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155th session of the Committee on the Human Rights of Parliamentarians

Geneva, 25 January – 2 February 2018

CONTENTS

E

Americas

- **El Salvador**

ELS02	Ricardo Humberto Contreras Henríquez
ELS03	Patricia María Salazar Rosales (Ms.)
ELS04	Rolando Alvarenga Argueta
ELS05	José Ramón González Suvillaga
ELS06	Misael Serrano Chávez
ELS07	Óscar Alfredo Santamaría Jaimes
ELS08	Juan Pablo Fontan Nuila
ELS09	Francisco José Rivera Chacón
ELS10	César Rene Florentín Reyes Dheming
ELS11	Ana Mercedes Larrave De Ayala (Ms.)
ELS12	Marco Javier Calvo Camino
ELS13	Marco Francisco Salazar Umaña
ELS14	Jorge Adalberto Josué Godoy Cardoza
ELS15	Nery Francisco Herrera Pineda
ELS16	José Antonio Rodríguez Hernández
ELS17	Jorge Castañeda
ELS18	Paola María Zablah Siri (Ms.)
ELS19	Felissa Guadalupe Cristales Miranda (Ms.)
ELS20	Lisseth Arely Palma Figueroa (Ms.)
ELS21	Carlos Armando Munguia Sandoval
ELS22	Ana Marina Castro Orellana (Ms.)
ELS23	Nelson Funes
ELS24	Luis Engelberto Alejo Sigüenza
ELS25	Gerardo Estanislao Menjívar Hernández
ELS26	José Antonio Lara Herrera
ELS27	Fernando Gutiérrez Umanzor
ELS28	Yessenia Orquídea Rivera Flores (Ms.)
ELS29	Roxana Marisela Durán Hernández (Ms.)
ELS30	Aquilino Rivera Posada
ELS31	Ana María Gertrudis Ortiz Lemus (Ms.)
ELS32	José Anibal Calderón Garrillo
ELS33	José Mario Mirasol Cristales
ELS34	Omar Elíseo Romero Lazo
ELS35	Julio César Miranda Quezada
ELS36	Alex Antonio Pineda
ELS37	Víctor Hugo Suazo Álvarez
ELS38	Delmy Carolina Vásquez Alas (Ms.)
ELS39	Damián Alegría
ELS40	Yolanda Anabel Belloso Salazar (Ms.)
ELS41	Luis Alberto Batres Garay
ELS42	Gustavo Danilo Acosta Martínez
ELS43	Idalia Patricia Zepeda Azahar (Ms.)
ELS44	María Otilia Matamoros De Hernández (Ms.)
ELS45	Hilda Jessenia Alfaro Molina (Ms.)
ELS46	Susy Lisseth Bonilla Flores (Ms.)
ELS47	Mario Rafael Ramos Sandoval
ELS48	Iris Marisol Guerra Henríquez (Ms.)
ELS49	Felipe Rolando Perla Mendoza
ELS50	Carlos Mario Zambrano Campos
ELS51	Dina Yamileth Argueta Avelar (Ms.)
ELS52	Samuel De Jesús López Hernández
ELS53	María Imelda Rivas De Auceda (Ms.)
ELS54	Patricia Del Carmen Cartagena Arias (Ms.)
ELS55	Ana Victoria Mendoza De Zacarias (Ms.)
ELS56	Abner Iván Torres Ventura
ELS57	David Rodríguez Rivera

- **Venezuela**

VEN13	Richard Blanco
VEN16	Julio Borges
VEN19	Nora Bracho
VEN20	Ismael Garcia
VEN22	William Dávila
VEN24	Nirma Guarulla
VEN25	Julio Ygarza
VEN26	Romel Guzamana
VEN27	Rosmit Mantilla
VEN28	Enzo Prieto
VEN29	Gilberto Sojo
VEN30	Gilber Caro
VEN31	Luis Florido
VEN32	Eudoro González
VEN33	Jorge Millán
VEN34	Armando Armas
VEN35	Américo De Grazia
VEN36	Luis Padilla
VEN37	José Regnault
VEN38	Dennis Fernández
VEN39	Olivia Lozano
VEN40	Delsa Solórzano
VEN41	Robert Alcalá
VEN42	Gaby Arellano
VEN43	Carlos Bastardo
VEN44	Marialbert Barrios
VEN45	Amelia Belisario
VEN46	Marco Bozo
VEN47	José Brito
VEN48	Yanet Fermin
VEN49	Dinorah Figuera
VEN50	Winston Flores
VEN51	Omar González
VEN52	Stalin González
VEN53	Juan Guaidó
VEN54	Tomás Guanipa
VEN55	José Guerra
VEN56	Freddy Guevara
VEN57	Rafael Guzmán
VEN58	María G. Hernández
VEN59	Piero Maroun
VEN60	Juan A. Mejía
VEN61	Julio Montoya
VEN62	José M. Olivares
VEN63	Carlos Paparoni
VEN64	Miguel Pizarro
VEN65	Henry Ramos Allup
VEN66	Juan Requesens
VEN67	Luis E. Rondón
VEN68	Bolivia Suárez
VEN69	Carlos Valero
VEN70	Milagro Valero
VEN71	German Ferrer

Asia

- **Cambodia**

CMBD27 Chan Cheng
CMBD48 Mu Sochua (Ms.)
CMBD49 Keo Phirum
CMBD50 Ho Van
CMBD51 Long Ry
CMBD52 Nut Romdoul
CMBD53 Men Sothavarin
CMBD54 Real Khemarin
CMBD55 Sok Hour Hong
CMBD56 Kong Sophea
CMBD57 Nhay Chamroeun
CMBD58 Sam Rainsy
CMBD59 Um Sam Am
CMBD60 Kem Sokha
CMBD61 Thak Lany (Ms.)
CMBD62 Chea Poch
CMBD63 Cheam Channy
CMBD64 Chiv Cata
CMBD65 Dam Sithik
CMBD66 Dang Chamreun
CMBD67 Eng Chhai Eang
CMBD68 Heng Danaro
CMBD69 Ke Sovannroth (Ms)
CMBD70 Ken Sam Pumsen
CMBD71 Keo Sambath
CMBD72 Khy Vanndeth
CMBD73 Kimsour Phirith
CMBD74 Kong Bora
CMBD75 Kong Kimhak
CMBD76 Ky Wandara
CMBD77 Lath Littay
CMBD78 Lim Bun Sidareth
CMBD79 Lim Kimya
CMBD80 Long Botta
CMBD81 Ly Srey Vyna (Ms)
CMBD82 Mao Monyvann
CMBD83 Ngim Nheng
CMBD84 Ngor Kim Cheang
CMBD85 Ou Chanrath
CMBD86 Ou Chanrith
CMBD87 Pin Ratana
CMBD88 Pol Hom
CMBD89 Pot Poeu (Ms.)
CMBD90 Sok Umsea

Europe

MENA

Niger

RN115 - Amadou Hama

Decision adopted by the Committee on the Human Rights of Parliamentarians at its 155th session (Geneva, 25 January - 2 February 2018)

The Committee,

Referring to the case of Mr. Amadou Hama, former Speaker of the National Assembly of Niger, to its decision adopted at its 149th session (January 2016) and to the decision of the IPU Governing Council at its 197th session (October 2015),

Referring also to the letters from the Speaker of the National Assembly dated 1 March 2016, 25 January and 28 March 2017, and 17 January 2018, as well as to the information provided by the complainant and the various judicial decisions rendered in the case,

Recalling that Mr. Hama, former Speaker of the National Assembly and the main opponent of the Head of State, has been in exile in France following legal proceedings instituted against him in 2014 and his sentencing, in his absence, in March 2017 to a one-year prison term for child abduction; the complainant alleges that Mr. Hama's parliamentary immunity and rights of defence have been infringed and that the charges against him are unfounded; the complainant believes that Mr. Hama has been a victim of political and judicial harassment since his party sided with the opposition in August 2013,

Considering the following information and allegations on file:

- **Parliamentary immunity**

- On 27 August 2014, the Bureau of the National Assembly of Niger authorized Mr. Hama's arrest without granting him a prior hearing. The complainant alleged, on the one hand, that Mr. Hama's parliamentary immunity and rights of defence have been infringed, given that the Bureau had failed to give him a hearing, or to verify any of the facts and, on the other hand, that there was no evidence to support the charges brought against him;
- The parliamentary authorities considered that the case was not political in nature and that the procedure followed by the National Assembly was conducted in accordance with the Constitution and laws of Niger, as they do not require the member of parliament concerned to have a hearing when the request is made when parliament is in recess and handled by the Bureau of the National Assembly; and
- The Committee noted that there was a legal vacuum with regard to the procedure for authorizing the arrest of a member of parliament by the Bureau when parliament is in recess and that the procedure followed by the National Assembly in the present case to authorize Mr. Hama's arrest had not been conducted with respect for the rights of defence;
- In March 2015, the Speaker of the National Assembly undertook to address the legal vacuum to ensure better protection for parliamentarians. Nevertheless, the chairperson of the parliamentary group for Mr. Hama's party was himself subjected to the same procedure in July 2015 (see case RN116 concerning Mr. Bakari);
- In his letter of 17 January 2018, the Speaker of the National Assembly indicated that new Rules of Procedure had been adopted in March 2017 and that the procedure for authorizing the arrest of a member of parliament followed by the Bureau when parliament is in recess was now better regulated, requiring a four-fifths majority of Bureau members.

- **Judicial proceedings**

- Mr. Hama fled Niger on 28 August 2014 following the decision taken by the Bureau and took refuge abroad. A warrant for his arrest was then issued;

- In December 2014, Mr. Hama and his wife were formally charged, along with 30 other people, for “child substitution” (and aiding and abetting child substitution), forgery and use of forged documents and criminal conspiracy, which are punishable by up to 10 years' imprisonment and the revocation of civic and political rights. Mr. Hama's wife and 12 other women are accused of faking their pregnancies and purchasing newborn babies in Nigeria through a subregional baby-trafficking network. They allegedly obtained false birth certificates on their return to Niger. Mr. Hama was accused of complicity for allegedly having known of his wife's conduct and having had false birth certificates issued;
- On 30 January 2015, the lower court declared that it had no jurisdiction in this matter because of preliminary proceedings relating to the establishment of the offences and the criminal court’s jurisdiction over the case;
- An observer appointed by the Committee to observe the judicial proceedings in April 2015 concluded in his mission report that, overall, the judicial proceedings seemed to have been conducted according to due process until that date. He noted that there were opposing opinions with regard to the case, and that, even though it would seem reasonable to suspect that scores were being settled, a certain number of objective facts had nevertheless come to light that could be considered as reasonable grounds for prosecution. He recommended that another observer be tasked with following the rest of the proceedings;
- The Court of Appeal quashed the lower court’s decision on 13 July 2015 and ordered the court to rule on the merits. The Court of Cassation upheld the decision of the Court of Appeal on 23 March 2016, three days after the results of the second round of the presidential election were announced;
- The trial on the merits took place in first instance before the Court of Appeal on 13 March 2017. Mr. Hama was sentenced in his absence to a one-year prison term for child abduction;
- The IPU was not informed of the trial dates in advance, despite its repeated requests over time. It was thus unable to send an observer to the trial;
- The Court of Cassation has not yet ruled on the appeal lodged by Mr. Hama against his conviction. If it upholds the sentence, it will become final. Mr. Hama's parliamentary mandate will be revoked and he will become ineligible for the next election in 2021.

- **Fair trial guarantees and conflicting positions of the parties**

- According to the parliamentary authorities, the arrest and prosecution of the Speaker of the National Assembly were not political in nature. They come in the wake of a judicial investigation lasting several months, which established that the purchase of newborn babies in Nigeria had become a widespread practice in Niger, particularly among affluent couples experiencing difficulties in having children, and that this practice was part of a subregional human trafficking network. The parliamentary authorities have repeatedly reaffirmed their willingness to provide all necessary clarifications on this case in view of the confusion between the political and legal aspects of the case. They recalled that, in politics, it was common for unresolved common law cases to catch up with politicians failing to demonstrate exemplary behaviour in the past, and that it was up to the courts to rule on the offences committed, irrespective of any political considerations;
- The complainant alleges that Mr. Hama's wife gave birth to twins in Nigeria after a normal pregnancy in 2012 and that there is no evidence to support the charges brought against them. Mr. Hama refused to have himself or his wife subjected to a DNA test, even arranged by an independent expert with IPU facilitation, arguing that the burden of proof rested with the prosecution and that the presumption of innocence should be maintained;
- The arguments of the Court of Appeal and the Court of Cassation in their respective decisions of 13 July 2015 and 23 March 2016 seem to centre mainly on a presumption of guilt of the defendants. The Court of Appeal appears to have reversed the burden of

proof provided for in the Civil Code. Its decision twice disregarded the principle of the presumption of innocence, on the basis that it could be proved that the accused women had faked the births of the children concerned. As this had yet to be established by a court, a ruling on the merits had not yet been handed down. In its decision, the Court of Cassation also considered that the offences of which the defendants were accused had been established, even though the trial on the merits had yet to take place – which appears to be a clear violation of the presumption of innocence and the right to a fair trial, all the more so as the court had rejected the grounds of appeal relating precisely to the violation of the presumption of innocence and the rights of defence by the Court of Appeal;

- The case file was referred to the ECOWAS Court of Justice, which rendered a decision on 1 July 2016. It found that Mr. Hama had not produced decisive evidence that human rights had been violated in his criminal case. It observed that Mr. Hama had not been prevented from intervening in the proceedings, that his lawyers had been free to file the appropriate appeals, and that the judicial decisions had been reached after adversarial proceedings. It considered that the right of access to justice had been respected and that it could not comment further without evaluating the legality of the judicial proceedings or the decisions rendered by national courts, which, based on its prior case law lay beyond its purview. The court also stated that it lacked jurisdiction to examine Mr. Hama's argument that his prosecution was politically motivated and designed to eliminate him as a political opponent;
- The complainant alleged that the trial on the merits that took place in February−March 2017 had been marked by blatant irregularities and that, moreover, since the case had been decided by the Court of Appeal and not by the lower court, Mr. Hama could not appeal against the ruling on the merits, which constituted a violation of international fair trial standards;
- In his letter of 28 March 2017, the Speaker of the National Assembly reported that, during the trial, the defence lawyers had raised several procedural objections, including the unconstitutionality of a law, and that they were calling for the suspension of the trial. Nevertheless, the court had decided to attach all the objections to the merits, which had not gone down well with the defence lawyers, who, according to the Speaker, had decided to withdraw from the trial;
- The sentencing decision of 13 March 2017 contains little detail on the evidence on which the court relied in concluding that Mr. Hama's wife was guilty (and by extension Mr. Hama, for complicity). The court refers mainly to evidence concerning the other defendants in the case;
- In January 2018, the complainant reported that the ongoing judicial proceedings were being conducted solely adducing inculpatory evidence and that the courts had successively refused to adduce exculpatory evidence that Mr. Hama's lawyers had tried to introduce. The complainant provided the following evidence to the IPU: confirmations dated July and October 2017 from the Nigerian authorities (Interpol/Nigeria and the National Agency for the Prohibition of Trafficking in Persons (NAPTIP)) that Mr. Hama has not been implicated in ongoing investigations and proceedings in Nigeria against the woman accused of being at the heart of the baby-trafficking network. The complainant also submitted correspondence from the President of the Bar Association, according to which Mr. Hama's lawyers were not given free access to the whole court file during the proceedings in order to prepare their defence.

