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Decisions of the Committee on the Human Rights of Parliamentarians

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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 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 199th session (October 2016); *noting* that of these members, Mr. Pilieri, 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; *referring also* to the existing cases under file name VEN/24-29, which concern parliamentarians from the MUD who were elected for the first time in 2015,

Having before it the new cases of Mr. Gilber Caro, Mr. Eudoro Gonzalez and Mr. Luis Florido, who were elected in 2015, which have been examined by the Committee on the Human Rights of Parliamentarians pursuant to the Procedure for the examination and treatment of complaints (Annex I of the Revised Rules and Practices),

Considering the information regularly provided by the complainant and by parliamentarians belonging to the MUD and during the hearing with the Committee on 3 April 2017,

Considering the letter of 12 March 2017 from Mr. Darío Vivas Velazco, member of the Venezuelan National Assembly and Coordinator of the Venezuelan parliamentary group *Bloque de la*

Patria in the Latin American Parliament, and the information he provided at the hearing with the Committee on 3 April 2017; *also considering* the multiple contacts with the IPU Secretary General and the IPU Secretariat have had with the Venezuelan Permanent Mission to the United Nations in Geneva,

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

- **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;

- **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 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;

- **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;

- **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;
- 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 charges against her. On December 2014, formal charges were reportedly brought by the Prosecutor's Office. No information is on file with regard to the current status of 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 of December 2015 for a further term as a member of the

National Assembly. According to the complainant, the suspension was totally disproportionate and unconstitutional and a violation of human rights;

- **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;

- **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;

- **Ms. Nirma Guarulla, Mr. Julio Ygarza and Mr. Romel Guzamana:**

- 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 judgement related to allegations of fraud during the election of Ms. Guarulla, Mr. Ygarza and Mr. Guzamana (all from the coalition of the former opposition, the MUD) and Mr. Miguel Tadeo (from the PSUV). The suspension has the effect of reducing the two-thirds majority that the "opposition", now majority, would have had in the National Assembly to take certain important decisions, and is therefore of particular significance;

- On 5 January 2016, the National Assembly decided to disregard this judgement and resolved that the deputies from Amazonas should take their seats, although Mr. Tadeo from the PSUV chose to respect the court order. 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;

- As a result of this continued contempt, since August 2016 the President of Venezuela has deprived the National Assembly of its funds to function, including salaries for its members and monies needed to cover its running costs;

- The complainant has repeatedly reiterated concerns about the lack of independence of the Supreme Court, including by pointing out that 13 of its judges and 21 substitutes judges of the Court, some of whom had close affinity with, if not direct ties to, the governing party, were elected hastily by the outgoing National Assembly within one

month after the 6 December 2015 elections had eliminated the governing party's majority in the newly elected National Assembly, which would take office on 5 January 2016;

- **Mr. Rosmit Mantilla, Mr. Enzo Prieto and Mr. Gilberto Sojo:**

- Mr. Mantilla, Mr. Prieto and Mr. Sojo, elected as alternate members of parliament in the parliamentary elections 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;

- Considering that Mr. Mantilla was released on 17 November 2016 and took office as a parliamentarian on 22 November 2016. The legal case against him, however, continues and has reached the trial stage and Mr. Mantilla has to report regularly to the authorities. Mr. Sojo was released on 13 December 2016 and subsequently sworn in as a member of parliament. The legal case against him is, however, still pending;

- **The new case of Mr. Gilbert Caro:**

The complainant states that, on 11 January 2017, officers from the Bolivarian Intelligence Service (SEBIN) arbitrarily arrested and detained Mr. Caro, who is still being held at the detention centre "26 de julio" in San Juan de los Moros in Guárico State. The complainant claims that Mr. Caro is to be tried by a military court, which contravenes articles 28, 49 and 261 of the Venezuelan Constitution, and that he has not been presented in due time before a judge;

- **The new cases of Mr. Luis Florido and Mr. Eudoro Gonzalez and new developments concerning Mr. William Dávila:**

- Mr. Florido, President of the National Assembly's Committee on Foreign Relations, Sovereignty and Integration, returned to Venezuela on 27 January 2017 after carrying out parliamentary duties abroad. Upon his return, immigration officers confiscated his passport, informing him that the document had been cancelled owing to a reported official complaint of theft of the said document. On 6 February 2017, Mr. Florido was ready to travel abroad, using this time his ID card, which suffices for travel between Mercosur Member States, when he was told that he was subject to an order prohibiting him from leaving the country. On 7 February 2017, Mr. Dávila who was about to travel abroad, was likewise informed by immigration officers that his passport had been reported as stolen and therefore cancelled. Similarly, on 21 March 2017, Mr. González returned to Venezuela when immigration officers told him that his passport had been cancelled owing to a reported official complaint of theft of the said document;

- In all three cases, the complainant affirms that no official complaint about the theft of the passports was ever made. It considers that the measures against the three parliamentarians are arbitrary and have no basis in law, being merely meant to harass and silence parliamentarians wishing to participate in international forums to voice their criticism of the political situation in Venezuela,

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 by then arisen in the 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 numerous letters from the current Speaker of the National Assembly and his immediate predecessor, including his 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,

Considering that the mission, which was due to travel to Venezuela from 20 to 22 March 2017, was cancelled at the last minute after receiving the letter addressed to the IPU Secretary General by Mr. Darío Vivas Velazco, member of the Venezuelan National Assembly and Coordinator of the Venezuelan parliamentary group *Bloque de la Patria* in the Latin American Parliament, and the

refusal to provide a visa to the one member of the mission requiring it; *considering also* that in his letter, Mr. Dario Vivas states that "the Inter-Parliamentary Union has been welcomed in our country on previous occasions, including during His Excellency's successful visit in 2016. However, the National Assembly is currently acting outside the bounds of its constitutional functions; thus, it is not authorized to represent the Legislative Power before international organizations such as the Inter-Parliamentary Union" and that for the *Bloque de la Patria* therefore "the legal, political and practical conditions required for the proper conduct of a visit by the IPU Committee on the Human Rights of Parliamentarians cannot be met as they might have been in different circumstances",

Recalling 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 and parliamentarians from majority and opposition parties, and that his visit laid the groundwork for the organization of the planned mission by the Committee; *further recalling* the report by the Secretary General on his mission to the Committee in October 2016 and *considering* his report to the Committee at its current session,

Recalling that from May 2016 to February 2017 efforts were made, with mediation by the Secretary General of UNASUR, the former Prime Minister of Spain and the former Presidents of the Dominican Republic and Panama, and later the Vatican as well, to bring the two political sides together, which led to official plenary meetings on 30 October 2016 and 11 and 12 November 2016 to decide on the issues for the political dialogue. However, the dialogue stalled subsequently, in light of disagreements about what had been concluded thus far and how to proceed,

Considering that, on 29 March 2017, the Supreme Court decided to assume the powers of the National Assembly temporarily, considering that the latter remained in contempt of its rulings. According to Mr. Dario Vivas, following an urgent meeting of the National Council of Defence, the Supreme Court swiftly reversed its decision; the text of this decision appears to be unavailable as of yet,

1. *Deeply* regrets that, despite the agreement of the Speaker of the National Assembly, the governing party did not welcome the mission at this point in time and that the visa was refused to one of its members, all the more so as it remains convinced that in the cases at hand, against the backdrop of the current political crisis, such a mission could help address the concerns and questions that have arisen thus far; *hopes therefore* that the mission can still take place soon;

2. *Is deeply concerned* about the continued suspension of four members of the National Assembly; *reaffirms* that this situation not only directly affects their individual political rights, but also deprives their constituencies of representation in parliament; *fails to unders*tand 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; *fails to understand also* how, on a matter of such importance, it is possible that the Supreme Court has not yet issued a ruling, sixteen months after the elections; *calls on* the Supreme Court to do so as a matter of urgency, with due consideration of all the facts and with full respect for the right to defence of those concerned;

3. *Considers* that the subsequent rulings by the Supreme Court declaring all decisions by the National Assembly to be null and void for as long as the parliamentarians remain involved in the work of parliament to be grossly excessive;

4. *Is deeply concerned* that, as a result of this situation, the National Assembly as a whole and its members have been deprived of the financial means to which they are entitled to carry out their work, thereby seriously undermining the effectiveness of parliament; *urges* the relevant authorities to remedy this situation speedily; *stresses* at the same time the need for the various branches of State to act within their constitutionally prescribed mandate and prerogatives;

5. *Recognizes* that the issue relating to the suspension of the four members of the National Assembly is part of a larger political crisis in Venezuela, which can only be solved through political dialogue; *calls on* both sides to act in good faith and to commit fully to restarting the political dialogue with the assistance of the official mediators; *reaffirms* that the IPU stands ready to assist with these mediation efforts; and *wishes* to receive further official information about how this assistance can best be provided;

6. *Is pleased* that Mr. Mantilla and Mr. Sojo were released; *wishes to know* more about the prospect that Mr. Prieto will likewise soon be released and be allowed to carry out his parliamentary mandate; *wishes* to have full details of the legal grounds and facts that underpin the accusations against him and the stage reached in the legal proceedings;

7. *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 justifications for the legal proceedings brought against them individually and for the lifting of their parliamentary immunity;

8. *Is deeply concerned* that the passports of Mr. Gonzalez, Mr. Flores and Mr. Dávila were cancelled, apparently without any serious justification; *cannot but conclude* that this supports the allegations that the cancellation is in fact a reprisal for their political and parliamentary work, and is meant to prevent them from speaking about the situation in Venezuela in international fora; *urges* the relevant authorities to return the passports as a matter of urgency and to prevent these incidents from occurring;

9. *Notes* the allegations regarding Mr. Caro, in particular the alleged lack of respect for his parliamentary immunity and the possibility that he will be tried by a military court; *wishes* to receive official information on these points and on the exact accusations against him and the facts underpinning them;

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

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

Bangladesh

BGL/14 - Shah Ams Kibria

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. Shah Ams Kibria, a member of the Parliament of Bangladesh who was assassinated in a grenade attack in January 2005, and to the resolution adopted at its 197th session (October 2015),

Taking into account the letter from the parliamentary authorities, dated 26 October 2016, the information provided at the hearing held with the Deputy Speaker and another member of the Parliament of Bangladesh during to the 136th IPU Assembly, as well as the information provided by the complainants and other sources of information,

