this must be taken seriously to protect the dignity of the legislature.
- The thinly veiled attack by Mr. Tikoca against a minority community must not be tolerated. The absolute privilege enjoyed by members must not be used to incite racial discord, as was so often done in the past. It is not the example we want to set as the standard or acceptable pattern of behaviour for members of parliament, and equally for the Fijian population, because it will undermine the very institution that we all need to protect to ensure that there is sustained parliamentary democracy and respect for this very critical arm of the State.
- It is also critical that our children and the younger population are not exposed to this type of racial profiling and vilification as the norm, or do not see that this parliament is condoning such behaviour by an honourable member of parliament.
- It should be noted that, under section 20(h) of the Parliamentary Powers and Privileges Act (Cap. 5), any person who utters or publishes any false or scandalous slander or libel on parliament or upon any member of parliament commits an offence, and such an offence warrants, inter alia, imprisonment for a maximum of two years. That is how important the reputation of parliament is. This privilege protects our right to freedom of speech in the House by protecting our very reputations, and this privilege must not be abused to incite ill-will or hostility between the communities.
- Government Members were firmly of the view that Mr. Tikoca's actions were not only a grave and serious breach of privilege but a contempt of parliament.
- Given the above, the Privileges Committee recommends by majority that: Hon. Ratu Isoa Tikoca be suspended for the rest of the term of parliament; during the period of suspension, Hon. Ratu Isoa Tikoca is not to be allowed to enter the parliamentary precincts; and if Hon. Ratu Isoa Tikoca fails to comply with any of the above, that necessary enforcement measures must be imposed to ensure compliance”.

Considering that, on 29 September 2016, parliament accepted the findings and recommendations of the Privileges Committee, after first defeating a proposed amendment to reduce the penalty to a 30-day suspension,

Considering that the complainant considers that the suspension is arbitrary for the following reasons:

- The Privileges Committee made it clear that it found Mr. Tikoca guilty before hearing him first, which allegation was denied by the parliamentary authorities;
- Mr. Tikoca's remarks were not directed at the Muslim community as such and were not likely to provoke and promote feelings of ill-will or hostility, as was also borne out by the comments made on social media in the weeks and months that followed;
- Mr. Tikoca made an apology in parliament;
- The Deputy Speaker, as confirmed by the Speaker, had already ruled on the matter, so it therefore cannot be reopened;
- The recommended suspension for the remainder of Mr. Tikoca's term is not provided for in law: Standing Order No. 76 provides for a maximum suspension of 28 days;
- If the House finds that a member has been in breach of privilege, then the usual practice, which is also borne out by Fiji case law, is to ask the member to withdraw the comments, which would be the end of the matter,

Considering that the parliamentary authorities, in their letter of 18 October 2016, as well as during the hearing with the Committee, have stated in response that:

- The Privileges Committee minutes note that, although they had deliberated and come to a conclusion on the first day of their proceedings, and initially did not wish to call any

- witnesses, they had decided on the second day that they did want to hear from Mr. Tikoca;
- The Privileges Committee, and later parliament, were in no doubt as to whom the remarks were directed;
 - Mr. Tikoca's apology was noted;
 - The Deputy Speaker did not rule on any matter of privilege;
 - The standing order deals with gross disorderly conduct. Clause (5) of the standing order clearly states that being suspended under clause (3) or (4) does not prevent parliament from also holding the member's conduct to be in contempt. It is therefore clear that matters of privilege and contempt are not covered by that particular standing order; and
 - Ultimately, the sanction imposed by parliament is for parliament to determine. Section 73(2) of the Constitution of Fiji states: "Parliament may prescribe the powers, privileges and immunities of members of parliament and may make rules and orders for the discipline of members of parliament",

Considering the following Standing Orders:

"Article 75:(1) The Speaker may order any member whose conduct is highly disorderly or repeatedly violates the Standing Orders to withdraw immediately from parliament or a period of time that the Speaker decides, being no more than the remainder of that sitting day.

Article 76: Naming of member and suspension for grossly disorderly conduct

(1) The Speaker may name any member whose conduct is grossly disorderly and call on parliament to judge the conduct of the member by immediately putting the question "That [member] be suspended from the service of parliament". There is no amendment or debate on the question.

...

(3) If the majority of all members vote in favour, the member is suspended, -

(a) on the first occasion, for three days (excluding the day of suspension);

(b) on the second occasion during the same session, for seven days (excluding the day of suspension); or

(c) on the third or any subsequent occasion during the same session, for 28 days (excluding the day of suspension).

(4) A member who is suspended who refuses to obey a direction of the Speaker to leave the Chamber is, without any further question being put, suspended from the service of parliament for the remainder of the calendar year.

(5) The fact that a member has been suspended under clause (3) or (4) does not prevent parliament from also holding the member's conduct to be in contempt",

1. *Thanks* the parliamentary authorities for their cooperation and the information they provided, including during the hearing with the Committee;
2. *Is deeply concerned* about Mr. Tikoca's suspension for the remainder of his term; *considers* that Article 73 of the Constitution, read together with Standing Order 76(5) of parliament, does not provide sufficient legal certainty and clarity as a basis for such a suspension; *considers* also that the suspension is wholly disproportionate, as it not only deprives Mr. Tikoca of his right to exercise her parliamentary mandate, but also deprives his electorate from representation in parliament for a period covering half the term of parliament; *is also concerned* about what appears to be a recent trend in Fiji to impose long-term suspensions on vocal opposition parliamentarians and the serious consequences this has for the opposition's ability do its work effectively;

3. *Reaffirms* that freedom of expression is absolutely essential to the parliamentary mandate and that the exercise of this right includes not only statements that are favourably received or regarded as inoffensive, but also those that may offend, shock or disturb others;
4. *Considers* in this regard that Mr. Tikoca's words, although touching on sensitive societal matters, fall within his right to freedom of expression; *considers* also that any concern about his words would have been best settled directly and immediately in the plenary of parliament, as seemed to have happened at first;
5. Believes that, in light of the above, the best way forward is for parliament to swiftly lift Mr. Tikoca's suspension; and *calls on* parliament to take the necessary action;
6. *Requests* the Secretary General to convey this decision to the competent authorities, the complainant and any third party likely to be in a position to supply relevant information;
7. *Requests* the Committee to continue examining this case and to report back to it in due course.