- **Political aspects of the case**

- The charges against Mr. Hama were made shortly after his party joined the opposition. Leading up to the presidential elections, he was perceived as the President's main adversary and was criticized for not resigning as Speaker after leaving the majority. According to the complainant, several leaders and many members and activists of the party were also victims of political and judicial harassment during the same period, orchestrated by the majority on the instructions of the Head of State, particularly in the run-up to the presidential and legislative elections;

- After taking refuge in France for more than a year, Mr. Hama returned to Niger in November 2015 to face justice and to campaign as a candidate in the presidential elections of February 2016. He was arrested upon leaving the plane and kept in detention throughout the campaign period. Mr. Hama was unable to campaign in person, but he nevertheless came in second in the first round of voting in the presidential elections. The opposition coalition supported him and denounced irregularities. It decided to boycott the second round of voting. On 20 March 2016, the outgoing president, Mr. Issoufou, was re-elected with 92 per cent of the vote. Moreover, Mr. Hama was re-elected to parliament in the legislative elections;
- On 16 March 2016, shortly after the opposition announced its boycott of the second round of voting, Mr. Hama was transferred to France for medical reasons. Following President Issoufou's victory, the Court of Cassation immediately granted Mr. Hama's provisional release, on 29 March 2016, just days after the President had issued a statement in which he reached out to the opposition, calling for an easing of political tensions in Niger. The opposition, which was boycotting the National Assembly to protest against the election results, agreed to resume its parliamentary work. Since the end of 2016, it has again been expressing its dissatisfaction with the current regime's leadership of the country, according to the complainant, who believes this was why the case was suddenly reactivated and brought to trial in early 2017, leading to the sentencing of Mr. Hama,

Also considering that *Radio France Internationale* (RFI) reported on 28 January 2018 that Nigeria had asked Niger to carry out DNA tests on Mr. Hama's second wife after two children had been found on his land. According to the article, a search had been launched for the children following the lower-court conviction, with the intention of placing them in an orphanage, and Mr. Hama's wife had allegedly left Niger,

Bearing in mind the applicable constitutional, legislative and regulatory framework, as well as the fact that Niger is a party to both the International Covenant on Civil and Political Rights and the African Charter on Human and Peoples' Rights,

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

2. *Takes note of* the progress made in the judicial proceedings; and *deeply regrets* that it has not been kept informed by the parties of the dates of the trial on the merits and that it has therefore not been able to send an independent observer;

3. *Notes* the complainant's persistent allegations of non-compliance with international fair trial standards in the judicial handling of the case; and *requests* the authorities to send its observations in this regard, in particular concerning the alleged violations of the presumption of innocence, the refusal to consider certain exculpatory evidence, and the Court of Appeal's jurisdiction at first and last instance, as well as unconfirmed information relayed by RFI;

4. *Takes note of* the highly political aspect of the case, given the way in which the key stages in the prosecution of Mr. Hama coincide with the political calendar, in particular the latest presidential elections; *expresses the hope* that a solution can now be found in the changed political context; *invites* the complainant and the parliamentary authorities to take part in a hearing during the 138th IPU Assembly (Geneva 24−28 March 2018) to discuss the case; and *recalls* that the IPU is willing to facilitate a dialogue with a view to resolving the case;

5. *Notes with interest* that the Rules of Procedure of the National Assembly have been amended to better regulate the lifting of parliamentary immunity by the Bureau when parliament is in recess; *requests* the Speaker of the National Assembly to provide a copy of the amended provisions;

6. *Requests* the Secretary General to convey this decision to the parliamentary authorities, the complainant and any third party likely to be able to provide relevant information; and *requests him in particular* to contact the Nigerian authorities in order to have them carry out the necessary checks, in view of their involvement in the case;

7. *Decides* to continue examining the case.

Niger

RN116 - Seidou Bakari

Decision adopted by the Committee on the Human Rights of Parliamentarians at its 155th session (Geneva, 25 January - 2 February 2018)

The Committee,

Referring to the case of Mr. Seidou Bakari, a former member of parliament of the National Assembly of Niger, and to the decision it adopted at its 149th session (October 2016),

Referring also to the letter dated 17 January 2018 from the Speaker of the National Assembly and to the information provided by the complainant,

Recalling that Mr. Seidou Bakari, former member of parliament and former Chairperson of the Parliamentary Group Modenfa/Lumana Africa, is being prosecuted in an embezzlement case opened in July 2015 while he was still a member of parliament; that at the beginning of July 2015 the Government filed an arrest application for him and, since the National Assembly was in recess, on 28 July 2015 the Bureau authorized the arrest of Mr. Seidou Bakari, member of parliament,

Recalling also that the complainant alleges that Mr. Bakari was a victim of acts of political and judicial harassment given the fact that in August 2013 his party joined the opposition in view of the 2016 elections and that the party president – Mr. Amadou Hama, who at the time was the Speaker of the National Assembly – became the main opponent to the Head of State (see the RN/115 case on Mr. Amadou Hama, which was also before the Committee); that at the time, Mr. Bakari was Mr. Amadou Hama's right hand in parliament, which is why, according to the complainant, he was targeted; that the complainant is of the opinion that the charges brought against Mr. Bakari are unfounded, that his parliamentary immunity was breached by the National Assembly and that the procedures followed both by parliament and the judiciary are breaches of his basic right to due process,

Referring to the following information and allegations:

- **As regards the procedure followed by the Bureau of the National Assembly**

- According to the complainant, the Bureau of the National Assembly of Niger refused to hear Mr. Bakari and granted the Government's request without any prior verification and even though no criminal charges had yet been brought against the member of parliament;
- The parliamentary authorities deemed that the case was not political in character and that the procedure followed by the National Assembly was carried out in keeping with the Constitution and laws of Niger, as these did not require the presence of the member of parliament concerned when an application is filed during recess and is considered by the Bureau of the National Assembly;
- The Committee noted with concern the serious irregularities alleged by the complainant and the fact that these irregularities seemed similar to those recorded earlier when, in August 2014, Mr. Amadou Hama's arrest was authorized in spite of the promises made by the Speaker of the National Assembly in March 2015 to remedy this legal void and thus guarantee a fair trial that would strictly respect the rights of the defence. The Committee deplored the fact that the Bureau once again proceeded with an authorization for arrest in violation of the rights of defence of a member of parliament and called again on the National Assembly to amend its Rules of Procedure and regulate the procedure appropriately;
- In his letter dated 17 January 2018, the Speaker of the National Assembly noted that new Rules of Procedure had been adopted in March 2017 and that the Bureau's procedure when authorizing the arrest of a member of parliament during recess was now better regulated, as it required a four-fifths majority of Bureau members.

- **As regards Mr. Bakari's arrest and detention**

- Mr. Bakari was not arrested immediately following the authorization granted by the Bureau of the National Assembly. He was arrested on 16 May 2017, following the 2016 parliamentary elections, which is when he was not re-elected and was therefore no longer a member of parliament;
- Mr. Baraki has been held in custody on remand since his arrest; by the end of January 2018 he will have been held in detention for 20 months. He is being held in regular prison conditions in Kollo Prison, 50 kilometres from the capital;
- According to the complainant, Mr. Bakari presented himself voluntarily at the first summons of the investigating judge. He provided all the requested documentation. He has not been involved in any court proceedings before. However, according to the complainant, all his requests for provisional release were rejected. The complainant claims that the court based its decision of 21 October 2016 on the grounds that "the facts are serious; there remain matters to be completed and detention is still required until truth is obtained", rather than on the specific grounds relating to Mr. Bakari's individual situation and to the circumstances of the prosecution;
- In his letter of 17 January 2018, the Speaker of the National Assembly noted that, in keeping with the principle of the separation of powers and confidentiality of preliminary investigations, he had not been able to obtain a copy of the detention order but that, in accordance with the law, the order had to contain the grounds for detention;
- Articles 131 to 133 of the Code of Criminal Procedure provide that detention on remand is "an exceptional measure" and may not be ordered or maintained except in the following three cases: (1) if it is the only means to preserve evidence or prevent pressure on witnesses or victims or fraudulent consultations between those accused; (2) if it is the only means to protect an accused and so guarantee his/her availability to be brought before the courts or to put an end to or prevent a repeat of the offence; (3) if the crime has caused an exceptional and persistent disturbance to public order and detention is the only way to put an end to it. Article 131.1 *bis* also provides that "detention on remand cannot exceed a reasonable period of time, taking into consideration the seriousness of the offences of which the accused is charged and the complexity of the investigations needed to obtain the truth".

- **As regards the allegations of embezzlement**

- The basis of the case is embezzlement allegations dating back to 2005. At that time, Mr. Bakari was in charge of coordinating the food crisis cell (CCA), attached to the Cabinet of the Prime Minister – at that time Mr. Amadou Hama – and operated under the dual control of the Prime Minister and Niger's international partners. The purpose of the CCA was to provide food assistance in food crisis periods. According to the complainant, Mr. Bakari is accused of having paid the providers but that the food was never delivered and this allegedly amounted to an embezzlement of around CFA 6.5 billion (around US$ 11 million) meant for the procurement of foodstuffs for the victims of the 2005 food crisis;
- The complainant considers that the charges brought against Mr. Bakari are unfounded and that the documentation and explanations he provided support this claim. The complainant notes that Mr. Bakari simply executed the decisions made collectively by the CCA and that he did not have the authority to take decisions himself or to approve spending. According to the complainant, at the time, Niger's international partners were satisfied with the management of the funds, which is why they approved the accounts after having carried out their own audit;
- Also according to the complainant, the charges are the result of an administrative investigation conducted by a State inspector under the instructions of the President of the Republic after Mr. Amadou Hama joined the opposition. The complainant also underlines that Mr. Bakari was never interrogated during the administrative investigation, nor was he informed of its conclusions. The complainant submitted a report of the preliminary

investigation carried out by the National *Gendarmerie*, which led to the administrative investigation and which, it appears, contradicts the conclusions of the administrative investigation, as it concludes that all the transactions were in keeping with the applicable legislation;

- The complainant considers that Mr. Bakari has in turn been the victim of a political settling of scores whereby the regime in place sought to sideline the opposition ahead of the 2016 elections. The complainant emphasizes that the proceedings instigated by the Government and the National Assembly against Mr. Bakari are similar to those previously instituted against Mr. Amadou Hama, except for the nature of the charges.