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

- The initial inquiry into the assassination proved to be an attempt by the investigating officers to divert the course of justice. Since the re-opening of the investigation in March 2007, Islamist militants belonging to the Horkatul Jihad al Islami (Huji), including its leader Mr. Mufti Hannan Munshi, have been implicated. According to the March 2010 report of the Ministry of Home Affairs, several persons have been arrested, including the two who detonated the grenades (Mr. Mizanur Rahman Mithu and Mr. Md Badrul Alam Mizan). In addition, the former State Minister for Home Affairs, Mr. Lutfozzaman Babar, stands accused of harbouring and protecting the individuals who threw the grenades;
- According to the parliamentary authorities, the investigation found that a Kashmir-based Islamic militant organization led by Mr. Abdul Mazid Butt had helped Mr. Mufti Abdul Hannan and Mr. Moulana Tajuddin, Huji leader in Bangladesh, transport Arges grenades from Pakistan to Bangladesh with the intent to commit assassinations in different parts of the country. Further investigation also revealed that some of the accused had been present when the grenades were thrown at Mr. Kibria;
- On 20 June 2011, the Criminal Investigation Department (CID) submitted a supplementary charge sheet against 14 other persons, with the request that the court rule on their status;
- Mr. Kibria's family objected to the charge sheet and filed a no-confidence motion on the grounds that it was, in its view, incomplete and, among other concerns, failed to identify all the individuals involved in the assassination, in particular the real masterminds of the murder. The family further expressed concern that, unless further investigations were conducted, the evidence was unlikely to hold up in court, as it had been drawn largely from interrogations conducted in prison and the accused would claim that they had been obtained under duress. The family also remained concerned about persisting political interference in the investigations and about the fact that it was not kept regularly informed of new developments and that its proposals to help advance the investigation had been disregarded;
- In January 2012, the judge granted the family's motion and ordered further investigations to be carried out. The newly assigned investigating officer visited Mrs. Kibria and indicated that she would remain in regular contact with the family as the third investigation proceeded;
- A third investigation was initiated. The investigating officer reviewed past case records and obtained testimony from 93 witnesses. This resulted in the identification and arrest of new suspects. A new charge sheet was submitted in December 2014 against

35 individuals. This third charge sheet was transferred to the Speedy Trial Tribunal in June 2015 and confirmed on 13 September 2015. Trial proceedings are still under way, with a total of 171 witnesses expected to provide testimony;

- According to the authorities, the new suspects identified include Mr. Harris Chowdhury (the political adviser of the then Prime Minister Khaleda Zia – Mr. Chowdhury appears to also have been involved in the August 2004 attack against the then leader of the opposition and current Prime Minister, Sheikh Hasina), who is suspected of having planned the assassination. Mr. Harris Chowdhury, as well as two other suspects identified in the latest charge sheet, has absconded. The Bangladeshi authorities confirmed that they have informed Interpol in order to seek necessary action and that a red notice has been issued against Mr. Harris Chowdhury;
- According to one of the complainants, in the past few years Mr. Kibria's family had stopped receiving regular updates on the investigation. The complainant observes that this lack of information, coupled with the long history of political interference, complications and delays in the investigation, has resulted in a loss of confidence in the judicial process on the part of Mr. Kibria's family. The family did not contest the third charge sheet, as it had done in the two earlier ones, because of this loss of confidence. The family reportedly continues to believe that other individuals involved in the crime, particularly the potential instigators, have not yet been charged due to political interference, and consider that justice delayed is justice denied;
- During the hearing conducted at the 132nd IPU Assembly (Hanoi, March 2015), the Deputy Speaker of the Bangladeshi Parliament stated that the case was now on the right track, that the Bangladeshi authorities were committed to completing the judicial proceedings quickly and that he was confident that quick progress would be made towards resolving the case. He observed that the delays in the investigation were initially caused by political factors. He fully acknowledged that justice delayed was justice denied and emphasized that transparency in the proceedings and due process were essential to ensure a satisfactory outcome. He was not aware that Mr. Kibria's family had not been informed of recent investigative steps and observed that it was normally a matter of routine for investigators to keep the families informed. He further pledged to convey a copy of the new charge sheet when made public, once it had been confirmed by the court, as well as continue to convey information on any new developments in the proceedings;
- The parliamentary Standing Committee on the Ministry of Home Affairs has continued to monitor the case,

Considering that, during the hearing conducted at the 136th IPU Assembly (Dhaka, April 2017), the Deputy Speaker of the Bangladeshi Parliament reaffirmed that judicial proceedings in Bangladesh take time, and that the delays in the investigation were largely caused by the defendants and by the family when it contested the previous charge sheets. The trials were now ongoing in two separate proceedings running in parallel (assassination case and explosives case). It was taking time due to the need for the judges to hear every single witness in person and to allow the parties to cross-examine them. Great care was being taken to respect all rules of criminal procedure and the rights to defence, as the case was politically sensitive. A number of suspects were senior officials of the current opposition party and, if the court rushed the process and was not sufficiently transparent, the opposition would say that it was a political conspiracy. The court was therefore closely scrutinizing the evidence provided so as to ensure fair process. Forty-three witnesses had been examined by the court to date and the next hearing was scheduled to take place on 29 March 2017,

Bearing in mind the striking similarities between the grenade attack against Mr. Kibria and that against Sheikh Hasina and others five months earlier. Both attacks targeted key members of the opposition at the time and the same type of grenade was used both times. In both cases, the investigation has revealed an alleged conspiracy between members of the then ruling party and Islamist extremists and, in this respect, several of the persons charged stand accused in the two cases, including several members of the current opposition Bangladesh Nationalist Party (BNP) and leaders of Harkat-ul-Jihad al Islami,

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

1. *Thanks* the Deputy Speaker for the information provided during the hearing; however, *reaffirms its wish* to receive more detailed information in writing on a regular basis on developments in the ongoing trial proceedings; *regrets* that such information has not been forthcoming and that neither the parliamentary authorities, nor the Attorney General, have yet responded in relation to the long-standing proposed trial-observation mission; *reiterates its wish* to receive a copy of the latest charge sheet, as well as further information on the grounds and evidence supporting the charges against the suspects;

2. *Notes* that the proceedings are still under way and that they are making slow progress; *takes note* of the reasons given by the parliamentary authorities in this respect;

3. *Remains deeply concerned* that, more than 12 years after the attack, none of the perpetrators has yet been held responsible in a court of law; *reiterates* that justice delayed is justice denied; and *hopes* that the trial will proceed swiftly and that further progress will promptly be made towards ensuring full accountability for this serious crime, in conformity with national and international standards of fair trial, including those regarding the application of capital punishment, and without any political interference;

4. *Is worried about* the lack of fairness of and loss of confidence in the current proceedings, including by Mr. Kibria's family, as well as the strong suspicions of the politicization of the judiciary;

5. *Notes with deep concern* that Mr. Kibria's family and lawyers have claimed for several years now that they have not been kept informed of progress made in the investigation or in the trial proceedings, including dates of hearings scheduled by the court, but that the authorities continue to claim the contrary; *urges once more* the relevant authorities to take all appropriate measures immediately to ensure that the family is regularly and fully informed of all judicial developments and therefore able to participate meaningfully in the ongoing proceedings to ensure transparency in the ongoing judicial proceedings and accountability for the crimes;

6. *Notes with concern* that several suspects remain at large and takes note of the efforts undertaken by the authorities to apprehend them; *wishes* to be kept informed of progress in this regard;

7. *Notes with appreciation* that the Parliament of Bangladesh continues to monitor the case; *expects* it to convey its concerns and requests for information to the relevant executive and judicial authorities; and *trusts* that it will continue to keep the Committee regularly apprised of any significant developments and of the responses provided by all relevant authorities;

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

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

Bangladesh

BGL/15 - Sheikh Hasina

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 Sheikh Hasina, leader of the opposition at the time the communication was submitted, and current Prime Minister of Bangladesh, and to the resolution adopted at its 197th session (October 2015),

Taking into account the letter from the parliamentary authorities dated 26 October 2016, the letter from the Principal Secretary at the Prime Minister's Office dated 12 December 2016, the hearing held with the Deputy Speaker of the Parliament of Bangladesh and another member of parliament during the 136th IPU Assembly, as well as the information provided by the complainants and other sources of information,

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

- On 21 August 2004, a well-planned grenade attack was launched against Sheikh Hasina, resulting in her injury, as well as the death and injury of scores of other individuals;
- The initial investigation into the attack led to the arrest of 30 suspects, three of whom made statements confessing to their participation in the attack, which were later found to be false and fabricated;
- A subsequent investigation into the attack revealed the following: the attack was carried out by Islamist militants belonging to Horkatul Jihad al Islami (Huji), several of whom, including its leader Mufti Hannan Munshi, were arrested in connection with the case; upon interrogation, the assailants disclosed the involvement of government officials who, upon further investigation, were found to have provided administrative and financial support for the attack, including involvement in its planning and in helping facilitate the escape of some of the perpetrators;
- After the deadline for submitting the final investigation report had been extended many times, on 2 July 2011 the Criminal Investigation Department (CID) submitted a supplementary charge sheet and formally indicted, on 18 March 2012, 30 more persons, including Mr. Lutfozzaman Babar (State Minister of Home Affairs), Mr. Abdus Salam Pinto (Deputy Minister, whose brother, Mr. Moulana Mohammad Tajuddin, had supplied the grenades used in the attack), Mr. Ali Ahsan Mohammed Mujahid (Secretary General of Jamaat E Islami Bangladesh), Mr. Tarek Rahman (Senior Vice-President of the Bangladesh Nationalist Party (BNP) and the son of former Prime Minister Khaleda Zia) and Mr. Harris Chowdhury (Political Adviser to Khaleda Zia), who were charged under sections 34, 109, 118, 119, 120(b), 201, 212, 217, 218, 302, 307, 324, 326, and 330 of the Criminal Code and sections 3, 4 and 6 of the Explosive Substances Act. Former heads of intelligence and the police were also named in the charge sheet. Further investigations also found that Mr. Abdus Salam Pinto, Mr. Lutfozzaman Babar and Mr. Tarek Rahman had assured the perpetrators that they would provide the necessary administrative help to carry out the attack, with Mr. Babar guaranteeing that security measures would be managed in a way that would enable the assailants to carry out the attack freely. Seven of the indicted individuals were also found to have diverted the course of justice with respect to the initial investigation in order to shield the true perpetrators;
- A total of 52 suspects have been charged. As of March 2017, eight had been granted bail and 18 had fled abroad to evade justice;

- According to the authorities, one absconded suspect, Mr. Abu Bakar (aka Hafej Salim Hawlader), had been arrested and referred to the court. Red notices had been issued against Mr. Tarek Rahman, Mr. Al Haj Moulana Mohammad Tajuddin Mia, Mr. Harris Chowdhury, Mr. Kazi Shah Mofazzal Hossen Kaykobad and Mr. Ratul Ahammed Babu, with red notices for other absconded individuals currently being processed;
- The trial has been under way since 2012. A total of 491 witnesses are scheduled to provide testimony. Approximately 100 witnesses appeared before the court in 2014, 90 in 2015 and 20 in 2016, according to the information provided by the authorities. The trial has been progressing slowly;
- The Deputy Speaker stated, during a hearing held at the 132nd IPU Assembly (Hanoi, March 2015), that the case was on the right track and that the Government was committed to completing the trial quickly. He fully acknowledged that justice delayed was justice denied and emphasized that transparency in the proceedings and due process were essential to ensure a satisfactory outcome. He stated that, even without hearing the full roster of witnesses, the case could advance and reach its conclusion if the prosecution and the court agreed that sufficient evidence had been received. The attack and the circumstances contributing to the long delays in the investigation and trial were influenced by political factors. The case had also been impeded by procedural challenges filed by the defence lawyers with the intention of delaying the pursuit of justice. The Bangladeshi Government was in discussions with the authorities of the United Kingdom to facilitate the extradition of Mr. Tarek Rahman;
- The Parliament's Standing Committee on the Ministry of Home Affairs has continued to monitor the case,