- **As regards the status of the ongoing judicial proceedings**

- According to the complainant, the Public Prosecutor only granted Mr. Bakari a two-day hearing at the first instance court in Niamey. Up to this date, no other collection of evidence has taken place. The complainant denounces the inaction of the public ministry and the ensuing unreasonable delays while Mr. Bakari remains on remand;
- The complainant claims that only Mr. Bakari has been charged in this case and that no other decision makers who authorized the trade deals and their payments have been interviewed or arrested;
- The complainant alleges that the investigating judge opposed the submission of exculpatory evidence by the defence lawyers. According to the complainant, this evidence would prove that some of the foodstuffs which, according to the indictment, had not been delivered, in actual fact had been received. In addition, the investigating judge has also not followed up on Mr. Bakari's request of 3 October 2017 (letter ref. no. 1271/NK/SAD/16) seeking a hearing of the donors as defence witnesses, who were the decision makers at the time when Mr. Bakari executed the decisions for which he is now being prosecuted;
- In his letter dated 25 January 2017, the First Deputy Speaker of the National Assembly noted that the offences for which Mr. Bakari is being prosecuted are not covered by the statute of limitations on public legal proceedings and that the only information he provided was that "it was the duty of the courts to investigate his manner of management and that the case is currently ongoing";
- In his letter of 17 January 2018, the Speaker of the National Assembly noted that he was not able to obtain answers to all the Committee's questions due to their legal character and in keeping with the principle of the separation of powers and the confidentiality of investigations. He stated that progress had been made in the case and that the investigating judge would shortly issue an order on the case. In keeping with the applicable procedure, the order could either refer the case to the Court of Appeal for judgement or dismiss the proceedings,

Bearing in mind the applicable constitutional, legislative and regulatory framework and the fact that Niger has ratified the International Covenant on Civil and Political Rights and the African Charter on Human and Peoples' Rights,

1. *Notes with concern* the length of the preliminary investigation, in which no progress appears to have been made and, in particular, the length of Mr. Bakari's detention on remand, which does not appear to be in keeping with articles 131 and 133 of the Code of Criminal Procedure; consequently, *invites* the relevant authorities to release him immediately, to expedite the processing of the case and to provide it with more detailed information on these points;

2. *Expresses its concern* regarding the merits of the charges brought against Mr. Bakari, given the substantial information and documentation submitted by the complainant and the absence of responses by the authorities on the issue at this stage;

3. *Considers* that this case has a highly political aspect to it; *concludes* that the proceedings initiated against Mr. Bakari have evident similarities with those initiated against the president of his party, Mr. Amadou Hama; and that these similarities – as well the fact that the proceedings were initiated to coincide with the latest presidential and parliamentary elections – add weight to the complainant's allegations;

4. *Urges* the Niger authorities to do their utmost to guarantee that the case is handled fairly and independently, fully respecting international fair trial standards;

5. *Requests* the authorities to keep it informed of the decision to be taken by the investigating judge and, if appropriate, of the trial dates, so as to be able to send an observer; *also requests* the authorities to provide its observations and more detailed information on the case regarding the allegations made by the complainant;

6. *Notes with interest* that the Rules of Procedure of the National Assembly have been amended to better regulate the lifting of parliamentary immunity by the Bureau when parliament is in recess; *requests* the Speaker of the National Assembly to provide a copy of the amended provisions;

7. *Invites* the parliamentary authorities, as well as the complainant, to take part in the hearings to be held during the 138th IPU Assembly (Geneva, 24−28 March 2018) in order to discuss the case with the two parties and thus find appropriate solutions;

8. *Requests* the Secretary General to convey this decision to the parliamentary authorities, the complainant and any third party likely to be able to provide relevant information;

9. *Decides* to continue examining the case.

Zimbabwe

ZBW20 - Job Sikhala

Decision adopted by the Committee on the Human Rights of Parliamentarians at its 155th session (Geneva, 25 January - 2 February 2018)

The Committee,

Referring to the case of Mr. Job Sikhala, an opposition parliamentarian at the time the complaint was submitted, and to the resolution adopted by the IPU Governing Council at its 194th session (March 2014),

Referring also to the letter of the Speaker of the National Assembly dated 5 May 2014,

Recalling the following information on file:

- Mr. Sikhala is a former member of the Parliament of Zimbabwe who belongs to the opposition party, the Movement for Democratic Change (MDC);
- Mr. Sikhala was arbitrarily detained and severely tortured by police officers in January 2003. Mr. Sikhala was arrested together with four other persons, including the Harare lawyer Gabriel Shumba, and accused of having set fire to a bus on 13 January 2003. According to the testimony he gave in court on 16 January 2003, having first been taken to Matapi police station and then Harare central police station, he was transferred to an unknown destination by two police officers, who blindfolded him in such a way that he could not breathe properly. When they arrived, Mr. Sikhala was beaten and made to drink a liquid that the police officers claimed was urine but which, according to Mr. Sikhala, was instead a poisoned liquid, subsequently causing severe coughing and diarrhoea. Mr. Sikhala and the three others were subsequently charged under section 5 of the Public Order and Security Act (POSA) with attempting to subvert a constitutionally elected government. When they appeared in court on 16 January, Mr. Sikhala gave a detailed testimony in court of his ordeal, which was widely reported in the Zimbabwean media. Mr. Shumba told the court that he had been coerced into writing a letter that was to serve as prosecution evidence. They were released on bail of Z$ 30,000 each and told to report to the police once a week. On 5 February 2003, the court dismissed the charges;
- Mr. Sikhala subsequently filed a lawsuit against the Minister of Home Affairs and the police regarding his torture. The case was registered under reference HC/645/03. He provided the names of suspects and medical certificates;
- Since his initial complaint, Mr. Sikhala clearly identified the police officers who tortured him, namely: (i) Mr. Chrispen Makadenge, who has remained a serving member of the Zimbabwean Republic Police and was promoted to the senior position of chief superintendent in the investigative branch of the police; (ii) Mr. Matsvimbo, who was also promoted and has continued working closely with police security; (iii) Mr. Garnet Sikovha; and (iv) Mr. Mashashu, both of whom have since died;
- In its memorandum of 20 April 2004, the police confirmed that Mr. Job Sikhala had lodged a report to the effect that he had been tortured while in detention and stated that “although there has been a lot of hype which has tended to impair investigations in connection with this case, progress has been made in the investigations”. However, in its memorandum of 14 October 2005, the police stated that Mr. Sikhala had been unable "to positively identify the accused persons and it has been difficult to finalize this case", and in its report of 8 March 2006, they stated that no progress had been made owing to Mr. Sikhala’s lack of cooperation. In the police memorandum of 4 July 2006, the police reiterated that it was difficult to proceed with the case since Mr. Sikhala had failed to identify the culprits after a team of investigators had been put in place to investigate the allegations. In his letter of 30 August 2010, the Attorney General also stated that Mr. Sikhala had not “brought any admissible evidence proving any identifiable suspect”

and that there was consequently no basis for alleging that he had not been accorded the protection of the law;

- Mr. Sikhala made repeated attempts to reactivate the proceedings, including by means of a high court application filed in 2010, which was never ruled upon;
- The torturers were never brought to justice and the judicial authorities failed to take any action to hold the culprits accountable;
- In May 2012, the African Commission on Human and People's Rights held that the State of Zimbabwe was responsible for the torture of Mr. Gabriel Shumba in 2003, who was Mr. Sikhala's lawyer at the time, and had been arrested and tortured with him;
- Mr. Sikhala has suffered further abuse for his opposition stance during his parliamentary terms as well as afterwards. When travelling to the 116th IPU Assembly (Bali, Indonesia, April 2007), he was escorted by 20 bodyguards in order to avoid the same fate as Mr. Nelson Chamisa (who was badly injured in an attack – a crime also still unpunished – on 18 March 2007 at Harare International Airport, reportedly by state security agents in the presence of the police). Mr. Sikhala was arbitrarily detained several times, including while participating in opposition meetings and protests in 2007 and 2011. He was systematically charged with various offences, arrested and later released for lack of evidence,

Recalling further that the Public Order and Security Act, enacted in 2002 and amended in 2007, gives the police sweeping powers; that it has been widely criticized as severely restricting freedom of expression, assembly and association considering the way in which police have interpreted the act to justify the excessive use of force and to deter dissenting voices from holding public rallies and demonstrations; the Public Order and Security Act has not been repealed and no institutional and legislative reform has been undertaken to guarantee the effective impartiality of the police, the security forces and the judiciary and to ensure accountability for past abuses,

Considering that, in his letter of 5 May 2014, the Speaker of the National Assembly confirmed that Mr. Sikhala had been assaulted while performing parliamentary duties and that the police had not fully investigated his case; the Speaker also confirmed Mr. Sikhala's efforts in trying to reactivate judicial proceedings in his case by means of an application before the High Court in 2010 which, according to him, had been struck off the roll on the grounds of procedural flaws and therefore considered "dead"; that Mr. Sikhala never approached the Constitutional Court for legal redress,

Considering that the IPU Secretary General has not received updated information from the complainant in over four years and that its communications have remained unanswered,

Taking into account that:

- Zimbabwe is party to the International Covenant on Civil and Political Rights, under which it is obliged to respect the prohibition of torture and other ill-treatment (article 7), the right to liberty and security of person (article 9), and the right to freedom of expression (article 19), and to ensure that "any person whose rights or freedoms as herein recognized are violated shall have an effective remedy (…)" (article 2(3)(a));
- The prohibition of torture is a peremptory norm of international law and that, according to the United Nations Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, "wherever there is reasonable ground to believe that an act of torture (…) has been committed, the competent authorities of the State concerned shall promptly proceed to an impartial investigation (…)";
- Zimbabwe, as a party to the International Covenant on Civil and Political Rights, is bound not only to prohibit torture and cruel, inhuman or degrading treatment, but also to institute *ex officio* investigations into known torture allegations in order to hold those responsible to account, and that the absence of a formal complaint regarding an attack of which the authorities were aware cannot be invoked to justify inaction;
- In its report of 13 March 2017, pursuant to the universal periodic review on Zimbabwe conducted by the United Nations Human Rights Council, the Working Group noted that

several recommendations made to Zimbabwe pertaining to the ratification of the United Nations Convention against Torture and its optional Protocol, together with other conventions and international human rights treaties to which it is not party, did not enjoy the support of Zimbabwe,

1. *Concludes* that the torture of Mr. Sikhala constitutes a serious human rights violation and that the authorities of Zimbabwe have failed to take any effective action to hold the State officials responsible to account, therefore violating their obligations under the international human rights conventions to which Zimbabwe has subscribed;

2. *Is appalled* that the attempts made by the victim to promote justice and reparation have been systematically disregarded by the competent authorities, that no serious investigation has been conducted, despite the evidence and the clear identification of the alleged perpetrators by Mr. Sikhala and that, rather than taking action against the alleged perpetrators, the authorities have promoted some of them within the security forces;

3. *Recalls* that impunity, a serious human rights violation in itself, undermines the rule of law and respect for human rights in the country and is bound to encourage the repetition of similar crimes;

4. *Considers* that the Parliament of Zimbabwe has further failed to exercise its oversight function effectively and to fulfil its duty and vested interest to ensure the protection of its members in order that they may carry out their mandate without hindrance;

5. *Decides* to close Mr. Sikhala's case in accordance with Article 25(a) and (b) of Annex I of the Revised Rules and Practices of the Committee on the Human Rights of Parliamentarians given that, in spite of the Committee's best efforts to that end, it is of the view that a satisfactory settlement can no longer be reached, and taking into consideration that the complainant has failed to respond to the communications addressed to him for an extended period of time, thus making it impossible for the Committee effectively to continue its examination of his case;

6. *Emphasizes*, however, that this decision does not make it in any way less imperative for the authorities to hold the alleged perpetrators to account; *urges* them to ratify the United Nations Convention Against Torture and Other Cruel or Inhuman and Degrading Punishment and its optional Protocol; *invites* them to undertake comprehensive legislative reforms to ensure full compliance with international human rights standards, including by repealing the Public Order Security Act and adopting legislation against torture;

7. *Requests* the Secretary General to convey this decision to the parliamentary authorities and to the complainant.

Chile

CHI87 - Jaime Guzman Errazuriz

Decision adopted by the Committee on the Human Rights of Parliamentarians at its 155th session (Geneva, 25 January - 2 February 2018)

The Committee,

Referring to the case of Mr. Jaime Guzmán Errázuriz, a member of the Senate of Chile who was assassinated on 1 April 1991, and to the decision it adopted at its 143rd session (January 2014),

Recalling the following facts on file:

- In 1993, two members of the Manuel Rodríguez Patriotic Front (a Chilean movement) were convicted and sentenced as perpetrator and instigator respectively of the assassination;
- In June 2003, the Chilean authorities issued an international arrest warrant for Mr. Galvarino Sergio Apablaza Guerra, also known as "Commander Salvador", of the Manuel Rodríguez Patriotic Front, in connection with his alleged involvement in the planning and execution of the murder. In November 2004, the Argentine authorities detained Mr. Apablaza, who was using a false identity at the time, in Buenos Aires;
- On 30 November 2004, the Chilean Supreme Court initiated criminal proceedings against Mr. Apablaza. On 16 December 2004, the Santiago Court of Appeal requested Mr. Apablaza's extradition. On 13 January 2005, the Chilean Embassy in Argentina conveyed the request for extradition to the Argentine authorities;
- On 4 July 2005, the Argentine National Court for Federal Criminal and Correctional Matters No. 11 decided not to grant the extradition request, considering that it was not possible to link Mr. Apablaza directly to the commission of the crime on the basis of the evidence presented by the State of Chile. Both the Argentine Prosecutor's Office and the State of Chile appealed that decision;
- On 1 December 2004, Mr. Apablaza submitted a request for asylum to the Refugee Eligibility Committee (CEPARE) in Argentina;
- In February 2006, the Argentine Prosecutor General, appearing before the Argentine Supreme Court, expressed support for the extradition request. At first, the Supreme Court decided to await the outcome of Mr. Apablaza's asylum application. However, in September 2010, the Supreme Court decided to grant the extradition request, considering that, by its inaction, the National Commission for Refugees (CONARE, CEPARE's successor) was indefinitely delaying consideration of the extradition request, which was tantamount to a denial of justice. However, the Supreme Court stressed that its decision was without prejudice to any subsequent decision by the government to comply with its non-refoulement obligation, as provided for in article 7 of Argentina's General Act on the Recognition and Protection of Refugees (Act No. 26.165), which stipulates that "no refugee shall be expelled, returned or extradited to another State when there are serious reasons to believe that his/her right to life, liberty or security are at stake";
- On 1 October 2010, CONARE granted Mr. Apablaza asylum, stating that it did so pursuant to the provisions of article 7 above;
- The Chilean State subsequently filed a case against the CONARE decision before Argentine Federal Administrative Court No.1, Secretariat No.1,

Considering that the Chilean complainants have argued that CONARE's decision runs counter to Argentina's national and international obligations, as: (i) the conditions for Mr. Apablaza being considered a refugee have not been met; (ii) the extradition request fulfilled all the technical

requirements; and (iii) its rejection amounts to a denial of justice for the victims of the crimes for which he is allegedly responsible,

Bearing in mind that Argentina is a party to the International Covenant on Civil and Political Rights and the American Convention on Human Rights, and is therefore bound to combat impunity, including by providing or ensuring a proper remedy in cases of human rights violations; and *mindful* that Argentina is a party to the United Nations Convention (1951) and Protocol (1967) relating to the Status of Refugees,

Taking into account the following new information, presented by the President of the Argentine Senate, Ms. Gabriella Michetti, in her letter of 19 December 2017, and on behalf of the complainants by Chilean Senator Juan Antonio Coloma and President of the Chilean IPU Group, in his letter dated 8 January 2018, on developments in 2017 with regard to the following members of the Manuel Rodríguez Patriotic Front:

- In early December 2017, CONARE, after listening to the parties and stakeholders, decided to strip Mr. Apablaza of his refugee status. Mr. Apablaza has appealed this decision, which appeal is still pending;
- In May 2017, the Mexican authorities arrested one of the alleged perpetrators of Senator Gúzman's assassination, Mr. Raul Escobar Poblete, whose extradition to Chile has since been sought. His ex-wife, Ms. Marcela Mardones, was arrested on entering Chilean territory with a false identity and is being prosecuted for direct involvement in the crime;
- In September 2017, the Chilean police arrested Mr. Florencio Velazquez Negrete, in connection with his alleged involvement in the crime;
- In December 2017, Mr. Ricardo Palma Salamanca, who had already been sentenced in 1993 for his involvement in the assassination, but escaped from prison in 1996, was located in France. The process to obtain his extradition is under way,

Considering also that, some time ago, according to Senator Coloma in the aforesaid letter, the Chilean Inter-Parliamentary Group asked its Argentine counterpart for a meeting of the Chile-Argentina Inter-Parliamentary Friendship Group to start a dialogue on the question of the situation of Mr. Apablaza, which was accepted by them; according to him, the meeting has not yet materialized, as the Argentine legislators had yet to come forward to finalize arrangements; since then, parliamentary elections have taken place in Argentina (October 2017); according to Senator Coloma, with new members of parliament in office in Argentina the meeting remains postponed by the Argentine counterpart,

1. *Thanks* the President of the Argentine Senate for her letter and the information provided therein;

2. *Is pleased* that significant progress has been made in the last twelve months to help ensure accountability in the case of the assassination of Senator Gúzman, in particular in light of the increased likelihood that Mr. Apablaza will finally stand trial in Chile for his alleged involvement in this crime; *wishes* to be kept informed of significant developments in the pursuit of justice, in particular with regard to the final decision taken on Mr. Apablaza's appeal in Argentina;

3. *Continues to believe* that, in light of its mandate, the Chile-Argentina Inter-Parliamentary Friendship Group can and should take a keen interest in this matter; *trusts* therefore that it will soon be able to meet and will decide to closely monitor developments regarding Mr. Apablaza;

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

5. *Decides* to continue examining this case.

Colombia

CO121 - Piedad Córdoba

Decision adopted by the Committee on the Human Rights of Parliamentarians at its 155th session (Geneva, 25 January - 2 February 2018)

The Committee,

Referring to the case of Ms. Piedad Córdoba, a former member of the Colombian Senate, and to the decision it adopted at its 143rd session (January 2014),

Recalling the following sequence of events:

- On 27 September 2010, the *Procuradoría* concluded that Ms. Córdoba had promoted and worked with the Revolutionary Armed Forces of Colombia (FARC) and, as a disciplinary sanction, barred her from holding public office for 18 years. On 27 October 2010, the *Procurador General* ratified the decision of his Office, as a result of which Ms. Córdoba lost her Senate seat;
- The decision to disbar Ms. Córdoba was based, inter alia, on incriminating material alleged to have been found in the computers of a high-ranking FARC member, Mr. Raúl Reyes. On 19 May 2011, the Supreme Court ruled in a criminal investigation against another former member of Congress, Mr. Wilson Borja, whose alleged links to the FARC had also come under scrutiny. Official protocol requirements to protect the material found in Mr. Reyes' computer had not been followed. Since there was no guarantee that the material had not been tampered with, it could not be relied on in court;
- Ms. Córdoba has affirmed from the outset that the 18-year disbarment amounts to political persecution and that there is no proof to substantiate the decision;
- In the meantime, in May 2012, in yet another disciplinary case, the *Procuradoría* concluded that Ms. Córdoba had made an illegitimate financial contribution to the election campaign of Mr. Ricardo Montenegro and barred her from holding public office for 14 years; Ms. Córdoba has subsequently challenged this decision, arguing that there was no evidence to justify the disbarment,

Considering that article 23(2) of the American Convention on Human Rights, on respect for the exercise of political rights, stipulates: "the law may regulate the exercise of the rights […] only on the basis of age, nationality, residence, language, education, civil and mental capacity, or sentencing by a competent court in criminal proceedings",

Recalling that an IPU delegation travelled to Bogotá in August 2011 to help strengthen the National Congress of Colombia and, as part of that assignment, formulated recommendations, including that the *Procurador* should be divested of the power to revoke the parliamentary mandate as a disciplinary sanction; *recalling also* that this matter was raised in the course of the visit to Colombia on 20 and 21 March 2013 by the Committee's then Vice-President, Senator Juan Pablo Letelier,

Considering that, on 9 August 2016, the Council of State annulled the 18-year disbarment against Ms. Córdoba, as it concluded that the chain of custody with regard to the evidence presented in her case could not be guaranteed, and that on 11 October 2016 the Council of State also annulled the 14-year disbarment, as it concluded that the decision by the *Procuraduría* had not been based on solid evidence,

Considering that parliamentary and presidential elections will take place in Colombia in March and May−June 2018 respectively and that Ms. Córdoba has announced that she will stand in the presidential election,

1. *Is pleased* that the disbarments against Ms. Córdoba have finally been quashed and that she is now free to exercise her right to take part in the conduct of public affairs in her country;

2. *Decides* therefore to close this case, while deeply regretting that Ms. Córdoba was barred from politics for six years, thus depriving her electorate of its voice in parliament, as a result of decisions and on the basis of a procedure both of which breach basic international standards regarding respect for the parliamentary mandate, the exercise of political rights and the right to a fair trial;

3. *Requests* the Secretary General to convey this decision to the parliamentary authorities and the complainants.

Colombia

CO140 - Wilson Borja

Decision adopted by the Committee on the Human Rights of Parliamentarians at its 155th session (Geneva, 25 January - 2 February 2018)

The Committee,

Referring to the case of Mr. Wilson Borja, a former member of the Colombian Congress and a vocal critic of the Colombian Government, and to the resolution adopted by the Governing Council at its 190th session (April 2012),

Recalling its previous concerns in this case with respect to the recurrent reported deficiencies in Mr. Borja's security detail,

Recalling also its previous concerns about the possible early release of three military officers who were sentenced to prison sentences of up to 55 years for their responsibility in the attempt on Mr. Borja's life in 2000,

Considering that, according to the information provided by the complainant on 11 January 2018, hearings are about to be fixed to examine their release; the complainant also mentions that former paramilitary leader, Mr. Éver Veloza (known as 'Hernán Hernández' or 'H.H.'), who has confessed to having killed the police officers involved in the attack on Mr. Borja, might soon be released; according to the complainant, Mr. Borja has asked the Prosecutor's Office to widen the investigation so as to identify all those responsible for the attempt on his life,

Considering furthermore that Mr. Borja's security detail has been reduced to two body guards and an armoured vehicle, which, according to the complainant, disregards the risks he runs in pursuing his efforts to shed full light on the attempt on his life and identify the masterminds,

Considering finally that Mr. Borja will stand as a candidate for the political party *Polo Democrático Alternativo* in the parliamentary elections of March 2018, which means, according to the complainant, that his security situation is ever more fragile,

1. *Is deeply concerned* about the potential repercussions on Mr. Borja's security of the possible release of those convicted for the attempt on his life and of Mr. Éver Veloza, and on the efforts to shed full light on and establish full accountability for this crime; *wishes* to be kept informed of significant developments regarding their possible release and to know the precise legal grounds and basis invoked in support of their release;

2. *Calls on* the authorities to do everything possible to swiftly strengthen Mr. Borja's security detail so that he enjoys the protection his situation warrants; *wishes* to be kept informed of steps taken to this end;

3. *Also calls* on the relevant authorities to step up efforts to identify and hold to account all those who ordered the attack on Mr. Borja; *wishes* to know in this regard what Mr. Éver Veloza's status is in the investigation; *requests* the authorities to provide information as to whether they are looking at other possible suspects and what, if any, criminal action has been taken against them;

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

5. *Decides* to continue examining the case.

Ecuador

EC71 - Lourdes Tibán

Decision adopted by the Committee on the Human Rights of Parliamentarians at its 155th session (Geneva, 25 January - 2 February 2018)

The Committee,

Seized of the case of Ms. Lourdes Tibán, a former member of the National Assembly of Ecuador,

1. *Notes* that the communication was submitted in due form by a qualified complainant under Section I(1)(d) of the Procedure for the examination and treatment of complaints (Annex I of the Revised Rules and Practices of the Committee on the Human Rights of Parliamentarians);

2. *Notes* that the communication concerns an incumbent member of parliament at the time of the initial allegations;

3. *Notes* that the communication concerns allegations of threats and acts of intimidation, which fall within the Committee's mandate;

4. *Considers*, therefore, that the complaint is admissible and *declares itself* competent to examine the case.

El Salvador

ELS02 - Ricardo Humberto Contreras Henríquez
ELS03 - Patricia María Salazar Rosales (Ms.)
ELS04 - Rolando Alvarenga Argueta
ELS05 - José Ramón González Suvillaga
ELS06 - Misael Serrano Chávez
ELS07 - Óscar Alfredo Santamaría Jaimes
ELS08 - Juan Pablo Fontan Nuila
ELS09 - Francisco José Rivera Chacón
ELS10 - César Rene Florentín Reyes Dheming
ELS11 - Ana Mercedes Larrave De Ayala (Ms.)
ELS12 - Marco Javier Calvo Camino
ELS13 - Marco Francisco Salazar Umaña
ELS14 - Jorge Adalberto Josué Godoy Cardoza
ELS15 - Nery Francisco Herrera Pineda
ELS16 - José Antonio Rodríguez Hernández
ELS17 - Jorge Castañeda
ELS18 - Paola María Zablah Siri (Ms.)
ELS19 - Felissa Guadalupe Cristales Miranda (Ms.)
ELS20 - Lisseth Arely Palma Figueroa (Ms.)
ELS21 - Carlos Armando Munguia Sandoval
ELS22 - Ana Marina Castro Orellana (Ms.)
ELS23 - Nelson Funes
ELS24 - Luis Engelberto Alejo Sigüenza
ELS25 - Gerardo Estanislao Menjívar Hernández
ELS26 - José Antonio Lara Herrera
ELS27 - Fernando Gutiérrez Umanzor
ELS28 - Yessenia Orquídea Rivera Flores (Ms.)
ELS29 - Roxana Marisela Durán Hernández (Ms.)
ELS30 - Aquilino Rivera Posada
ELS31 - Ana María Gertrudis Ortiz Lemus (Ms.)
ELS32 - José Anibal Calderón Garrillo
ELS33 - José Mario Mirasol Cristales
ELS34 - Omar Elíseo Romero Lazo
ELS35 - Julio César Miranda Quezada
ELS36 - Alex Antonio Pineda
ELS37 - Víctor Hugo Suazo Álvarez
ELS38 - Delmy Carolina Vásquez Alas (Ms.)
ELS39 - Damián Alegría
ELS40 - Yolanda Anabel Belloso Salazar (Ms.)
ELS41 - Luis Alberto Batres Garay
ELS42 - Gustavo Danilo Acosta Martínez
ELS43 - Idalia Patricia Zepeda Azahar (Ms.)
ELS44 - María Otilia Matamoros De Hernández (Ms.)
ELS45 - Hilda Jessenia Alfaro Molina (Ms.)
ELS46 - Susy Lisseth Bonilla Flores (Ms.)
ELS47 - Mario Rafael Ramos Sandoval
ELS48 - Iris Marisol Guerra Henríquez (Ms.)
ELS49 - Felipe Rolando Perla Mendoza
ELS50 - Carlos Mario Zambrano Campos
ELS51 - Dina Yamileth Argueta Avelar (Ms.)
ELS52 - Samuel De Jesús López Hernández