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

Considering that in the letters of October 2016, and during the hearing conducted during the 136th IPU Assembly, the parliamentary authorities indicated the following:

- 224 witnesses out of a total of 491 witnesses have provided testimony to date. The most recent hearings were scheduled to take place on 20 and 21 March 2017 to cross-examine witness No. 225. With the exception of two remaining accused, all the other accused had already completed their cross-examination of this witness;
- Mr. Kazi Shah Mofazzal Hossen Kaykobad, one of the absconding suspects against whom a red notice had been issued, has been arrested in the United Arab Emirates and efforts were currently underway to secure his extradition to Bangladesh;
- Great care was being taken to respect all rules of criminal procedure and the rights to defence, as the case was politically sensitive. A number of suspects were senior officials of the current opposition party. If the court rushed the process and was not sufficiently transparent, the opposition would say that it was a political conspiracy. The court was therefore closely scrutinizing the evidence provided so as to ensure fair process,

Bearing in mind the striking similarities between the grenade attack against Mr. Kibria and that against Sheikh Hasina and others five months earlier. Both attacks had targeted key members of the opposition at the time, and the same type of grenade was used both times. In both cases, the investigation has revealed an alleged conspiracy between members of the then ruling party and Islamist extremists and, in this respect, several of the persons charged stand accused in the two cases include several members of the current opposition Bangladesh Nationalist Party (BNP) and three Harkat-ul-Jihad al Islami leaders,

Also bearing in mind that article 35 of the Bangladeshi Constitution provides that "every person accused of a criminal offence shall have the right to a speedy and public trial by an independent and impartial court or tribunal established by law". The International Covenant on Civil

and Political Rights (ICCPR) – to which Bangladesh is a party – also affirms the right to be tried without undue delay. At its universal periodic review (UPR) before the United Nations Human Rights Council, Bangladesh accepted recommendations made to end impunity and to take necessary measures to ensure that perpetrators of human rights violations are prosecuted,

1. *Thanks* the Deputy Speaker for the information provided during the hearing; however, *reaffirms its wish* to receive more detailed information in writing on a regular basis on developments in the ongoing trial proceedings; *regrets* that such information has not been forthcoming and that neither the parliamentary authorities, nor the Attorney General, have yet responded in relation to the long-standing proposed trial-observation mission;

2. *Notes* that the proceedings are still under way and that they are making slow progress; *takes note* of the reasons given by the parliamentary authorities in this respect;

3. *Remains deeply concerned* that, more than 12 years after the attack, none of the perpetrators has yet been held responsible in a court of law; *reiterates* that justice delayed is justice denied and *hopes* that the trial will proceed swiftly and that further progress will promptly be made towards ensuring full accountability for this serious crime, in conformity with national and international standards of fair trial, including those regarding the application of capital punishment, and without any political interference;

4. *Is worried about* the lack of fairness of and loss of confidence in the proceedings, as well as the strong suspicions of the politicization of the judiciary;

5. *Notes with concern* that several suspects remain at large and takes note of the efforts undertaken by the authorities to apprehend them; *wishes* to be kept informed of progress in this regard;

6. *Notes with appreciation* that the Parliament of Bangladesh continues to monitor the case; *expects it to* convey its concerns and requests for information to the relevant executive and judicial authorities; and *trusts* that it will continue to keep the Committee regularly apprised of any significant developments and of the responses provided by all relevant authorities;

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

8. *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 15 parliamentarians from the opposition Cambodian National Rescue Party (CNRP), who are all long-standing and prominent members of the CNRP leadership: Mr. Chan Cheng, Ms. Mu Sochua, Mr. Keo Phirum, Mr. Ho Van, Mr. Long Ry, Mr. Nut Romdoul, Mr. Men Sothavarin, Mr. Real Khemarin, Mr. Sok Hour Hong, Mr. Kong Sophea, Mr. Nhay Chamroeun, Mr. Sam Rainsy, Mr. Um Sam An, Mr. Kem Sokha and Ms. Thak Lany, and the decision adopted at its 199th session (October 2016, Geneva),

Referring to the hearings held with the Cambodian delegation to the 136th IPU Assembly and with Ms Saumura Tioulong on behalf of the CNRP,

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

Recalling the letters dated 11 July and 11 October 2016 of the Secretary General of the National Assembly of the Kingdom of Cambodia, the information submitted by the complainants and reliable third parties, as well as the hearings conducted with the Cambodian delegation and the complainants at the 135th IPU Assembly (October 2016, Geneva),

Taking into account that the complainants' claim that the cases under examination demonstrate that the ruling party is attempting to weaken, silence and exclude the opposition in the lead-up to the upcoming 2017 and 2018 local and national elections by various means, including: (i) acts of intimidation and pressure; (ii) physical violence against members of parliament; (iii) politico-judicial harassment characterized by the multiplication of groundless criminal prosecutions, unfair trials and court convictions, as well as charges kept dangling to maintain a permanent threat of arrest; (iv) exclusion from political participation and from entry into Cambodia of the former leader of the opposition; and (v) threats of suspension and dissolution of the CNRP and of a future ban on the political activities of its newly designated leadership pursuant to the recently passed amendments to the 1997 political party law,

Recalling the following information already on file on the individual situation of the 15 members of parliament whose cases have been referred to the Committee on the Human Rights of Parliamentarians since July 2014:

- **Mr. Chan Cheng**, a member of the National Assembly, was convicted to two years' imprisonment on 13 March 2015. His parliamentary immunity has not been lifted by the current legislature. He is free, pending the final decision of the appeals court. The appeal has been pending for two years. The long-dormant proceedings, which were believed to have been dismissed in 2012, were suddenly re-activated in mid-2014 amid a tense political standoff between the ruling and opposition parties relating to the contesting of the 2013 election results;

- **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 were consistent with what legally constituted the crime of insurrection. 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 almost three years after the protest in question;

- **Mr. Sok Hour Hong**, a senator, was arrested and charged after a video clip was posted on the Facebook page of the leader of the opposition, Mr. Sam Rainsy, on 12 August 2015. The video clip featured Mr. Hong Sok Hour discussing his views about the Vietnam/Cambodia border, a controversial and sensitive issue in Cambodia, and showing a copy of an article of a 1979 Viet Nam-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. His immunity was not lifted because the authorities considered that he had been arrested in flagrante delicto;

- **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 to that end 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. The international NGO, Human Rights Watch (HRW), conducted thorough investigations into the incident and concluded, in a report published in May 2016, that the trial was designed to cover up ultimate responsibility for the crime, rather than uncover it;

- **Mr. Sam Rainsy**, the then 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 defamation court case. He went into exile in November 2015 to avoid imprisonment. On 18 October 2016, the Prime Minister issued a ban to prevent Mr. Sam Rainsy from returning to Cambodia after the latter announced his wish to return from exile to participate in the upcoming elections;

- **Mr. Um Sam An**, a 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 complainants, the case was triggered following comments and videos he posted on Facebook in 2015 about the Vietnam/Cambodia border issue, in particular assertions that the Government used "fake maps" to delineate the border. His parliamentary immunity was not lifted. According to the complainants, the authorities argued that he was arrested in flagrante delicto because the crime was still ongoing as long as his comments remained on Facebook (although the court denied him bail on the grounds that there was a risk that he would then destroy evidence by removing the comments from Facebook);
- **Mr. Kem Sokha**, First Deputy Speaker of the National Assembly of Cambodia until October 2015 and current President of the CNRP, has faced intimidation and harassment since April 2015, including repeated threats, an attack on his residence (October 2015), his removal from office as first Deputy Speaker of the National Assembly (October 2015), and the "Mon Srey" case was levelled against him and has been ongoing since late February 2016. Although his immunity has not been lifted, an attempt to arrest Mr. Kem Sokha was made in May 2016 and he spent months holed up at the CNRP headquarters under de facto house arrest, according to the complainants. Mr. Kem Sokha was convicted to a five-month prison term on 9 September 2016 for refusing to appear for questioning;
- **Ms. Thak Lany**, a 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 complainants, 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. She went in exile,

Recalling the following in relation to the political dialogue and the 2016 Committee visit to Cambodia:

- This political 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 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. It failed, however, to address and resolve the cases at hand;
- In February 2015, the Committee conducted a "visit of last resort" to Cambodia, after extensive time had repeatedly been given to both parties to find negotiated solutions. The final report of the visit concluded that the parliamentarians had been – and continued to be – victims of serious violations of their fundamental rights. They were being prevented from effectively playing their role as parliamentarians and members of the opposition freely without fear of persecution;
- The National Assembly of Cambodia shared its official views in a letter dated 11 July 2016. It denied that any violations of human rights had been committed in the cases at hand and claimed that all opposition parliamentarians concerned were criminals who must be punished in accordance with the law. Accordingly, this was a purely judicial matter for the Cambodian courts to decide and not a political matter that could be resolved through the culture of dialogue, as political dialogue could not replace or violate the law,

Considering that no progress has been made on the cases under examination, nor on the resumption of a constructive political dialogue, and that the situation has further deteriorated in recent months, as demonstrated by the following new developments of concern that have occurred since the 135th IPU Assembly, according to the complainants:

- The three bodyguards sentenced to four years' imprisonment (including three years suspended) after confessing to the beating of Mr. Kong Sophea and Mr. Nhay Chamroeun were released from jail after serving only one year. They were immediately reintegrated into the Prime Minister's bodyguard unit and promoted by the Prime Minister. The appeals lodged by both members of parliament against the lightness of the first-instance sentence have not been processed to date. The other assailants were not investigated or held accountable. Neither were suspected organizers and instigators, despite clear evidence;
- In November 2016, Mr. Kem Sokha's appeal was rejected by the court. On 2 December 2016, he was granted a royal pardon in respect of his conviction for failure to appear before the court. Relations between the CPP and the CNRP initially took a more positive tone after Mr. Kem Sokha's pardon. The CNRP lifted its boycott and resumed parliamentary work. On 6 December 2016, the Prime Minister granted Mr. Kem Sokha the status of minority leader in parliament (replacing Mr. Sam Rainsy). The main judicial proceedings in the "Mon Srey" case have, however, continued. A landmark decision of the United Nations Working Group on Arbitrary Detention was adopted on 18 December 2016. It concluded that the detention of the civil society members arrested in connection with the "Mon Srey" case was arbitrary;
- In late January 2017, Mr. Kem Sokha was stripped of the status of minority leader after the National Assembly amended its internal rules on 31 January 2016 upon the instructions of the Prime Minister. The provisions establishing a minority leader in parliament and formal status to the political opposition were repealed. They had been among the positive outcomes of the 2014 political agreement and had constituted the legal basis for the culture of dialogue;
- On 11 February 2017, Mr. Sam Rainsy resigned as leader of the CNRP to protect the party from being dissolved pursuant to legislative reform to amend the 1997 political party law. Mr. Kem Sokha took over as President of the CNRP following a CNRP Congress held on 2 March 2017. Ms Mu Sochua was elected Vice-President at that time, together with Mr. Eng Chhai Eang and Mr. Pol Ha;
- On 9 March 2017, amendments to the 1997 political party law were adopted after being fast-tracked by the Cambodian Parliament upon the request of the Prime Minister. The amended legislation gives unprecedented power to the executive and judicial branches to suspend and dissolve political parties. It prohibits people with criminal court convictions (including for minor offences) – such as Mr. Sam Rainsy – from holding senior positions in political parties. It also prohibits parties from receiving foreign funding. Pursuant to the amended law, if convicted of a criminal offence, a party leader will be banned from undertaking any political activity for a period of five years and his/her political party will be dissolved pursuant to a Supreme Court order. Numerous concerns have been voiced and conveyed to the Committee regarding the provisions of the amendments, which are couched in vague terms and appear squarely at odds with accepted restrictions on the right to freedom of association under international law (particularly with the requirements of necessity and proportionality), as reflected in the legal analysis published on 28 March 2017 by the United Nations Office of the High Commissioner for Human Rights;
- Following the entry into force of the amendments, the Cambodian authorities challenged the newly elected CNRP leadership. The CNRP's request for re-registration, as required under the amended legislation, has therefore not been granted by the Minister of the Interior. The CPP has also threatened to sue the CNRP for insulting it and inciting social disorder on the grounds of the choice of the CNRP's electoral campaign slogan ("change commune chiefs who serve the party and replace them with commune chiefs who serve the people"). The CNRP is currently no longer recognized as a political party at a time when the National Electoral Commission is due to finalize the list of candidates received for the local elections (which include CNRP candidates). A further legal cloud continues to hang over the new CNRP leadership with the ongoing proceedings still dangling over Mr. Kem Sokha and Ms. Mu Sochua. This situation could result in the suspension and dissolution of the CNRP pursuant to amended political party law and deprive its new leaders of their right to participate in political activities for five years;

The following significant developments have occurred in the other cases under examination:

- New court cases have continued to be launched against Mr. Sam Rainsy. Four additional convictions were delivered in prior proceedings. He was found guilty in all cases. Sentences handed down totalled around eight years of imprisonment and heavy fines in early April 2017;
- Senator Sok Hour Hong was sentenced to seven years' imprisonment on 9 November 2016. The defence lawyers' requests for independent expert Internet analysis and to be granted an Internet connection in the court room to demonstrate to the judges how he downloaded the litigious version of the 1979 treaty on the Internet were never granted during the proceedings. The appeal trial is scheduled to take place on 7 April 2017;
- Senator Thak Lany was convicted in abstentia to 18 months in prison on 18 November 2016 after she went into exile. During the trial, the defence continued to assert that the video had been doctored and that Ms. Thak Lany had not made the incriminating statement, while prosecution witnesses claimed the contrary. The origin of the video clip was never made clear, according to the complainants. The presiding judge allegedly stopped the defence counsel when he began asking the prosecution witnesses who shot the video,

Considering the communications and renewed requests for information conveyed by the IPU Secretary General on behalf of the Committee on 12 and 23 November 2016 and 20 March 2017, to which no response from the Cambodian authorities has been forthcoming since the 135th IPU Assembly,

Considering that, since the submission of the initial complaint in July 2014, over a dozen official letters have been conveyed by the IPU to seek specific information, documentation and official observations from the parliamentary authorities on the cases at hand. However, the Cambodian authorities have only shared three responses in writing in three years, the last one dating back to October 2016. Those responses have been helpful but only addressed a few of the issues and information requests submitted. The authorities have failed to keep the Committee informed of new developments, such as the court verdicts delivered on the cases, and to provide supporting documentation, such as copies of the judicial decisions,

Recalling that 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 given the escalation of politically motivated charges, judicial harassment and acts of violence. These State and international organizations, including the UN, 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 that would ensure the legitimacy of the next government,

Considering the report entitled "Death Knell for Democracy – Attacks on Lawmakers and the Threat to Cambodia's Institutions" issued on 20 March 2017 by ASEAN Parliamentarians for Human Rights, and the findings and recommendations made by the UN OHCHR in the legal analysis of the amended political party law that was published on 28 March 2017,

Considering that the following information was shared during the two separate hearings held during the 136th IPU Assembly with the Cambodian delegation, on the one hand, and with a representative of the CNRP, on the other hand, in the Committee's effort to continue hearing both sides in a systematic manner to promote dialogue:

- Both parties have reaffirmed their previous positions on the individual cases and were unable to report any concrete progress. They expressed, first and foremost, fears and concerns about the broader security situation in Cambodia on the eve of crucial elections that could possibly result in the first ever political changeover since the end of the civil war in Cambodia, should the CNRP win the elections. This unprecedented situation is at the origin of fears that Cambodia may go back to a situation of violence reminiscent of the past, due to heightened political tensions;
- The Cambodian delegation to the 136th Assembly reaffirmed on these grounds that the top priority for the Cambodian authorities was to ensure peace and to prevent any disturbance of society at all costs. In their view, political stability would bring about more economic development and result in increasing respect for human rights in due time. Significant progress had already been made in that direction in recent years. The delegation reaffirmed that the opposition should therefore stop "putting gas into the fire" and adopt a more constructive stance; Mr. Sam Rainsy should "cool down". The delegation considered that since his resignation, the new CNRP leaders had stepped down their rhetoric and the atmosphere had improved. They emphasized that they needed to work together and that the situation would improve after the elections. They affirmed that the political dialogue was an inclusive part of the CPP policy and that it had never stopped in their opinion. They claimed that Cambodia had always cooperated with the Committee and that the lack of written response resulted from a misunderstanding, communication problems and the lack of sufficient time provided to respond;
- Ms. Saumura Tioulong indicated during the hearing that prior concerns related to violations of the fundamental rights to freedom of opinion, expression, association and assembly remained unresolved. The current overall political environment was not conducive to free and fair elections. Mr. Sam Rainsy had been sidelined following the amendment of the political party legislation. Neither the ruling party nor the authorities had the right under international law and democratic principles to choose against whom they would compete in the next elections and that was in effect what was currently happening. There was no progress since the designation of a new CNRP leadership, as the latter had not been cleared of pending criminal charges. The CNRP feared that it would be dissolved any day pursuant to the amended political party law. This would be tantamount to cancelling the popular vote conferred upon the 66 CNRP parliamentarians elected in 2013 and going back to a one-party system just before the local elections. The only solution was to find a way forward through dialogue, strict respect for human rights and key democratic principles with the assistance of international mediation. The ruling party should not be scared of the possibility of losing power for a few years, but should rather consider this as normal practice in any democratic regime, and hence a positive outcome of the democratic reforms undertaken in Cambodia in the past few years. Guarantees could certainly be negotiated and put in place to ensure a smooth and peaceful transition should political power alternate, so as to avoid any subsequent political revenge and alleviate any existing fears,

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, freedom of association, equality before the law and to a fair trial conducted by an independent and impartial court and to participate in public affairs;
- 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 the fundamental principle of "liberal multi-party democracy" enshrined in article 1 of the Constitution of Cambodia and 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. *Deplores* the lack of any concrete progress in resolving the cases at hand for the past two and a half years and the rare lack of a written response from the Cambodian authorities to IPU requests for information; *can but conclude* that there is a lack of political will on the part of the Cambodian authorities, including parliament, to resolve the cases;

2. *Expresses deep concern* at the escalation of the situation; *is particularly alarmed* at the allegations that the CNRP may be dissolved pursuant to the recently adopted amendments to the political party law, which do not comply with international standards on freedom of association and have clearly targeted Mr. Sam Rainsy and his party;

3. *Remains deeply concerned* that a large segment of opposition members of parliament, who make up the current leadership of the only opposition party in parliament, continue to face serious violations of their fundamental rights to freedom of opinion, expression, association and assembly; *considers* that these restrictions undermine their right to political participation, as they are being prevented from effectively carrying out their role as parliamentarians and members of the opposition freely without fear of persecution;

4. *Urges* the ruling party and the opposition once again to resume the political dialogue and to urgently resolve the individual cases at hand in strict compliance with human rights standards; *considers* that such dialogue can only be useful when there is sufficient space for dissent and for the peaceful exercise of the freedoms of expression, association and peaceful assembly;

5. R*ecalls* that, pursuant to the principles and values defended by the IPU, as enshrined in the Universal Declaration of Democracy adopted by the IPU in September 1997, "a state of democracy ensures that the processes by which power is acceded to, wielded and alternates allow for free political competition and are the product of open, free and non-discriminatory participation by the people, exercised in accordance with the rule of law, in both letter and spirit" and expresses the hope for increased tolerance and acceptance of the role of the political opposition in Cambodia; *considers* that it is crucial for the CNRP to be able stand in the upcoming elections; *reiterates* the availability of the IPU to facilitate the political dialogue and to mediate in the crisis and to provide technical assistance to the Cambodian parliament to that end;

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

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

Malaysia

MAL/15 - Anwar Ibrahim

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 Dato Seri Anwar Ibrahim, a member of the Parliament of Malaysia, and to the decision it adopted at its 198th session (March 2016),

Taking into account the information provided over time by the Malaysian authorities and the information regularly provided by the complainants,

Taking into account the report of the trial observer, Mr. Mark Trowell QC, on the judicial review of the conviction and sentence after appeal of Datuk Seri Anwar bin Ibrahim (CL/200/12(b)-R.1),

Recalling the following information on file:

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

- On 24 February 2015, Mr. Anwar Ibrahim's family submitted an application for a Royal Pardon. On 16 March 2015, the Pardons Board rejected the application. On 24 June 2015, Mr. Anwar Ibrahim and his family filed an application for judicial review to seek permission from the High Court in Kuala Lumpur to review the Pardons Board's decision. The basis of their application was the presence on the Board of the then Attorney General, Mr. Patail, who showed personal hostility against Mr. Anwar Ibrahim in the past when he was the lead prosecutor in the first sodomy trial against him ("Sodomy I"), which fact they claimed was unacceptable, particularly since the then Prime Minister, Mr. Abdullah Ahmad Badawi, had reportedly promised that Mr. Patail would have no further involvement in the case. The defence counsel also invoked the testimony of retired senior police officer Mr. Ramli Yusuff about the alleged conspiracy to cover up the infamous "Black Eye" incident in 1998 during Mr. Anwar Ibrahim's detention in the course of "Sodomy I" and the fact that Mr. Patail had failed to disclose to the Board and the King that an order to investigate had been produced against the lead prosecutor, Mr. Muhammad Shafee Abdullah, following the false affidavit that the top lawyer had allegedly filed;
- On 30 April 2015, Mr. Anwar Ibrahim applied for a fresh judicial review of his conviction, under Rule 137 of the Federal Court rules, which is effectively to prevent injustice,

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

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

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

Considering the following new developments:

- On 14 December 2016, the Federal Court unanimously dismissed the application for a judicial review of Mr. Anwar Ibrahim's sentence, on the basis that there had been no miscarriage of justice, as reported and analysed by the IPU trial observer;
- On 18 January 2017, the Court of Appeal set aside the decision of the High Court of 15 July 2016 declining Mr. Anwar Ibrahim's leave for judicial review and its refusal to refer the question of whether it was possible to challenge in court the Pardon Board's decision to the Federal Court;
- On 23 March 2017, a motion on an urgent matter of public importance was submitted to the House of Representatives by its member, Ms. Nurul Izzah Anwar, regarding the Government's position on the official notice by Mr. Anwar Ibrahim's lawyers to the Minister and the Commissioner General of Prisons to demand his release under Section 43 of Act 537 and Act III of the Prison Regulations 2000, allowing prisoners to be released on licence following a risk assessment and adherence to requirements set forth by the authorities. In support of the motion, Ms. Nurul Izzah Anwar stated that it was just and consistent with the public interest that the Government granted the release and that

the campaign in support of Mr. Anwar Ibrahim regaining his liberty had garnered immense support. In response, the Speaker of the House of Representatives found that the motion concerned a matter which had already been decided by the judiciary, through an open trial, and noted that the Commissioner General of Prisons' Office concluded that the application did not fulfil the conditions set forth by the regulations,

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

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

- According to the complainant, since his imprisonment on 10 February 2015, Mr. Anwar Ibrahim has not been receiving the recommended medical care and was not being cared for by an independent doctor specialized in his health issues, including treating the serious and constant pain in his right shoulder, which might require arthroscopic surgery to ensure long-term healing;
- According to the leader of the Malaysian delegation, at the hearing held with the Committee on 18 March 2016, the authorities were going out of their way to allow Mr. Anwar Ibrahim to see any doctor of his choice, including, if that was his wish, by allowing him to fly in medical experts from abroad to treat him in Malaysia, but that he was not allowed to go abroad to undergo such treatment;

1. *Thanks* the IPU trial observer for his report, of which it takes note with interest;
2. *Regrets* that the application for judicial review to the Federal Court was fruitless, as it offered an opportunity to remedy the shortcomings in the judicial proceedings;
3. *Reaffirms its view* that, in light of the procedural irregularities, the serious doubts about the credibility of the evidence presented against Mr. Anwar Ibrahim, the dubious circumstances surrounding the alleged sodomy and the new information that has since come to light in support of the affirmation that his trial was based on other-than-legal considerations, his conviction and continued detention are untenable;
4. *Calls once more, therefore, on* the authorities to use all possible legal means to release Mr. Anwar Ibrahim forthwith and to take the necessary measures to enable him to return to parliamentary life;
5. *Is eager* to receive details on the steps taken to allow Mr. Anwar Ibrahim to be cared for by a doctor of his own choice and fully benefit from the medical expertise he wishes and the treatment he requires, including through, if needed, extensive care in hospital; *wishes* to be kept informed of the latest and next steps in Mr. Anwar Ibrahim's medical treatment;
6. *Considers* that the case of Mr. Anwar Ibrahim, along with the other Malaysian cases under examination by the Committee on the Human Rights of Parliamentarians, requires a follow-up visit to Malaysia to address the outstanding serious concerns and questions;
7. *Requests* the Secretary General to seek the agreement of the authorities for the visit and to convey this decision to the competent authorities, the complainants and any third party likely to be in a position to assist;
8. *Requests* the Committee to continue examining this case and to report back to it in due course.

Maldives

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

The Committee,

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

The Governing Council of the Inter-Parliamentary Union,

Referring to the cases of the above-mentioned current and former parliamentarians and to the decision adopted at its 199th session (October 2016),

Referring to the full report on the mission conducted to the Maldives from 10 to 12 October 2016 by the Committee on the Human Rights of Parliamentarians (CL/200/11(b)-R.2),

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 in 2012 and includes 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 around 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.

Considering that the mission observed, inter alia, the following regard to:

- **Death threats against members of parliament**

- The delegation was concerned about death threats targeting several prominent parliamentarians from the MDP and the fact that apparently no one had been held to account for those threats. The delegation noted that the authorities maintained that they were doing everything possible to protect the members of parliament at risk and to look into the threats, but that it was often difficult to identify the culprits and the victims sometimes failed to cooperate. The delegation was keen to receive details from the authorities on the precise steps taken to investigate the threats brought to their attention. It was also keen to know the precise protection measures in place for each of the members of parliament under threat;

- **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 was told that the authorities were 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 noted that, according to the Prosecutor General, charges had been pressed in March 2014 against one suspect, who was serving a sentence for a drug-related crime until March 2017, and that the trial was about to be completed;

- **Legal status of specific criminal cases initiated against three (former) members of parliament**

- The delegation was told that there was no legal action pending against Mr. Ibrahim Rasheed and Mr. Mohamed Shifaz and trusted that the authorities would inform the persons directly concerned. The delegation noted that the legal case against Mr. Mohamed Rasheed, on charges of terrorism in connection with acts of arson in February 2012, was still ongoing. It welcomed the initiative by the Prosecutor General to ask the court to speed up consideration of the case. The delegation hoped that this would happen and with full respect for due process;

- **The conviction of Mr. Ahmed Mahloof in July 2016**

- The delegation noted the contradictions in the accounts of 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 was concerned about the severity of the sentence and reports that basic fair-trial standards had not been respected. The delegation failed to understand how it could be argued that Mr. Mahloof tried to flee from the police in the presence of a sizeable police force at the court building. The delegation said that it would greatly appreciate receiving a copy of the lower-court verdict in order to clarify that and other matters related to his prosecution. The delegation hoped that the appeal proceedings, to which it proposed sending an observer, would take place smoothly and with respect for the right to a fair trial. In the meantime, it hoped that the authorities would 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 was concerned about human rights developments that had a direct impact on the cases at hand. It concerned 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 agreed that freedom of expression was not absolute, it considered that the new legislation overly restricted the exercise of that right, due to its scope, the vagueness of some of its key provisions and the hefty fine

imposed as punishment. Similarly, although it understood that Male was a small island prone to congestion, it also believed that legislation on the right to freedom of assembly should at all times have real meaning in practice. The delegation considered in this regard that the very limited designated areas for demonstrations and the fact that prior police authorization was required unduly restricted the exercise of that right;

- **Limited space for the opposition to contribute meaningfully to the work of parliament**

- Although the delegation appreciated that the current People's Majlis had adopted an impressive number of bills, it felt that such output should not come at the expense of the need for a substantive and meaningful discussion of each piece of legislation. The delegation was therefore concerned about reports that the adoption of important legislation had been fast-tracked and adopted without any changes and proper discussion or consultation with stakeholders outside of parliament. Likewise, the delegation was concerned about reports that parliament, drawing on the majority of its members belonging to the ruling coalition parties, had not carried out any serious oversight, even in the face of serious issues warranting public scrutiny. The delegation was 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, which hampered effective oversight;

- **Unacceptable behaviour in parliament and the handling of such incidents**

- The delegation noted that the parliamentary authorities and the opposition acknowledged that there had been unruly behaviour in parliament on both sides. The delegation believed that the Speaker fulfilled a paramount function in making sure that unacceptable behaviour, such as the spitting incident in February 2016, was immediately reprimanded and that all sides in parliament respected one another. It was absolutely crucial that the Speaker treated all sides impartially and was perceived as being above party politics. In that regard, it was also important that the Speaker allowed the opposition to make a meaningful contribution to the work of parliament and that the opposition respected his authority;

- **Importance of dialogue between the majority and the opposition and of engagement with the international community**

- The delegation strongly believed that the cases at hand had to be seen in the context of the ongoing political polarization in the Maldives. It believed that it was 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 enjoyed the trust of all Maldivians. The delegation therefore deeply regretted the recent decision by the Maldivian authorities to leave the Commonwealth, and hoped that the authorities would re-consider that decision,

Considering the following new information provided by the complainant since the mission took place:

- In December 2016 and February 2017, Mr. Mahloof was granted leave to go to India for 10 days and seven days respectively for medical treatment; according to the complainant, the appeal proceedings in his case have not started;

- On 27 March 2017, a motion of no-confidence against the Speaker was voted and defeated in the People's Majlis. The complainant alleges that the Maldivian National Defence Force were ordered to bar media and civil society organisations from observing the sitting, that proper procedure was not followed by allowing for a roll call rather than an electronic vote on the motion itself, that 13 parliamentarians were forcibly removed from the Chamber as a completely disproportionate response to the disorder that reigned in the Chamber, and that subsequent voting records were incorrect and/or manipulated. The complainant points out that the vote in the People's Majlis took place against heightened harassment of parliamentarians, through death threats and threats against their families and threats of prosecution on trumped up charges,

1. *Thanks* the mission delegation for the work carried out and endorses its overall conclusions; *regrets* that the Maldivian authorities have not submitted any observations on the report, nor the information they undertook to provide on various pending issues; *remains keen* to receive this further official information;

2. *Is deeply concerned about* the continued death threats against opposition members of parliament and the reduced space for freedom of expression and assembly and for the opposition to meaningfully contribute to the work of parliament; *calls on* the authorities to do everything possible to address these concerns and to report back on their action;

3. *Deeply regrets* that the authorities have not deemed fit to allow Mr. Mahloof to serve his sentence in the form of house arrest;

4. *Reiterates* its concern about the severity of the sentence against him and its failure to understand the justification for his conviction and sentence; *is concerned* by the apparent lack of action to treat his appeal, which may well lead Mr. Mahloof to serve his full sentence by the time the appeal ruling is rendered; *considers* that for this reason alone the authorities should release him forthwith;

5. *Is concerned* about the allegations surrounding the recent handling of the motion of no-confidence, also because it attests to the continued political polarization in the Maldives; *thanks* the parliamentary authorities for providing video footage of the situation that reigned in the People's Majlis during the vote on the no-confidence motion; and *will examine* this material thoroughly;