ELS53 - María Imelda Rivas De Auceda (Ms.)
ELS54 - Patricia Del Carmen Cartagena Arias (Ms.)
ELS55 - Ana Victoria Mendoza De Zacarias (Ms.)
ELS56 - Abner Iván Torres Ventura
ELS57 - David Rodríguez Rivera
ELS58 - José Augusto Hernández Conzález
ELS59 - Milton Ricardo Rámirez Garay
ELS60 - Norma Guísela Herrera De Portillo (Ms.)
ELS61 - María Luisa Vigil Hernández (Ms.)
ELS62 - Santos Margarito Escobar Castellón
ELS63 - Pablo Cësar De León Herrera
ELS64 - Carlos Alberto Palma Zaldaña
ELS65- Reina Guadalupe Villata (Ms.)
ELS66 - José Nohe Reyes Granados
ELS67 - Crissia Suhan Chávez García (Ms.)
ELS68 - Blanca Rosa Vides (Ms.)
ELS69 - José Gabriel Murillo Duarte
ELS70 - Gloria Elizabeth Gómez De Salgado (Ms.)
ELS71 - Carlos Rodrigo Rámirez Matus
ELS72 - Alex Rolando Rosales Guevara
ELS73 - Carlos Roberto Menjívar Vanegas
ELS74 - Noel Orlando García
ELS75 - Jesús Grande
ELS76 - Samuel Elíseo Hernández Flores
ELS77 - Pablo De Jesús Urquilla Granados
ELS78 - José German Iraheta Méndez
ELS79 - Ramón Kury González
ELS80 - Rosa Armida Barrera (Ms.)
ELS81 - José Alfredo Mirón Ruiz
ELS82 - Carlos Alfonso Tejada Ponce
ELS83 - José Vidal Carrillo Delgado
ELS84 - Manuel Alfonso Rodríguez Saldañia
ELS85 - Martír Arnoldo Marín Villanueva

Decision adopted by the Committee on the Human Rights of Parliamentarians at its 155th session (Geneva, 25 January - 2 February 2018)

The Committee,

Referring to the case of the above-mentioned 84 former alternate members of the National Assembly of El Salvador and to the decision it adopted at its 153rd session (January–February 2017) to declare the case admissible,

Considering the following information on file:

- Decree No. 1000 was approved by parliament on 27 April 2015 after two votes, and authorized the Executive to issue government bonds of up to US$ 900,000,000 to be placed on the national and international markets;
- The constitutionality of the decree was challenged before the Constitutional Chamber of the Supreme Court (file reference: 35-2015). The petitioner of the case claimed that parliament had called on an alternate during the second vote to substitute the titular parliamentarian who had abstained from voting in the first vote. The complainant alleged that the vote of this alternate was decisive for the approval of the decree. It also claimed that the alternate who was called on to vote was not the corresponding alternate to the

parliamentarian he substituted. For those reasons, the petitioner considered that Decree No. 1000 was unconstitutional;

- On 13 July 2016, the Constitutional Chamber of the Supreme Court of El Salvador concluded that the replacement of the titular member had been fraudulent, as no proper justification had been given for her absence and substitution. The Constitutional Chamber also concluded that the decree was unconstitutional because it was adopted without two thirds of the "elected parliamentarians" having voted in favour, as stipulated by the Constitution; in this regard, the Constitutional Chamber held that the alternates "lacked democratic legitimacy" as they were elected through the votes obtained by their respective titular members and therefore only indirectly. As a result, the Constitutional Chamber declared that the current legislature must only operate with titular parliamentarians and that on no account should the participation and votes of alternates be accepted;
- The complainant affirms that, in its examination of the petition, the Court decided, without a legal basis, to analyse, from a general perspective, constitutional issues linked to procedures for calling alternates to serve in parliament and the democratic legitimacy of alternates to substitute titular parliamentarians in parliamentary debates and votes. It also pointed out that the competent national electoral body (*Tribunal Supremo Electoral*) had already long validated the election of the substitutes, which had never been contested. Moreover, according to the complainant, the dismissed alternates were not part of the legal proceedings before the Constitutional Chamber of the Supreme Court and did not have the possibility of appealing the ruling as it emanates from the highest judicial body at national level,

Considering that El Salvador has ratified the International Covenant on Civil and Political Rights (ICCPR) and is also a party to the American Convention on Human Rights (ACHR); that both guarantee respect for the right to due process and to participate in political and public affairs,

Bearing in mind that civil and political rights are protected under the Constitution of El Salvador (December 1983, amended in 2009), articles 14 and 72 of which guarantee the right to due process and to participate in political affairs respectively,

Considering that legislative elections will take place in El Salvador in March 2018 and that the voting slips, in light of the ruling by the Constitutional Chamber of the Supreme Court and following changes made by parliament to the Electoral Code, now contain the names of both the titular and substitute members so that it is clear that voters vote for both directly,

1. *Is concerned* that the mandates of 84 alternate members of parliament were revoked without them having had the opportunity to defend themselves and as a result of a legal challenge in which their status was not in any way contested by the petitioner and hence with significant consequences for the functioning of parliament and the work of individual parliamentarians;

2. *Notes* that the lacunae identified by the Constitutional Chamber of the Supreme Court have been addressed with regard to the forthcoming legislative elections;

3. *Considers* that, given that the revocation of the mandates of the alternates has become irreversible, it is no longer in a position to examine the case to any effect; therefore *decides* to close it in line with Article 25(a) of Annex I to the Revised Rules and Practices of the Committee on the Human Rights of Parliamentarians;

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

Nicaragua

NIC11 - Wilber Ramón López Núñez
NIC12 - Luis Roberto Callejas Callejas
NIC13 - Raúl Benito Herrera Rivera
NIC14 - Carlos E. Mejía Zeledón (alternate)
NIC15 - Edgar Javier Vallejo Fernández
NIC16 - Carlos Javier Langrand Hernández
NIC17 - José Armando Herrera Maradiaga
NIC18 - Alberto José Lacayo Arguello
NIC19 - Rodolfo I. Quintana Cortez (alternate)
NIC20 - Juan Enrique Sáenz Navarrete
NIC21 - Silvia Nadine Gutiérrez Pinto (Ms.) (alternate)
NIC22 - Pedro Joaquín Chamorro Barrios
NIC23 - Marcia O. Sobalvarro Garia (Ms.) (alternate)
NIC24 - Francisco José Valdivia Martinez
NIC25 - Loyda Vanessa Valle González (Ms.) (alternate)
NIC26 - Eliseo Fabio Núñez Morales (alternate)
NIC27 - Indalecio Aniceto Rodriguez Alaniz
NIC28 - María Eugenia Sequeira Balladares (Ms.)
NIC29 - Víctor Hugo Tinoco Fonseca
NIC30 - Edipcia Juliana Dubón Castro (Ms.) (alternate)
NIC31 - Boanerges Matus Lazo

Decision adopted by the Committee on the Human Rights of Parliamentarians at its 155th session (Geneva, 25 January - 2 February 2018)

The Committee,

Referring to the case of the above-mentioned members of the National Assembly of Nicaragua and to the decision it adopted at its 152nd session (January−February 2017),

Recalling the following information on file:

- The Alliance of the Independent Liberal Party (PLI), composed of various political tendencies, was created by the opposition to increase its representation in parliament; the PLI obtained 26 seats, plus their respective alternates, in the National Assembly in the elections of 2011;
- In February 2011, the PLI elected as its legal representative Mr. Indalecio Rodríguez. This decision was challenged before the Constitutional Chamber of the Supreme Court by a fraction of the PLI members who considered that his election violated the party statutes. On 8 June 2016 (five years later), the Constitutional Chamber of the Supreme Court, through amparo judgement No. 299, granted the amparo and declared Mr. Pedro Eulogio Reyes Vallejos instead as the legal representative of the PLI. This decision of the Supreme Court and the positions taken by Mr. Reyes Vallejos were publicly denounced by several of the PLI parliamentarians;
- On 28 July 2016, the Supreme Electoral Council (*Consejo Supremo Electoral* – CSE) announced the revocation of the 16 parliamentarians and 12 alternates of the PLI, as requested by Mr. Reyes Vallejos. The CSE declared that articles 131.2 of the Constitution and 24.8 of the organic law on the legislature, among others, were applicable to the case. Both articles provide that officials elected by universal suffrage, having been put forward on closed party lists, will lose their mandate if they change political party while in office;

- On 30 July 2016, the executive board (*Junta Directiva*) of the National Assembly acted on the CSE decision to unseat the 16 parliamentarians and 12 alternates by passing Resolution No. 14-2016;
- The dismissed parliamentarians and alternates filed an amparo action before the Supreme Court challenging National Assembly Resolution No. 14-2016. The petition for amparo was rejected on 12 September 2016;
- The complainant claims that the revocation of the mandate of the parliamentarians and alternates, who represented the last fraction of opposition in the National Assembly, was linked to their work as opposition parliamentarians and that it has to be seen in the context of the suppression of all critical voices from public debate;
- According to the complainant, the dismissed parliamentarians and alternates were not notified of the application to revoke their parliamentary mandates and were therefore prevented from exercising their right to defence;
- At the request of several of the dismissed members of parliament (apparently, seven members of parliament of the 28 members who had not subscribed to the original complaint to the IPU), the CSE decided to review their situation and to reinstate them in the National Assembly,

Recalling that, according to the Speaker of the National Assembly, in his letter of 18 January 2017, proceedings were conducted in strict respect of national law and that no violations of human rights were committed against the dismissed parliamentarians,

Bearing in mind that article 139 of the Nicaraguan Constitution recognizes that members of parliament are exempt from liability for any opinions they express or votes they cast in the Assembly, and that they enjoy immunity in conformity with the law; and that, according to article 131 of the Constitution, officials elected by universal suffrage, and who have been put forward on closed lists by political parties, will lose their mandate if they change political party while in office,

Bearing in mind also that Nicaragua is a party to the American Convention on Human Rights and the International Covenant on Civil and Political Rights, and that both those instruments guarantee the right to freedom of expression and the right to participate in public affairs; *bearing in mind* that, in May 2014, the State of Nicaragua received several recommendations related to the need to guarantee freedom of expression and the independence of the media and to ensure that members of the political opposition, civil society organizations and journalists were free to express their views and opinions during its universal periodic review by the United Nations Human Rights Council,

Recalling that, in a press release published on 8 August 2016, the Inter-American Commission on Human Rights (IACHR) expressed its concern regarding the removal from office of opposition legislators in Nicaragua, and urged the State to adopt any measures that may be necessary to ensure the free exercise of political rights in the country. The IACHR stated that, as the Commission and the Inter-American Court of Human Rights have indicated, the American Convention on Human Rights establishes that the full scope of political rights may not be restricted in such a way that their regulation, or the decisions adopted in application of this regulation, prevents people from participating effectively in the governance of the State, or causes this participation to become illusory, depriving such rights of their essential content. Instituting and applying requirements for exercising political rights is not, per se, an undue restriction of political rights, as these rights are not absolute and may be subject to limitations. However, in a democratic society the regulation of these rights should respect the principles of legality, necessity, and proportionality. The IACHR added that, if the decision to remove the legislators from office meant that authorities elected by the mandate of the vote cannot serve out the terms for which they were elected, this decision could constitute an undue restriction on the exercise of political rights. In this regard, the IACHR urged Nicaragua to create the appropriate conditions and mechanisms so that political rights can be exercised effectively, respecting the principle of equality and non-discrimination, and recommended that Nicaragua should adopt any measures necessary to guarantee due respect for the powers of political adversaries who have been elected and invested with the people's mandate,

Recalling that general elections took place in Nicaragua on 6 November 2016 and that the complainant states that the timing of the revocation of the parliamentarians' mandates prevented them from standing in these elections and also from preparing their candidatures in time for the municipal elections planned for 2017,

1. *Stresses* that the revocation of a parliamentarian's mandate is a serious measure, which definitively deprives a member of the possibility of carrying out the mandate entrusted to him/her, and that the decision to revoke a parliamentary mandate should therefore be taken in full accordance with the law and on serious grounds; *stresses* that, contrary to the legislation in place in Nicaragua and to the action taken in the case at hand, the law should protect the basic elements of the free parliamentary mandate, in particular the responsibility of members of parliament to represent the entire nation, and that in no way should public statements inconsistent with the party line be recognized as sufficient basis in law for early termination of a parliamentarian's mandate;

2. *Considers* that the facts as presented to the CSE were not sufficient to revoke their mandate and that no opportunities appear to have been given to them to exercise their right to defence;

3. *Concludes* therefore that the revocation of the mandates of the parliamentarians and alternates was not based in law and did not follow due process, thereby giving credence to the allegation that they were expelled from parliament due to their work as opposition parliamentarians;

4. *Expresses deep concern* that, due to the timing of the revocation, they were no longer in a position to register as candidates for the parliamentary elections of November 2016 and were therefore once again prevented from exercising their basic human right to take part in the conduct of public affairs and from defending the views of the electorate they represent;

5. *Considers* that, as those elections took place, the revocation of the parliamentary mandates has become irreversible and that it is no longer in a position to examine the case to any effect; therefore *decides* to close it in line with Article 25(a) of Annex I of the Revised Rules and Practices of the Committee on the Human Rights of Parliamentarians;

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

Venezuela

VEN13 - Richard Blanco
VEN16 - Julio Borges
VEN19 - Nora Bracho (Ms.)
VEN22 - William Dávila
VEN24 - Nirma Guarulla (Ms.)
VEN25 - Julio Ygarza
VEN26 - Romel Guzamana
VEN27 - Rosmit Mantilla
VEN28 - Enzo Prieto
VEN29 - Gilberto Sojo
VEN30 - Gilber Caro
VEN31 - Luis Florido
VEN32 - Eudoro González
VEN33 - Jorge Millán
VEN34 - Armando Armas
VEN35 - Américo De Grazia
VEN36 - Luis Padilla
VEN37 - José Regnault
VEN38 - Dennis Fernández (Ms.)
VEN39 - Olivia Lozano (Ms.)
VEN40 - Delsa Solórzano (Ms.)
VEN41 - Robert Alcalá
VEN42 - Gaby Arellano (Ms.)
VEN43 - Carlos Bastardo
VEN44 - Marialbert Barrios (Ms.)
VEN45 - Amelia Belisario (Ms.)
VEN46 - Marco Bozo
VEN47 - José Brito
VEN48 - Yanet Fermin (Ms.)
VEN49 - Dinorah Figuera (Ms.)
VEN50 - Winston Flores
VEN51 - Omar González
VEN52 - Stalin González
VEN53 - Juan Guaidó
VEN54 - Tomás Guanipa
VEN55 - José Guerra
VEN56 - Freddy Guevara
VEN57 - Rafael Guzmán
VEN58 - María G. Hernández (Ms.)
VEN59 - Piero Maroun
VEN60 - Juan A. Mejía
VEN61 - Julio Montoya
VEN62 - José M. Olivares
VEN63 - Carlos Paparoni
VEN64 - Miguel Pizarro
VEN65 - Henry Ramos Allup
VEN66 - Juan Requesens
VEN67 - Luis E. Rondón
VEN68 - Bolivia Suárez (Ms.)
VEN69 - Carlos Valero
VEN70 - Milagro Valero (Ms.)
VEN71 - German Ferrer
VEN72 - Adriana d'Elia (Ms.)
VEN73 - Luis Lippa
VEN74 - Carlos Berrizbeita
VEN75 - Manuela Bolívar