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

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

Mongolia

MON/01 - Zorig Sanjasuuren

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. Zorig Sanjasuuren, a member of the State Great Hural of Mongolia, and acting Minister of Infrastructure Development – regarded as the father of the democracy movement in Mongolia in the 1990s – who was assassinated on 2 October 1998, and to the decisions adopted by the IPU Governing Council at its 198th session (Lusaka, March 2016) and by the Committee on the Human Rights of Parliamentarians at its 152nd session (January 2017),

Referring to the letters of 27 January and 27 March 2017 of the Deputy Chairman of the State Great Hural, to the hearing held with two members of the Mongolian delegation to the 136th IPU Assembly and to the information recently shared by the complainants and by third parties,

Referring also to the report of the visit conducted to Mongolia (CL/198/12(b)-R.1) from 16 to 19 September 2015,

Recalling the following long-standing concerns in this case:

- Uninterrupted investigations have officially been ongoing since Mr. Zorig's assassination almost 19 years ago. They have remained shrouded in secrecy and have yielded little results until recently. The excessive secrecy surrounding the investigation and the lack of progress has strongly eroded the trust and confidence in the investigative process and in the existence of a real political will to establish the truth. The renewed commitments to shed light on Mr. Zorig's assassination have long been seen as empty political promises;
- The murder is still widely believed to have been a political assassination that was covered up. It cannot be excluded that political interference is one of many combined factors that are likely to account for the lack of results in the investigation and include:
  - Initial investigative deficiencies (particularly contamination of the crime scene);
  - Issues related to the training and competence of the investigators, as well as forensic technologies available;
  - The endless replacement of investigators;
  - The top secret classification of the case, which is the main reason for the continued role of the central intelligence agency, the unusually wide scope of its involvement and the "wall of secrecy" surrounding the case – including in relation to alleged dubious investigation and questioning methods used by the Mongolian intelligence services, which have reportedly included the mistreatment of suspects and the use of coerced confessions on several occasions in the past;
  - The political dimension of the case and its subsequent political instrumentalization by political parties;
  - The time elapsed and its consequences;
  - The lack of accountability of the relevant authorities, despite the absence of results in the investigation,

Further recalling that, following the visit conducted to Mongolia, the IPU Governing Council has called on the Mongolian authorities to do their utmost to ensure that justice is done and

seen to be done in resolving the case of Mr. Zorig's assassination, and to give urgent consideration to the following recommendations:

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

Recalling that significant developments have taken place in the case in recent months; and *taking into account* that parliamentary elections took place in June 2016. They have resulted in the defeat of the Democratic Party and brought the Mongolian People's Party (MPP) back to power. Presidential elections are scheduled for late June 2017,

C*onsidering* the following information:

- **Detention and torture of Ms. Bulgan**

  - Ms. Banzragch Bulgan, Mr. Zorig's widow, was arrested on 13 November 2015 – shortly after the Committee's visit to Mongolia. She was detained at the Tuv Aimag (central province) prison by the central intelligence agency, in conditions allegedly amounting to torture under international human rights standards. Reliable sources stated that Ms. Bulgan was being held in solitary confinement and deprived of medical care, in a cell where artificial lighting was kept on 24 hours a day. According to them, she had been interrogated by intelligence officers and put under intense psychological pressure. The sources indicated that her prolonged detention had not been reviewed and authorized by a judge and that no charges had been formally brought against her by March 2016. Visits to Ms. Bulgan in detention were allegedly restricted. Her lawyer had not been granted access to the evidence against her, on the grounds that the case was classified. This was the second time that she had been placed in illegal detention since the start of the investigation;
  - The allegations relating to Ms. Bulgan's detention, torture and the violation of her rights to due process were ascertained during the 13 April 2016 visit of a parliamentary delegation headed by Mr. Bold Luvsanvandan, the then head of the parliamentary human rights commission. The delegation noted that the prison was under the full control of the intelligence services. It called on the President of Mongolia, the Speaker of the State Great Hural parliament and the Prime Minister to take action to put an end to that situation. Around 22 April 2016, Ms Bulgan was transferred to another prison, where she was reportedly held in better conditions and received medical care. A hearing was scheduled for 13 May 2016 to extend Ms. Bulgan's detention;

- No subsequent information was forthcoming on Ms. Bulgan's situation until January 2017, despite urgent appeals communicated to the Parliament of Mongolia. The Deputy Chairman of the State Great Hural responded in letters dated 27 January and 27 March 2017 that Ms. Bulgan had been released. She had been investigated and questioned as a suspect and defendant. Her participation in the case was not proved, the case was "backed down" and "while obtaining additional evidence, her involvement in the crime was not established and thus the case was terminated". The Committee was able to obtain confirmation from third parties that Ms. Bulgan had effectively been released;
- In relation to the detention and torture of Ms. Bulgan, the members of the delegation of Mongolia to the 136th IPU Assembly stated that, if torture had taken place while she was in detention, she could have complained to NGOs and the National Human Rights Commission of Mongolia, as they were paying close attention to such issues. She was, in any case, still entitled to lodge a judicial complaint if her rights had been violated,

- **Arrests and first instance trial**

- Three suspects were reportedly arrested around August 2015 in connection with Mr. Zorig's murder and had allegedly confessed to the murder, possibly in relation to the "Erdenet scenario", according to media reports. That scenario was one of the possible motives for the assassination, which had never been discounted. It was mentioned that Mr. Zorig had been informed of the embezzlement of funds from Erdenet (a major Mongolian mining company) and was ready to disclose the information or to take appropriate action to hold the culprits accountable, if and when appointed Prime Minister. During its visit to Mongolia – which took place shortly after these arrests – the Committee's delegation was never informed about these arrests, or even that any suspects in the case were being detained. The Mongolian authorities provided no response on these developments before January 2017, despite the urgent requests for information communicated to them;
- In January 2017, the Mongolian authorities and the complainants confirmed that three suspects had been convicted for Mr. Zorig's murder on 27 December 2016 and sentenced to 24 to 25 years' imprisonment. The verdict was handed down after a trial held behind closed doors. Mr. Zorig's family and their lawyer were authorized to attend the trial, but were prohibited from sharing information on the proceedings or the verdict on the grounds that the case was classified. They would be arrested and prosecuted in the event they fail to comply. No copy of the verdict or details of the proceedings was made available to the IPU or to the public on the same grounds. Mr. Zorig's family deplored that the requests made for the declassification of the case and for a public trial were rejected by the Mongolian authorities, including by the court. Mr. Zorig's family issued a public statement questioning the legitimacy of the closed trial and of the court decision and considered that justice has not been done and that the case should continue;
- Media reports published in Mongolia and abroad after the verdict further reflected the general lack of confidence in the impartiality and independence of the investigation and court proceedings. These reports considered that the trial was a smokescreen designed to conceal the real culprit(s)/mastermind(s) of the assassination. They emphasized that many questions remained unanswered. They recalled that the case had been highly politicized and noted it was hardly credible that the three convicted persons could have committed the assassination 18 years ago, considering their age at the time. They also recalled that at least 17 persons, including witnesses, police and judicial officers, had died in unexplained circumstances, and that the investigation had never shed light on the circumstances of their death;
- The Deputy Chairman of the Parliament of Mongolia stated that the defendants and the victims' lawyers had appealed the first instance conviction and that parliament would "carefully observe" the appeal proceedings and keep the IPU informed,

- **Appeal trial**

- The appeal trial was held over one single day on 14 March 2017. It was held behind closed doors again. At the opening of the hearing, the family's lawyer once again requested, in vain, that the case be declassified and that the proceedings be held in open court. The lawyers for

the accused and for the Zorig family were allowed to attend the proceedings, but were barred from sharing any information relating thereto. The verdict was issued the same day and confirmed the first instance sentence;

- The Vice-Chairman of the State Great Hural stated, in a letter dated 27 March 2017, that the appeals court had reviewed the process and concluded that all legal and procedural requirements had been respected pursuant to the law on criminal procedure and other regulations, including the right of the parties to the procedure. According to the letter, the testimonies and examination of the suspects and of the witnesses by the court were consistent with and corroborated each other. Witnesses appeared before the court and immediately identified the suspects. Information obtained through undercover operations was proved and all evidence collected during the investigation was examined. The law had not been not violated and the appeal was therefore dismissed. The Vice-Chairman also confirmed that the accused and the victims had requested to hold the trial openly but that the court ruled that it was impossible because the 220 page judicial files included five pages of information classified as top secret. Accordingly, under article 235(1) of the criminal procedure law, the trial was closed to the public pursuant to the state secret law. It was thereafter forbidden to share the court decision unless authorized authorities made a decision to declassify the case. The Deputy Chairman nevertheless stated that, once the final court decision was delivered, “some documents and testimonies relating to the crime” would be exposed to the public;
- The Mongolian authorities and the complainant confirmed that the defendants and the victims could lodge a last-resort appeal before the Supreme Court’s criminal law chamber. The Supreme Court would then make the final decision on the case, which is therefore not yet concluded at this stage. The Deputy Chairman of the State Great Hural made a commitment that the Parliament of Mongolia would demand a “fair and correct decision” in compliance with the law. In a press conference held in early April 2017, the Deputy Chairman expressed public concerns about the manner in which the Zorig case had been handled,

Considering that, at the hearing held during the 136th IPU Assembly, two members of the Mongolian delegation shared the additional following information:

- The proceedings had exclusively targeted the direct perpetrators of the assassination (four of which had been identified, with only three still being alive). The motives established by the court were “greed and money”. A second investigation appeared to have been opened to target the organizers and the instigators of the assassination on the basis of names allegedly provided by the convicted suspects. This procedure would probably look into possible political motives of the assassination. A second trial would subsequently follow in due time. Little information had been made available to parliament on these recent developments, as the criminal investigation is confidential and remains classified;
- The two members of the delegation reconfirmed that the trials were closed pursuant to existing rules of criminal procedure, which warrant top-level confidentiality when classified information is involved as evidence in a case. The parliamentary authorities had therefore not been authorized to provide copies of the court decisions to the IPU. The judicial authorities had informed parliament that the appeals court had verified that all legal and evidentiary requirements had been respected during the trial proceedings. The investigation may have been rushed but it was in accordance with the law, which provided that investigations needed to be completed within certain deadlines according to the information obtained by parliament;
- The members of the delegation stated that they shared the Committee’s concern about the need for justice to be done in this case and to be seen to be done. They also condemned the politicization of the case. They stated that, if any one of three suspects convicted were not guilty, it would be perceived as political repression and would look very bad for Mongolia. The members of the delegation observed that the fact that the trial took place behind closed doors indeed looked suspicious to the people. The fact that Ms. Bulgan did not participate in any of the hearings during the trials, in spite of being the only eyewitness in the case, also raised questions and suspicions. However, it was in compliance with criminal procedure laws;

- The members of the delegation stated that they were only able to obtain limited information on the case due to the separation of powers and the classification of the case. Neither members of parliament or parliament could intervene in the investigative and judicial process, due to the separation of powers. Given the concerns raised in this case and in others, a working group was now being established to amend the Constitution. A draft amendment was being prepared and discussed to allow for the establishment of ad hoc committees mandated to review suspicious cases like that of Mr. Zorig at the end of the investigative and judicial proceedings;
- The members of the delegation stated that the Committee would be welcome should it decide to send a delegation to Mongolia to seek further information and discuss its concerns with all relevant authorities,

Recalling that Mongolia is a party to the International Covenant on Civil and Political Rights and to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, it is therefore bound to ensure that: (i) no suspects or witnesses shall be subjected to torture or to cruel, inhuman or degrading treatment; (ii) that perpetrators of such acts should be held accountable and that confessions obtained through such means should not be considered admissible evidence in court proceedings; and (iii) that any person accused of a criminal charge shall be entitled to a fair and public trial by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial only for moral reasons or reasons of public order or national security in a democratic society, or when the interest of the private lives of the parties so requires. Such restrictive measure should be proportionate and only allowed to the extent strictly necessary in special circumstances where publicity would prejudice the interests of justice. Any judgement rendered in a criminal case should in any case be made public,

1. *Thanks* the Deputy Chairman of the State Great Hural and the members of the delegation of Mongolia for their cooperation; and *is encouraged* by the resumption of a constructive dialogue with the State Great Hural;

2. *Takes note with interest* that, since late December 2016, first instance and appeals trials have been conducted, with the result that three suspects have been convicted and sentenced to long prison terms for their involvement as the direct perpetrators in the assassination of Mr. Zorig; that the case is still ongoing, as the defendants and the victims' lawyers are entitled to a last resort appeal to the Supreme court; and that a new, confidential investigation is now being initiated against suspected organizers and instigators of the assassination;

3. *Is deeply concerned* that the trials were held behind closed doors and that the court decisions have not been disclosed*; points out* that neither the parliamentary authorities, nor Mr. Zorig's family or the Mongolian people, consider that justice has been done or has been seen to be done in the recent trial proceedings, and that serious concerns and questions on the case remain unanswered due to the continued excessive secrecy of the proceedings and top secret classification of the case;

4. *Remains concerned* that the alleged torture of Ms. Bulgan has not been adequately addressed by the relevant authorities of Mongolia, despite her release; and *still fails to understand* on what grounds her prolonged detention could have been legal, given that the authorities have confirmed that her participation in the crime was not proven;

5. *Reaffirms its prior concerns* about the politicization of the case; *is therefore deeply troubled* by the sudden rush in the proceedings following almost 20 years of apparent inertia in the investigative process; and *observes* that this coincides with a major change in political power following parliamentary elections and the fast-approaching presidential elections in June 2017;

6. *Considers* that the recent trials violated international fair trial standards and further undermine the legitimacy and integrity of the whole investigative process; *calls again* for the immediate declassification of the case; and *urges* the Supreme Court to remedy the

existing serious deficiencies by ordering a public re-trial in the presence of domestic and international observers in order to avoid any miscarriage of justice and to help shed light on the truth in this case; *expresses its wish* to send a trial observer to attend the proceedings to make an independent assessment of the fairness and legality of the proceedings; *further points out* that there are many alternative means available for maintaining a reasonable and appropriate measure of confidentiality in respect of legitimate sensitive evidence, without infringing on the right to a fair trial or jeopardizing the credibility and integrity of the proceedings and of the judicial institution;

7. *Remains convinced* that transparency, paired with strict respect for due process and the rights of defence, in compliance with the Constitution of Mongolia and international standards, could eventually restore confidence in the long-standing efforts to shed light on the truth of the assassination of Mr. Zorig, and contribute to further strengthening democracy and the rule of law in Mongolia;

8 *Notes with interest* that the State Great Hural is still actively monitoring the case; and *expresses its support and its encouragement* for its ongoing efforts to look into new ways of exercising proactive oversight in the case; *wishes to receive* more detailed information in this respect, particularly on the draft constitutional amendment under discussion; *further calls on* parliament to urgently review the existing State secret laws and regulations and to bring them into line with international standards and best practices in that respect; *offers* the availability of the IPU to facilitate technical assistance on these matters upon request;

9. *Wishes* the Committee to conduct a mission to Mongolia to obtain more information on recent developments from all relevant authorities and to facilitate progress in the case, in strict compliance with international human rights standards; *welcomes* the positive response of the two members of the Mongolian delegation in that respect; and *trusts* that it will soon receive official confirmation from the Parliament of Mongolia to that end; *also wishes* to continue being kept regularly apprised of any new developments relating to the case;

10. *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;

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

Philippines

PHI/08 – Leila de Lima

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. Leila de Lima, a member of the Senate of the Philippines, 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 letter dated 23 January 2017 from the President of the Senate and the information he provided at the hearing with the Committee on 3 April 2017,

Considering the following information on file:

- Ms. de Lima served as Chairperson of the Philippine Commission on Human Rights from May 2008 until June 2010, when she was appointed as the Philippine Secretary of Justice. She resigned from this position in October 2015 to focus on her candidacy for a seat in the Senate in the parliamentary elections of May 2016, which bid was successful;
- Senator de Lima had been a lifelong advocate of the fight against extrajudicial killings. On March 2009, as then Chairperson of the Commission on Human Rights, she led a series of investigations into a number of alleged extrajudicial killings linked to the so-called Davao Death Squad ("DDS") in Davao City, run by then Mayor Duterte. According to the complainant, the then Mayor and now President of the Philippines was reportedly behind the DDS. The investigation became a seed of antagonism and animosity between the Senator and the future President of the country;
- On 13 July 2016, Senator de Lima, as Chair of the Senate Committee on Justice and Human Rights, filed and initiated the proposed *Senate Resolution Nr. 9*, launching an inquiry into the alleged summary killings of thousands of suspected drug users and drug dealers since President Duterte took office in June 2016 and launched his war on drugs;
- Public hearings for the inquiry started on 22 August 2016 and were highlighted by the testimony of a self-confessed hitman and member of the DDS, Mr. Edgar Matobato, who had implicated President Duterte in some of the extrajudicial killings in Davao City. According to the President of the Senate, however, Mr. Matobato's hearing revealed several inconsistencies in his testimony;
- The President of the Senate stated that several observations made by other senators pointed to Senator de Lima's predisposition to conduct the hearing in a manner not best reflecting the objectiveness and neutrality expected of an impartial arbiter. Accordingly, on 19 September 2016, a motion was approved in the Senate that the chairmanship and membership of the Committee on Justice and Human Rights be declared vacant. According to the President of the Senate, this was done strictly in keeping with the Senate Rules of Procedure, and that such decisions are taken regularly as part of the political process, and was not in any way meted out to sanction her inquiry. The complainant nevertheless claims that the Senate ousted Senator de Lima as chair in an apparent reprisal for her inquiry;
- According to the complainant, subsequent to Senator de Lima's ousting as chair, the committee adopted its report (known as "the Gordon Report", in reference to the new chair of the inquiry) in an unorthodox manner, as no meeting was convened to discuss the draft report. Senator de Lima produced a "dissenting report" in December 2016, as

she considered that the inquiry had failed on several grounds, notably on its refusal to allow the testimonies of witnesses of extrajudicial killings to be heard before the Commission on Human Rights, on its premature termination and on its failure to take due account of the testimonies of Mr. Matobato, among others. "Due to the premature and abrupt termination of the Senate investigation, no comprehensive, in-depth gathering and assessment of the evidence was done by the Committee. Instead, what came out was a virtual whitewash designed to absolve the national leadership as led by the President", Senator de Lima said;

- The complainant states that Senator de Lima's concerns about extrajudicial killings are well documented and refers to a number of reports, including one from Human Rights Watch entitled *Licence to Kill: Philippine Police Killings in Duterte's War on Drugs*, of March 2017. According to this report, President Duterte's "war on drugs" has produced a campaign of unlawful killings by Philippine national police personnel and unidentified "vigilantes", which has resulted in the deaths of more than 7,000 suspected drug users and dealers since 1 July 2016. In addition, the report affirms that President Duterte's public endorsement of the campaign implicates him and other senior figures in possible incitement to violence, instigation of murder and responsibility for crimes against humanity. The report exposes the falsehood of official police reports that invariably assert self-defence to justify unlawful police killings. Instead, police routinely carry out extrajudicial killings of drug suspects and then cover up those crimes. In several instances investigated by Human Rights Watch, suspects in police custody were later found dead and classified by police as "found bodies", casting doubt on government assertions that most killings have been committed by vigilantes or rival drug gangs. The United Nations Committee on Economic, Social and Cultural Rights, in reviewing the Philippines' implementation of the provisions of its International Covenant, concluded on 7 October 2016 that "it is deeply concerned that declarations made by high-ranking officials in the context of the "war on drugs" may be seen to encourage and legitimize violence against drug users, including extrajudicial killings" and observed that "the number of extrajudicial killings of drug suspects has drastically increased in recent months […]";

- The complainant also points to another report by Human Rights Watch of 2009, entitled *You Can Die Any Time*: *Death Squad Killings in Mindanao*. It details the involvement of police and local government officials in targeted death squad killings in Davao City during President Duterte's time as mayor. Moreover, Human Rights Watch's 2014 report, entitled *One Shot to the Head: Death Squad Killings in Tagum City, Philippines*, documents police involvement in what appeared to be a copycat policy of extrajudicial killings in a city nearby, Davao City. The President of the Senate points out that, on 29 March 2012, the Office of the Ombudsman sanctioned 21 high-ranking officers of the Philippine national police (PNP) following the unabated killings in Davao City in recent years attributed to the alleged DDS. The Office of the Ombudsman closed and terminated its investigation on a complaint filed against President Duterte for his alleged involvement in the "killings attributed or attributable to the DDS" during his time as Mayor of Davao City, there being no evidence to support the involvement of (then) Mayor Duterte and the local officials of Davao City to the said acts. Under the Philippine Government set-up, there are other government agencies better equipped than the Senate to find out whether the "police and local government unit (LGU) officials are involved in targeted killings", according to the President of the Senate;

- On 11 August 2016, or almost a month after Senator de Lima filed her Senate resolution and inquiry, President Duterte stated, in reference to Senator de Lima, in a media interview in Davao City, "one day soon I will have to destroy her in public". The interview in Davao City was followed by at least 22 public occasions, as of 28 November 2016, on which President Duterte was recorded consistently hurling insults and accusations against Senator de Lima. President Duterte declared publicly and repeatedly Senator de Lima's guilt and her alleged complicity in the illegal drug trade in the country when she was Secretary of the Department of Justice during the previous administration, reportedly urging her to resign and saying, "if I were Senator de Lima, I would hang myself". The complainant also states that President Duterte said that charges would be filed against Senator de Lima and that she would end up

in prison, and that his remarks show that he has a long-standing grudge against her. The President of the Senate has pointed out that everyone enjoys freedom of expression in the Philippines and that Senator de Lima has herself made some scathing comments about President Duterte, including calling him a "psychopathic serial killer";