Decision adopted by the Committee on the Human Rights of Parliamentarians at its 155th session (Geneva, 25 January - 2 February 2018)

The Committee,

Referring to the existing cases under file names VEN13-73, which concern allegations of human rights violations affecting members from the coalition of the former opposition, the Democratic Unity Round Table (MUD), which obtained a majority of seats in the National Assembly following the parliamentary elections of 6 December 2015,

Seized of the new cases of Mr. Carlos Berrizbeita (VEN74) and Ms. Manuela Bolívar (VEN75), which have been examined pursuant to its revised 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,

Recalling the following information on file regarding the concerns in this case:

- **Attacks on parliamentarians by law enforcement officers and pro-government supporters in the course of demonstrations**

- According to the complainant, against a backdrop of peaceful demonstrations organized in defence of democracy and the Constitution of the Republic, since 28 March 2017 the following opposition members of parliament have been attacked by pro-government supporters and/or law enforcement officers:

  Robert Alcalá, Gaby Arellano, Marialbert Barrios, Carlos Bastardo, Amelia Belisario, Richard Blanco, Marcos Bozo, Julio Borges, José Brito, Yanet Fermín, Dinorah Figuera, Winston Flores, Luis Florido, Juan Guaidó, José Guerra, Olivia Lozano, Omar González, Stalin González, Américo De Grazia, Tomás Guanipa, Freddy Guevara, Rafael Guzmán, María G. Hernández, Piero Maroun, Juan A. Mejía, Jorge Millán, Julio Montoya, José M. Olivares, Carlos Paparoni, Miguel Pizarro, Henry Ramos Allup, Juan Requesens, Luis E. Rondón, Delsa Solórzano, Bolivia Suárez, Carlos Valero, Milagro Valero;

- In August 2017, the Office of the United Nations High Commissioner for Human Rights (OHCHR) issued a report, "Human rights violations and abuses in the context of protests in the Bolivarian Republic of Venezuela from 1 April to 31 July 2017". The OHCHR's findings point to an increasingly critical human rights situation since the protests began, with mounting levels of repression of political dissent by national security forces and increasing stigmatization and persecution of people perceived as opposing the government of President Maduro. The OHCHR found that security forces systematically used excessive force and arbitrarily detained protesters, and documented patterns of ill-treatment, in some cases amounting to torture, as well as serious violations of the due process rights of persons detained by the authorities in connection with the protests. Credible and consistent accounts from victims and witnesses indicate that security forces systematically used excessive force to deter demonstrations, crush dissent and instil fear. The authorities rarely condemned incidents of excessive use of force, in most cases denying that the security forces were responsible for such incidents, and repeatedly labelled demonstrators as "terrorists".

- **Parliamentarians prevented from taking their seats in parliament**

- 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 relating to the election of Ms. Nirma Guarulla, Mr. Julio Ygarza and Mr. Romel Guzamana (all from the coalition of the former opposition, the MUD) and of Mr. Miguel Tadeo (from the Unified Socialist Party of Venezuela (PSUV)). On 5 January 2016, the National Assembly decided to disregard this judgement, considering that it was unjustified and that the deputies from Amazonas should take their seats, although Mr. Tadeo of the PSUV chose to respect the court order. On 11 January 2016, the Supreme Court ruled 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 at 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 on resuming their seats". They subsequently returned to the National Assembly, but later decided to temporarily withdraw from its work. It appears that no progress has been made on the case before the Supreme Court regarding the allegations of fraud that are at the origin of the suspension of the members of parliament.

- **Arbitrary detention of parliamentarians and/or politically motivated proceedings**

- The complainant states that, on 11 January 2017, officers from the Bolivarian Intelligence Service (SEBIN) arbitrarily arrested and detained Mr. Gilber Caro. The charges brought against Mr. Caro are treason and appropriation of goods belonging to the armed forces. According to the complainant, Mr. Caro is not receiving sufficient food, has lost considerable weight and is being kept in isolation. His cell measures 2 metres by

3 metres and has no natural light. Mr. Caro started a hunger strike on 11 September 2017, which he ended after passing out;

- Mr. Rosmit Mantilla, Mr. Enzo Prieto and Mr. Gilberto Sojo, elected as alternate members of parliament in the elections of 6 December 2015, were deprived of their liberty in 2014 in connection with ongoing legal proceedings, for political reasons according to the complainant. Mr. Mantilla and Mr. Sojo were released in November and December 2016. The legal case against them continues. However, Mr. Prieto remains in detention;
- On 17 August 2017, the Supreme Court of Justice "declared appropriate" ["declaró procedente"] the detention of member of parliament Mr. German Ferrer on the basis of accusations of involvement in a widespread extortion ring and after concluding that the case was one of "in flagrante delicto" that concerned the commission of a "permanent crime". Mr. Ferrer was originally a member of the PSUV and is the husband of former Prosecutor General Diaz, who was ousted by the Constituent Assembly in August 2017 after voicing serious criticism of the Government. On 18 August 2017, the Constituent Assembly lifted Mr. Ferrer's immunity. Mr. Ferrer and his wife fled to Colombia the same day.

- **Arbitrary confiscation of passports and other intimidation in connection with international parliamentary work**

- The passports and/or identity cards of Mr. Florido (in January and February 2017), Mr. William Dávila (February 2017), Mr. Eudoro González (March 2017) and Mr. Américo de Grazia (July 2017) were cancelled by immigration officers as they either returned to or were about to leave Venezuela in connection with parliamentary work abroad. Immigration officers told them that their passports had been cancelled owing to a reported official complaint of theft of the said documents. In all four cases, the complainant affirms that these measures are politically motivated and that no official complaint about the theft of the passports was ever made;
- On 6 April 2017, Ms. Delsa Solórzano, on returning home from Dhaka, where she had been head of the Venezuelan Delegation to the 136th IPU Assembly, was briefly detained in an abusive and intimidating manner by officers of the armed forces and the National Customs and Revenue Administration on the orders of SEBIN;
- On 15 July 2017, deputies Mr. Jorge Millán and Mr. Richard Blanco arrived at Simón Bolívar International Airport. As deputy Mr. Millán was registering his entry into the country, SAIME agents attempted to take away his passport. When he refused to hand it over, invoking his status as a parliamentarian, they took him to a room where five officers, directed by Major Henribson Herrera, beat him, seized and revoked his passport, and took his mobile phone in order to review and erase information it contained. Deputy Mr. Blanco, for his part, while awaiting his luggage at the airport, was surrounded by agents from SEBIN and the Bolivarian National Guard, who detained him for more than 40 minutes without explanation.

- **Allegations of arbitrary disbarment from holding public office**

- In a decision of 3 August 2017, the *Contraloría General de la Republica* [Comptroller-General of the Republic] disbarred a member of the National Assembly, Ms. Adriana D'Elia, from holding public office for 15 years. On 16 August 2017, the Comptroller-General also disbarred member of parliament Mr. Luis Lippa from holding public office, although no information is on file as to the length of the disbarment. According to the complainant, revoking a parliamentary mandate can only be done through a final legal decision following proceedings that respect due process, neither of which applies to the situation of the aforementioned parliamentarians.

- **Illegal occupation of parliamentary premises, including by paramilitary groups who, incited by the government, attacked and seriously injured deputies and violated their human rights**

The events of 5 July 2017

- At approximately 12 noon, a group of government supporters who had gathered outside the entrance to the legislative building invaded parliament, brandishing clubs, pipes, knives and explosive devices and threatening National Assembly deputies and those who work for them: https://www.youtube.com/watch?v=of00oAZf82s. Those injured included the legislators Mr. de Grazia, Ms. Nora Bracho, Mr. Armando Armas, Mr. Luis Padilla and Mr. José Regnault. Deputy Mr. de Grazia suffered convulsions after being beaten with an object about the head and had to be transported by ambulance to a medical facility, where he was diagnosed as having a cerebral contusion and several broken ribs. Three other legislators sustained cuts to the head;
- According to the complainant, after the initial attack, the group of government supporters continued laying siege to the Assembly area for more than seven hours, launching rockets at parliamentary headquarters and holding hostage 108 journalists, 120 workers and 94 deputies, as well as musicians and special guests, including representatives of the diplomatic corps. The complainant also stresses that the Bolivarian National Guard (GNB), which had custodial responsibility for the premises, did not contain the demonstrators nor act to prevent the attacks against parliamentarians.

The events of 27 June 2017

- On 27 June 2017, at approximately 5 p.m., while an ordinary session of the National Assembly was being held, GNB agents took sealed boxes bearing the stamp and seal of the National Electoral Council (CNE) into the Federal Legislative Palace without the prior authorization of the parliamentary authorities. Three women deputies, Ms. Dennis Fernández, Second Deputy Speaker of the National Assembly, Ms. Delsa Solórzano and Ms. Olivia Lozano, together with deputy Mr. Winston Flores, approached to verify what was happening and what the boxes contained, but were forced away and beaten with helmets by GNB officers;
- When questioned about events by deputy Mr. Julio Borges, then Speaker of the National Assembly, Col. Lugo Armas answered that he managed conflicts “as he saw fit” and ordered the deputy to withdraw and pushed him out of his office;
- While these events were occurring, armed paramilitary groups began surrounding and then violently entering the Legislative Palace, shouting slogans and insults and throwing explosives and other dangerous objects at the building. Deputies were held hostage and the building was occupied for more than four hours, during which no action was taken by the GNB or any other state security force to eject the violent groups or protect the physical integrity of the deputies,

Recalling that, on 1 May 2017, President Maduro announced that he would convene an Assembly to rewrite the Constitution, which prompted a new wave of street protests; that on 30 July 2017, despite mounting national and international pressure, voting for the Constituent Assembly took place; and that on 4 August 2017, the Constituent Assembly members were sworn in,

Recalling also the following information with regard to the general restrictions placed on the work of the National Assembly and its members:

- Since August 2016, the President of Venezuela has deprived the National Assembly of funds, including salaries for its members and staff and monies needed to cover its running costs;
- The Constituent Assembly has taken over many of the premises belonging to the National Assembly, whose room to operate is therefore greatly diminished;
- In a decision of 18 August 2017, the Constituent Assembly invested itself with legislative powers,

Recalling the persistent concerns that the complainant and others have expressed about the lack of independence of the Supreme Court; in this regard they pointed out, among other concerns, that three judges and 21 substitute judges, some of whom had close affinity with, if not direct ties to, the governing party, were elected hastily to the Court by the outgoing National Assembly less than one month after the elections of 6 December 2015 had eliminated the governing party's majority in the newly elected National Assembly, which then took office on 5 January 2016,

Recalling the long-standing efforts since 2013 to send a delegation of the Committee on the Human Rights of Parliamentarians to Venezuela, which have failed in the absence of clear authorization from the Government to welcome and work with the delegation; *recalling* that the IPU President, on the last day of the 136th IPU Assembly in Dhaka (5 April 2017), called for the speedy dispatch of a human rights mission and a high-level political mission to Venezuela, proposals for which he obtained tacit support in the room 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; *considering* that, since the 136th IPU Assembly, the outgoing IPU President and the Secretary General have made numerous attempts to obtain the agreement of the Venezuelan executive to conduct these missions, but to no avail,

Recalling the official visit to Venezuela by the Secretary General in late July 2016, during which he met, among 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,

Considering that, according to the complainant, since October 2017 the attacks against and harassment of opposition parliamentarians continue unabated, as illustrated by the public smear campaign against Ms. D'Elia, the attack on 3 December 2017 against Mr. Carlos Paparoni and the arbitrary arrest and treatment of Ms. Bolivar on 17 January 2018 by GNB officers,

Considering that, on 23 January 2018, the Constituent Assembly announced that the presidential election, previously expected to be held at the end of 2018, would take place before 1 May 2018; on 25 January 2018, the Supreme Court ordered the CNE to exclude the opposition coalition MUD from registering to participate as a unified platform in the presidential election for violating the principle of avoiding "double affiliation" in politics, which argument the opposition flatly rejects; individual political parties were required to re-register with the CNE before the 28 January 2018 deadline in order to be eligible to participate; only *Acción Democrática* (Democratic Action, AD) and *Primero Justicia* (First Justice, PJ) are said to be registered by the CNE, which would make them the only two opposition parties allowed to submit a candidate for the presidential elections; *considering also* that several of the main opposition leaders are either in prison, disqualified from standing in the elections or in exile; *considering furthermore* that the complainant affirms that the decision by the Supreme Court is arbitrary and aims to weaken and divide the opposition and hence their chances of being provided a free and fair opportunity to participate in the election, and that the harassment of opposition members is likely to increase in the lead-up to the vote which, according to the complainant, the authorities will aim to win at all costs,