- According to the complainant, in concert with the acts and words of the President, on 19 August 2016, the Speaker of the House, Mr. Pantaleon Alvarez, filed *Senate Resolution No. 105*, seeking an investigation into the proliferation of the drug trade at New Bilibid Prison (hereinafter NBP) when Senator de Lima was Secretary of Justice. Soon thereafter, the investigation of the House of Representatives proceeded, through its Committee on Justice. In an abrupt departure from, and in violation of, the rules on committee hearings at the House of Representatives, it was the Secretary of the Department of Justice, Mr. Vitaliano N. Aguirre II, who presented the witnesses and directed the questions put to them. Secretary Aguirre, along with his team of prosecutors, took charge not only of the questioning of the witnesses but of the entire course of the House investigation up until its termination. Testimonies from dozens of inmates at the NBP tagged Senator de Lima as an alleged "protector" of drug syndicates and a supposed key personality in the illegal drug trade in the national jail. Not content with his dominant role in the House inquiry, Secretary Aguirre made criminal accusations and offensive remarks against Senator de Lima on numerous occasions before members of the media;
- Senator de Lima has denied any involvement in drug trafficking in the NBP and points out that it was her who took action on this matter, such as on 15 December 2014, when in a surprise raid inside the NBP authorities discovered "VIP treatment" for some high-profile inmates and drug lords. Police also found illegal drugs inside the prison cells. Senator de Lima, then Secretary of Justice, ordered the inspection and was present during the raid. It appears that, under Senator de Lima's watch as Secretary of Justice, the Department of Justice (DoJ) conducted over 30 inspections at the NBP as part of its surprise inspections initiative called "Oplan Galugad";
- On 20 September 2016, the House Committee on Justice began its hearings with regard to *Senate Resolution No. 105*. Senator de Lima reportedly refused to attend the hearings, calling it a "sham inquiry" designed to discredit her because of her vocal opposition to President Duterte. According to the complainant, those who attested to Senator de Lima having received drug money for her senatorial campaign had been pressured or offered rewards to present false testimony against her. One such witness is Mr. Ronnie Dayan, Senator de Lima's former driver. A complaint for unethical behaviour was reportedly filed with the Senate Committee on Ethics and Privileges against Senator de Lima on 12 December 2016, resulting from the inquiry conducted by the House pursuant to *Senate Resolution No. 105*;
- On 21 November 2016, the DoJ panel of investigating prosecutors issued subpoenas to Senator de Lima in the following cases: (i) NPS No. XVI-INV-16J-00313, entitled Volunteers against Crime and Corruption (VACC), represented by Dante Jimenez versus Senator de Lima et al; (ii) NPS XVI-INV-16J-00315, entitled Reynaldo Esmeralda and Ruel Lasala versus Senator de Lima et al; (iii) NPS XVI-INV-16K-00331, entitled Jaybee Nino Sebastian, represented by his wife, Ms. Roxanne Sebastian, versus Senator de Lima et al; and (iv) NPS XVI-INV-16-K-00336, entitled National Bureau of Investigation (NBI) versus Senator de Lima et al;
- On 2 December 2016, Senator de Lima filed her omnibus motion, arguing that the investigation of the cases was within the exclusive authority and sole jurisdiction of the Office of the Ombudsman and that, considering the partiality, bias and lack of objectivity of the Secretary of Justice and the panel of investigating prosecutors in those cases, these officials should limit themselves to referring the cases to the Office of the Ombudsman;
- On 9 December 2016, a hearing was set on the omnibus motion. On 12 December 2016, Senator de Lima submitted her reply to the comments/opposition of Attorney Eduardo Bringas, in attendance on behalf of complainants VACC (I.S. No. INV-16J- 00313), together with a "manifestation with motion to first resolve pending incidents and to defer further proceedings". On 21 December 2016, however, the DoJ panel ruled that the case

was declared "submitted for resolution" and that all pending incidents would be resolved together with the merits of the case in one resolution;

- Senator de Lima's counsel made a verbal request for reconsideration, which was verbally denied. When her counsel enquired if a written order would be issued, the respondent DoJ panel stated that they saw no need for the same and would merely resolve all pending incidents. Given the serious abuse of discretion amounting to lack or excess of jurisdiction on account of an evident lack of investigative authority, institutional bias, manifest partiality, and undue haste by which the respondent DoJ panel conducted the preliminary investigation of the four aforementioned cases, Senator de Lima filed a petition for prohibition and certiorari with the Court of Appeals under Rule 65 of the Rules of Court;
- On 17 February 2017, three complaints of illegal drug trading against Senator de Lima were filed with the Muntinlupa Regional Trial Court. The complaints were based on the findings and conclusions of the DoJ panel, contained in a joint resolution dated 14 February 2017. They charge Senator de Lima, Mr. Rafael Ragos and Mr. Ronnie Dayan with illegal drug trading, punishable under section 5, in relation to section 3 (jj), section 26 (b) and section 28 of Republic Act No. 9165 (Comprehensive Dangerous Drugs Act of 2002), and were assigned to Judge Juanita Guerrero's Branch 204. On 20 February 2017, Senator de Lima promptly filed a motion to quash, mainly on the grounds of the court's lack of jurisdiction over the offence charged against Senator de Lima, the DoJ panel's lack of authority to file the complaints, the fact that the complaints include more than one offence and that the allegations and the recital of facts, both in the complaints and in the resolution, do not allege the corpus delicti of the charge of violation of R.A.9165. In the same motion, Senator de Lima also placed on record some of her observations, including that the evidence on record does not justify the filing of the case in court. The motion to quash was scheduled for a hearing on 24 February 2017 and the DoJ panel filed a motion to re-set in order to have the hearing re-scheduled for 3 March 2017;
- On 23 February 2017, the judge issued the disputed order upon which the arrest warrant, dated the same day, was issued. According to the complainant, the judge's actions were possibly made with undue haste and inordinate interest, since a motion to quash was yet to be resolved and the judge would not have had time to determine the probable cause, given the voluminous records submitted by the prosecution and the likewise voluminous motion to quash filed by Senator de Lima;
- On 24 February 2017, the arrest warrant in question was served on Senator de Lima by CIDG officials. She is currently detained at the PNP custodial centre in Camp Crame, Quezon City, in accordance with the order issued by the respondent judge committing her to the Custodial Service Unit. Later that day, during the hearing fixed to hear the motion to re-set filed by the DoJ panel, the judge defended the issuance of the arrest warrant, despite failing to first consider and resolve the petitioner's motion to quash by, according to the complainant, making the flawed claim that she had to acquire jurisdiction over the person of the Senator first before she could resolve her motion to quash. Senator de Lima challenged this decision before the Court of Appeals and subsequently the Supreme Court, where the matter is pending,

Considering that Senator de Lima stands accused of a non-bailable offence and faces between 12 years and life in prison; that under the Philippine Constitution, legislators only enjoy immunity from arrest for crimes punishable by fewer than six years' imprisonment,

Considering that the President of the Senate states that justice is following its course and that not only former convicts have accused her of involvement in drug-trafficking, but also two former members of the National Bureau of Investigation. He is following her situation very closely and the Secretary General of the Senate and the official in charge of security at the Senate have visited her. The President of the Senate is looking into her security and intends to visit her as soon as possible. In response to the suggestion by the Committee on the Human Rights of Parliamentarians that it undertake a visit the Philippines in connection with Senator de Lima's case, he has also stated that he would be more than pleased to welcome such a visit,

Considering that, according to the complainant, the smear campaign – which includes threats to release a purported sex video of Senator de Lima and Mr. Dayan and intimidation and accusations against Senator de Lima – is part of an attempt to derail accountability for the appalling death toll resulting from President Duterte's abusive war on drugs. During the House inquiry, Senator de Lima's address and mobile telephone number were also publicly released, a blatant violation of her rights. Senator de Lima was hounded, in particular through almost 2,000 threatening and harassing text messages, containing very foul language. Prior to her arrest, Senator de Lima revealed "heightened security threats" against her, notably "intensified monitoring", including electronic surveillance and physical surveillance by security agents,

Bearing in mind that the Philippines has ratified the International Covenant on Civil and Political Rights and is therefore bound to respect the right to fair trial,

1. *Thanks* the President of the Senate for his cooperation and the information he provided;

2. *Is deeply concerned* about Senator de Lima's arrest, detention and the accusations levied against her; *fails to understand* how the accusations against her make sense, given that she has been the one taking action against the alleged drug trafficking in NBP; *considers*, also in light of the timing of the accusations, which coincide with the inquiry she launched in the Senate, and the reported public statements made by President Duterte and the Secretary of Justice, that there is serious reason to believe that she is targeted due to her outspoken criticism of the impact of the current government's policies on human rights in the Philippines;

3. *Is deeply concerned* in this regard that the statements made by President Duterte and the Secretary of Justice flout the principle of the presumption of innocence, portraying Senator de Lima as guilty before legal proceedings have even started; *considers* that their statements, first and foremost those of the Head of State, forcibly carry great weight and may put undue pressure on the course of the criminal cases;

4. *Is also concerned* about the fact that the legal proceedings on the substance of accusations appear to be going ahead, even though very important preliminary questions have yet to be resolved; and *calls on* the relevant authorities to ensure full respect for Senator de Lima's right to a fair trial, taking due account of all the facts and relevant legal provisions; *wishes* to receive the official views on this matter; *decides* to send a trial observer to the criminal proceedings should they take place;

5. *Is concerned* about the allegation that Senator de Lima was dismissed as chair and member of the Senate Committee on Justice and Human Rights for political reasons and that its report pursuant to *Senate Resolution Nr. 9* was not finalized in line with the applicable rules and does not take duly into account important evidence; *wishes* to receive the official views on this matter;

6. *Wishes* to receive further details on the prison conditions of Senator de Lima in the PNP custodial centre;

7. *Understands* that a complaint against Senator de Lima for "unethical behaviour" was reportedly submitted to the Senate; *wishes* to know the exact facts underpinning the complaint and the procedure that will be followed;

8. *Considers* that the issues at hand affecting one of its members should be of great concern to the Senate; *trusts* that it will do everything possible to monitor Senator de Lima's situation closely, including with regard to her right to physical integrity and a fair trial and conditions of detention;

9. *Is pleased* that the President of the Senate would welcome a visit by a delegation of the Committee on the Human Rights of Parliamentarians in order to address the concerns and questions that have arisen in this case; *considers* that it is crucial that this delegation

meets with the relevant parliamentary, executive and judicial authorities and Senator de Lima and her lawyers, along with any third party likely to assist it in its work; *requests* the Secretary General to make the necessary arrangements for this visit to take place as soon as possible;

10. *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;

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

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