Recalling that, from May 2016, efforts were made, with mediation by the Secretary General of the Union of South American Nations (UNASUR), the former Prime Minister of Spain and the former presidents of the Dominican Republic and Panama, and later by the Vatican until it withdrew, to bring the two political sides together, which led to several meetings in 2016 and 2017 to decide on the issues for the political dialogue; Chile, Mexico, Saint Vincent and the Grenadines, Nicaragua and Bolivia were subsequently asked to accompany the dialogue process, although Mexico recently withdrew in protest against the decision by the Venezuelan authorities to hold the presidential election before 1 May 2018, as Mexico affirmed that the date of the election was precisely one of the topics that required agreement from all sides in the dialogue; the dialogue has thus far failed to produce concrete results; it appears that meetings between the Venezuelan Government and the opposition are being held at the very end of January 2018 in the Dominican Republic to discuss the current situation,

1. *Remains deeply concerned* about the ongoing scale of repression of opposition members with apparent impunity and the continued efforts to undermine the integrity and autonomy of the National Assembly of Venezuela; *fears* that this repression is bound to increase against the backdrop of the fast-approaching presidential election and doubts about the free and fairness of the vote;

2. *Urges* the authorities to put an immediate stop to the harassment of and attacks against opposition parliamentarians, to take effective action to hold to account those responsible for past abuses and to ensure that law enforcement officers respect human rights at all times in the conduct of their work; *requests* the relevant authorities to provide concrete information on steps taken by them to shed light on and establish accountability for the past incidents and to prevent new abuses from occurring;

3. *Urges once more* the relevant authorities to ensure that the National Assembly and its members can fully carry out their work by respecting its powers and allocating the necessary funding for its proper functioning; *requests* the relevant authorities to provide urgently information on steps taken to this end;

4. *Remains deeply concerned* about Mr. Caro's situation, one year after he was arrested; *urges* the authorities to ensure that he receives adequate treatment in detention; *requests* the relevant authorities to provide official information on this matter and on the exact charges against him and the facts underpinning them; *also requests* these authorities to provide the full details of the legal grounds and facts that underpin the charges against Mr. Prieto;

5. *Deeply regrets* that the human rights mission to Venezuela has still not taken place; *remains* all the more convinced, given the ongoing deteriorating situation, that such a mission could help address the concerns at hand; *requests*, therefore, the Secretary General to work with the relevant authorities with a view to the mission taking place as soon as possible;

6. *Calls on* the IPU Governing Bodies to urgently review the situation in Venezuela with a view to helping ensure that the concerns spelt out in this decision are effectively addressed, in particular given the looming presidential election;

7. *Reaffirms* its stance that the issues in these cases are part of the larger political crisis in Venezuela, which can only be solved through political dialogue; *calls once again on* all sides to act in good faith and to commit fully to political dialogue with the assistance of external mediation; *reaffirms* that the IPU stands ready to assist with these efforts; and *requests* the relevant authorities to provide further official information on how this assistance can best be provided;

8. *Invites* the global parliamentary community, primarily through IPU member parliaments, as well as other relevant international, regional and domestic stakeholders, to engage in joint efforts to help resolve the current crisis in a manner consistent with democratic and human rights values, including by facilitating the resumption of a political dialogue, adopting public statements and making representations to the Venezuelan authorities;

9. *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;

10. *Decides* to continue examining this case.

Venezuela

VEN74 - Carlos Berrizbeitia

Decision adopted by the Committee on the Human Rights of Parliamentarians at its 155th session (Geneva, 25 January - 2 February 2018)

The Committee,

Seized of the case of Mr. Carlos Berrizbeitia, an opposition member of the National Assembly of Venezuela,

1. *Notes* that the communication was submitted in due form by a complainant qualified under Section I, 1(b) of the Procedure for the examination and treatment of complaints (Annex 1 of the Revised Rules and Practices of the Committee on the Human Rights of Parliamentarians);

2. *Notes* that the communication concerns an incumbent member of parliament at the time of the initial allegations;

3. *Notes* that the communication concerns allegations of violations of the rights to freedom of opinion and expression and the alleged failure to respect parliamentary immunity, allegations that fall within the Committee's mandate;

4. *Considers*, therefore, that the complaint is admissible and *declares itself* competent to examine the case.

Venezuela

VEN75 - Manuela Bolívar (Ms.)

Decision adopted by the Committee on the Human Rights of Parliamentarians at its 155th session (Geneva, 25 January - 2 February 2018)

The Committee,

Seized of the case of Ms. Manuela Bolívar, an opposition member of the National Assembly of Venezuela,

1. *Notes* that the communication was submitted in due form by a complainant qualified under Section I, 1(b) of the Procedure for the examination and treatment of complaints (Annex 1 of the Revised Rules and Practices of the Committee on the Human Rights of Parliamentarians);

2. *Notes* that the communication concerns an incumbent member of parliament at the time of the initial allegations;

3. *Notes* that the communication concerns allegations of torture, ill-treatment and other acts of violence, threats, intimidation, arbitrary arrest and detention, violations of the rights to freedom of opinion and expression and freedom of movement and the alleged failure to respect parliamentary immunity, allegations that fall within the Committee's mandate;

4. *Considers*, therefore, that the complaint is admissible and *declares itself* competent to examine the case.

Cambodia

CMBD27 - Chan Cheng
CMBD48 - Mu Sochua (Ms.)
CMBD49 - Keo Phirum
CMBD50 - Ho Van
CMBD51 - Long Ry
CMBD52 - Nut Romdoul
CMBD53 - Men Sothavarin
CMBD54 - Real Khemarin
CMBD55 - Sok Hour Hong
CMBD56 - Kong Sophea
CMBD57 - Nhay Chamroeun
CMBD58 - Sam Rainsy
CMBD59 - Um Sam Am
CMBD60 - Kem Sokha
CMBD61 - Thak Lany (Ms.)
CMBD62 - Chea Poch
CMBD63 - Cheam Channy
CMBD64 - Chiv Cata
CMBD65 - Dam Sithik
CMBD66 - Dang Chamreun
CMBD67 - Eng Chhai Eang
CMBD68 - Heng Danaro
CMBD69 - Ke Sovannroth (Ms)
CMBD70 - Ken Sam Pumsen
CMBD71 - Keo Sambath
CMBD72 - Khy Vanndeth
CMBD73 - Kimsour Phirith
CMBD74 - Kong Bora
CMBD75 - Kong Kimhak
CMBD76 - Ky Wandara
CMBD77 - Lath Littay
CMBD78 - Lim Bun Sidareth
CMBD79 - Lim Kimya
CMBD80 - Long Botta
CMBD81 - Ly Srey Vyna (Ms)
CMBD82 - Mao Monyvann
CMBD83 - Ngim Nheng
CMBD84 - Ngor Kim Cheang
CMBD85 - Ou Chanrath
CMBD86 - Ou Chanrith
CMBD87 - Pin Ratana
CMBD88 - Pol Hom
CMBD89 - Pot Poeu (Ms.)
CMBD90 - Sok Umsea
CMBD91 - Son Chhay
CMBD92 - Suon Rida
CMBD93 - Te Chanmony (Ms.)
CMBD94 - Tioulong Saumura (Ms.)
CMBD95 - Tok Vanchan
CMBD96 - Tuon Yokda
CMBD97 - Tuot Khoert
CMBD98 - Uch Serey Yuth
CMBD99 - Vann Narith
CMBD100 - Yem Ponhearith
CMBD101 - Yim Sovann
CMBD102 - Yun Tharo
CMBD103 - Tep Sothy (Ms.)

Decision adopted by the Committee on the Human Rights of Parliamentarians at its 155th session (Geneva, 25 January - 2 February 2018)

The Committee,

Referring to the existing cases under file names CMBD27 and CMBD48-61, which all concern members from the opposition Cambodian National Rescue Party (CNRP), and to the decision adopted by the Governing Council at the 137th IPU Assembly (St. Petersburg, October 2017),

Seized of the new cases under the file name CMBD62-103, which it has examined and declared admissible pursuant to its Procedure for the examination and treatment of complaints (Annex I of the Revised Rules and Practices), and which concern the remaining 42 members of the National Assembly of the CNRP who lost their parliamentary mandate and were banned from politics following a ruling by the Supreme Court on 16 November 2017, which is referenced in detail further below,

Referring to the letters of 29 November, 13 and 18 December 2017 of the Secretary General of the National Assembly, as well as the information provided by the complainants and reliable third parties,

Referring to the hearing held with Mr. Sam Rainsy and Ms. Saumura Tioulong at its 155th session and to the numerous hearings held with both parties in the past as part of the Committee's effort to continue hearing both sides in a systematic manner to promote dialogue,

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

Also referring to the IPU Presidential Statement on the state of democracy in the world issued at the 137th IPU Assembly,

Recalling the following information and allegations on file:

- The CNRP is the main opposition party in Cambodia and the only opposition party elected to parliament. The situation of 15 opposition parliamentarians, including the President and Vice-President of the CNRP, has been under examination before the Committee since 2014. At that time, the outcome of the 2013 parliamentary election was contested by the opposition, which claimed that it would have won the elections in the absence of fraud. The opposition had gained an unprecedented number of seats in parliament, with 55 members elected in the National Assembly (against 68 for the ruling Cambodian People's Party (CPP)) and 11 in the Senate (against 46 for the CPP) – therefore depriving the CPP for the first time of a two-thirds majority in the National Assembly;
- The complainants' claim that the ruling party has sustained a policy to weaken, silence and exclude the opposition in the lead-up to the 2017 and 2018 local and national elections by committing a series of abuses against opposition members of parliament along the lines of the long-standing patterns of abuse previously condemned by the IPU in past cases. Such abuses have allegedly included: (i) acts of intimidation and pressure; (ii) physical violence; (iii) political and judicial harassment characterized by multiple 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 ban on the political activities of its leaders pursuant to controversial fast-tracked amendments to the 1997 political party law that gave unprecedented power to the executive and judicial branches to suspend and dissolve political parties as well as their leaders;
- The position of the Cambodian authorities, including the National Assembly, has remained that no human rights violations were committed in the cases at hand and that all opposition parliamentarians concerned were criminals who must be punished by Cambodian courts in accordance with the law;
- Physical violence committed against opposition members of parliament has been met with persisting impunity, while all judicial proceedings that have been processed to the present date have concluded with the systematic convictions of the opposition parliamentarians concerned. Serious issues of due process, fairness and lack of independence of the judiciary have been observed, as well as violations of the rights to freedom of expression, peaceful assembly and association of the parliamentarians concerned;
- The previous leader of the CNRP, Mr. Sam Rainsy, was forced into exile and to resign from the party. He was convicted by the courts on numerous occasions in his absence and new charges have continued to be pressed against him. His successor, Mr. Kem Sokha, has also been targeted by threats and prosecutions. He was arrested on 3 September 2017 and faces a prison sentence of 15 to 30 years for charges of treason and conspiracy with a foreign power. He is detained in a remote prison in solitary confinement and under 24-hour video surveillance in his cell. Judicial proceedings are still ongoing against Mr. Kem Sokha and Mr. Sam Rainsy. Mr. Kem Sokha and Mr. Um Sam Am currently remain in detention, while all other CNRP parliamentarians have fled Cambodia;
- Following the arrest of Mr. Kem Sokha, the Prime Minister issued several public statements warning that the CNRP would face dissolution if it "dared to appear to protect" Mr. Kem Sokha, and that, in such case, other CNRP members would face similar charges. Since that time, opposition members of parliament have allegedly been labelled as "rebels", placed under constant surveillance and repeatedly intimidated, according to

the complainant. According to the information shared by Ms. Mu Sochua, Vice-President of the CNRP, during the hearing held at the 137th IPU Assembly most of the senior CNRP leadership and about half of opposition members of parliament, including herself, were forced to flee Cambodia out of fear of reprisals after they received a message warning them of their imminent arrest and of the impending dissolution of the CNRP. Ms. Mu Sochua expressed the view that Cambodian opposition parliamentarians and members no longer had any freedom to express their opinions, to meet or gather peacefully or to move around freely inside or outside of Cambodia. She feared for her safety and for the safety of all CNRP parliamentarians and members. She expressed the wish to return to Cambodia to continue exercising her parliamentary and opposition duties and ensure that the voice of the Cambodian people who elected the CNRP to parliament would be respected. She also expressed the wish of the CNRP for political dialogue to resume;

- The successive amendments to the 1997 political party law adopted in March and July 2017 have been couched in vague terms and are considered to be squarely at odds with accepted restrictions on the right to freedom of association under international law, particularly the requirements of necessity and proportionality. On 6 October 2017, the Minister of the Interior submitted an official request to the Supreme Court to dissolve the CNRP on the basis of the above-mentioned amendments. The complainant expressed fears that the Supreme Court would soon order the dissolution of the CNRP and would deprive the party members of their elective mandates conferred by the people at the national and local levels, as well as exclude them from campaigning and running freely and fairly in the general elections scheduled for 29 July 2018;
- The failure of the mechanism for dialogue established between the two main political parties represented in parliament (known as the “culture of dialogue”) to address and resolve the cases at hand and the subsequent collapse of any effective political dialogue since late 2015, as well as the failure of the judiciary to provide redress for the abuses committed,

Considering the following developments that have occurred since the 137th IPU Assembly and the information and allegations shared by both parties in that respect:

- The Cambodian authorities have denied bail to Mr. Kem Sokha who remains detained in solitary confinement. They have rejected the IPU Governing Council's request to allow a delegation of the Committee to visit him in detention. They have not responded to new allegations relating to the inhuman conditions of detention of Mr. Kem Sokha and denial of medical assistance. New criminal cases have continued to be brought on a regular basis against Mr. Sam Rainsy and to lead to systematic convictions. Former Senator Hong Sok Hour was released in October 2017 following a royal pardon, and Mr. Um Sam An has filed an application for a royal pardon;
- On 16 November 2017, the Supreme Court of Cambodia ordered the dissolution of the CNRP and banned a total of 118 CNRP leaders (including all 55 CNRP members of the National Assembly) from political life for five years after a one-day hearing and without any possibility of appeal. Their parliamentary mandates were immediately revoked and were given to small parties who did not win any seats at the last elections. All members of parliament have gone into exile out of fear of continuing reprisals;
- The complainant claims the following with regard to the Supreme Court decision:
    - The decision is groundless and purely motivated by political considerations. It stated that, before the ruling was issued, CNRP members were warned by the Prime Minister that their only choice was to join the ruling party or to be prepared for the dissolution and ban of their party. In its view, they are the ultimate measures taken by the ruling party to prevent the opposition from participating in the 2018 elections. It considers that the measures taken are arbitrary and violate the Constitution and laws of Cambodia, in particular the rights to freedom of association and expression and the right to participate in the conduct of public affairs and to be elected;

- The Supreme Court has acted upon the instructions of the Prime Minister and has exercised neither independence nor impartiality. It pointed out that the composition of the Court itself precluded such independence and stressed, inter alia, that the presiding judge was a close friend of the Prime Minister and a prominent member of the ruling party. The CNRP declined to submit evidence in its defence or to send lawyers to the trial, as it viewed its outcome as predetermined;
- The constitutional provisions related to multi-party democracy and to the National Assembly have been violated. Replacing elected parliamentarians by appointed members of smaller parties closely aligned with the ruling party is a clear violation of article 1 and 76 of the Constitution. The latter clearly spells out that members of the National Assembly will be elected by "a free, universal, equal, direct and secret ballot". It emphasizes that a significant part of the population of Cambodia has been arbitrarily deprived of parliamentary representation as a result of these measures and that the current National Assembly has no longer any integrity or legitimacy as it is not in compliance with the Constitution;

- In his letter of 13 December 2017, the Secretary General of the National Assembly confirmed the dissolution of the CNRP and stated that the Supreme Court decision was based on charges of conspiracy with a foreign country to overthrow the legitimate government. He pointed out that the National Assembly was still composed of four political parties and that the status of a multi-party parliament therefore remained in existence in Cambodia,

Considering that the Supreme Court decision, a copy of which was provided by the complainant, is seven lines long; that the judges have not provided any grounds for their decision and that no information has been provided by the Cambodian authorities on the replacement of the CNRP parliamentarians by appointed members of smaller parties,

Recalling that the amendments allowing for the redistribution of the CNRP seats to other parties in case of dissolution were adopted on 16 October 2017 – in the midst of the 137th IPU Assembly – and that the Cambodian delegation to the 137th IPU Assembly that was heard at that time told the Committee that it had been misinformed by the complainant and no such amendments were being contemplated or discussed in the Cambodian Parliament,

Taking into account reports by the United Nations and other international and regional organizations that the political space in Cambodia has dramatically shrunk following an unprecedented crackdown on critical media outlets and civil society, and that the range of laws and tactics being employed to restrict criticism of the Government and quell political debate has continued to widen,

Noting the international, regional and bilateral condemnations that have followed the dissolution of the CNRP, including the statement issued by the Office of the United Nations High Commissioner for Human Rights and the resolution adopted by the European Parliament on 14 December 2017, as well as the withdrawal of aid and the sanctions adopted by the European Union and the United States of America,

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 and chapter 3 of the Cambodian Constitution, concerning 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 41, which enshrines the right to freedom of expression, and articles 80 and 104, which provide for parliamentary immunity,

Taking into account that, at the 137th IPU Assembly, the Executive Committee and then the Governing Council urged the IPU leadership to continue to engage with the Cambodian authorities to help them comply with international standards and work towards a more peaceful and stable environment for the next elections,

1. *Notes with consternation* that all 55 parliamentarians of the only opposition party elected to parliament were stripped of their parliamentary mandates and were banned from political life as a result of a Supreme Court ruling and on the basis of legislation which run completely counter to their individual and collective rights to take part in the conduct of public affairs and their right to a fair trial; *is deeply concerned* that all 55 opposition members of the National Assembly of Cambodia were promptly replaced by non-elected political parties allegedly aligned with the ruling party, which only reinforces the perceived political motivation for the Supreme Court decision;

2. *Concludes* that these latest repressive measures clearly constitute violations of the fundamental rights of the parliamentarians concerned; and *observes with regret* that they are sadly reminiscent of a long-standing pattern of abuse against the opposition that has been documented by the IPU before every election in Cambodia in the past;

3. *Is deeply concerned* that these measures leave the ruling party with no significant challenger ahead of the upcoming general elections and therefore deprive a significant part of the Cambodian population from parliamentary representation and from the ability to freely exercise their right to vote for the political representatives of their choice; therefore *expresses serious concerns* about the conduct of credible, free, fair and transparent elections in 2018;

4. *Urges* the Cambodian authorities to immediately reinstate all 55 members of the CNRP in the National Assembly, and to resume the political dialogue and allow the CNRP to field candidates for the upcoming elections; *reiterates its call* on the Cambodian authorities to take urgent measures to end the ongoing harassment of the CNRP and its members, as well as provide all appropriate guarantees to ensure that those who have gone into exile are able to return safely, without delay, to resume their political activities within the CNRP and to campaign freely in the run-up to the fast-approaching 2018 elections, without fear of reprisals;

5. *Seriously questions* the current integrity and legitimacy of the parliamentary institution as a whole in Cambodia in light of these recent developments and the lack of a level playing field in the lead-up to the general elections that go directly against the core principles of parliamentary democracy, multi-party liberalism and of a governance system based on the rule of law; *recalls* that, pursuant to the principles and values defended by the IPU, as enshrined in the Universal Declaration on Democracy adopted by the IPU in September 1997, "a state of democracy ensures that the processes by which power is acceded to, wielded and alternated 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 *urges* for increased tolerance and acceptance of the role of the political opposition in Cambodia;

6. *Calls upon the IPU Governing bodies* to urgently review the situation in Cambodia with a view to helping ensure that the concerns spelt out in this decision are effectively addressed; *reiterates* the availability of the IPU to facilitate the resumption of a political dialogue and to mediate between the parties;

7. *Invites* the global parliamentary community, primarily through IPU member parliaments, as well as other relevant international, regional and domestic stakeholders, to engage in joint efforts to help resolve the current crisis in a manner consistent with democratic and human rights values, including by facilitating the resumption of a political dialogue, adopting public statements and making representations to the Cambodian authorities;

8. *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;

9. *Decides* to continue examining this case.

Cambodia

CMBD62 - Chea Poch
CMBD63 - Cheam Channy
CMBD64 - Chiv Cata
CMBD65 - Dam Sithik
CMBD66 - Dang Chamreun
CMBD67 - Eng Chhai Eang
CMBD68 - Heng Danaro
CMBD69 - Ke Sovannroth (Ms)
CMBD70 - Ken Sam Pumsen
CMBD71 - Keo Sambath
CMBD72 - Khy Vanndeth
CMBD73 - Kimsour Phirith
CMBD74 - Kong Bora
CMBD75 - Kong Kimhak
CMBD76 - Ky Wandara
CMBD77 - Lath Littay
CMBD78 - Lim Bun Sidareth
CMBD79 - Lim Kimya
CMBD80 - Long Botta
CMBD81 - Ly Srey Vyna (Ms)
CMBD82 - Mao Monyvann
CMBD83 - Ngim Nheng
CMBD84 - Ngor Kim Cheang
CMBD85 - Ou Chanrath
CMBD86 - Ou Chanrith
CMBD87 - Pin Ratana
CMBD88 - Pol Hom
CMBD89 - Pot Poeu (Ms.)
CMBD90 - Sok Umsea
CMBD91 - Son Chhay
CMBD92 - Suon Rida
CMBD93 - Te Chanmony (Ms.)
CMBD94 - Tioulong Saumura (Ms.)
CMBD95 - Tok Vanchan
CMBD96 - Tuon Yokda
CMBD97 - Tuot Khoert
CMBD98 - Uch Serey Yuth
CMBD99 - Vann Narith
CMBD100 - Yem Ponhearith
CMBD101 - Yim Sovann
CMBD102 - Yun Tharo
CMBD103 - Tep Sothy (Ms.)

Decision adopted by the Committee on the Human Rights of Parliamentarians at its 155th session (Geneva, 25 January - 2 February 2018)

The Committee,

Seized of the case of the above-mentioned members of the National Assembly of Cambodia,

1. *Notes* that the communication was submitted in due form by qualified complainants under Section I(1)(c) of the Procedure for the examination and treatment of complaints (Annex I of the Revised Rules and Practices of the Committee on the Human Rights of Parliamentarians);

2. *Notes* that the communication concerns incumbent members of parliament at the time of the initial allegations;

3. *Notes* that the communication concerns allegations of violations of the rights to freedom of opinion, expression, peaceful assembly and association, abusive revocation of the parliamentary mandate, lack of due process and of fair trial proceedings, failure to respect parliamentary immunity, violation of freedom of movement, and threats and acts of intimidation, allegations that fall within the Committee's mandate;

4. *Considers,* therefore, that the complaint is admissible and *declares itself* competent to examine the case.

Republic of Korea

KOR30 - Kim Mi-Hyui (Ms.)
KOR31 - Kim Jae-Yeon (Ms.)
KOR32 - Oh Byoung-Youn
KOR33 - Lee Sang-Gyu
KOR34 - Lee Seok-Gi

Decision adopted by the Committee on the Human Rights of Parliamentarians at its 155th session (Geneva, 25 January - 2 February 2018)

The Committee,

Referring to the decision adopted at its 147th session (March 2015) on the admissibility of the case of the five above-mentioned former parliamentarians, who were opposition members of the National Assembly of Korea,

Recalling that, on 19 December 2014, the Constitutional Court of the Republic of Korea ruled on the Government's petition to dissolve the Unified Progressive Party (UPP) on grounds of unconstitutionality; that the Constitutional Court held that the UPP was an unconstitutional party because its objectives or activities were contrary to the fundamental democratic order, and ordered as a result that its five parliamentarians be stripped of their seats in the National Assembly,

Recalling that the complainant affirms that the Government and the Constitutional Court based their decisions on prejudice and preconceptions about the UPP, without any evidence that it posed a present and clear danger; that the complainant considers that the Constitutional Court's decision to disqualify members of the National Assembly has no basis in law,

Recalling that the Constitutional Court, as demonstrated by the information provided by the Speaker of the National Assembly, in reaching its decision considered that:

- Members of the National Assembly are not bound by any instruction or interference by others and perform their duties in accordance with their conscience by giving priority to national interests, serving as representatives of the nation as a whole (see article 46, section 2 of the Constitution). At the same time, with the development of contemporary party democracy, parliamentarians are in reality voted into office with the support of their parties or relying on party affiliation, after being nominated by the parties to run for election. As a party member, they are influenced by the rules, discipline or platforms of their parties when forming political opinions, thereby holding the status as representatives of the ideologies of their parties;
- It is not specified in the Constitution or in legislation whether the members of the National Assembly would lose their seats in the event their parties are ordered by the Constitutional Court to disband, but the status of parliamentarians of a political party dissolved for violating the Constitution should be established in light of the essential purpose and effects of the system for disbanding unconstitutional political parties;
- The essence of entrusting the Constitutional Court with the power to disband political parties lies in protecting citizens and safeguarding the Constitution by excluding the parties whose objectives or activities run counter to the basic democratic order from the process of shaping public political opinions. Ordering the dissolution of a political party, after the Constitutional Court finds it unconstitutional under strict conditions, derives from the principle of defensive democracy to protect the Constitution and, under such exceptional circumstances, it is inevitable that the status of National Assembly members as representatives of the people should be sacrificed. If parliamentarians of a political party to be disbanded retain their seats in the National Assembly, it would allow them to continue to represent the unconstitutional political ideas of the party in the process of forming political opinions and to convert those ideas into reality. In practice, this would result in the continued existence of the party and its activities. Thus, by not relieving the

affiliated members of their parliamentary seats in effect runs counter to the function of the political party dissolution system as a defender of the Constitution or the ideas and principles of defensive democracy, eventually leading to a failure to ensure the full and effective implementation of the decision to disband the party,

Considering that, despite numerous requests, the complainant has failed to provide further information to substantiate its initial allegations,

1. *Reaffirms* its position that the revocation of a parliamentarian's mandate is a serious measure, which definitively deprives a member of the possibility of carrying out the mandate entrusted to him/her, and that the decision to revoke a parliamentary mandate should therefore be taken in full accordance with the law and on serious grounds;

2. *Considers* that the case at hand raises important questions about the facts that led the Court to dissolve the UPP and about respect for the individual parliamentary mandate, in particular as the revocation of the mandates of the five individual members of parliament is seemingly presented as the logical consequence of the party dissolution, not because their political activities as individuals are deemed to be unconstitutional; *considers also* that, in addition to this important question about individual versus collective responsibility, it is unclear whether other, less harsh, penalties were considered instead of the revocation of the parliamentary mandates;

3. *Decides*, however, to close further examination of the case, in line with Article 25(a) of the Annex I to the Revised Rules and Practices of the Committee on the Human Rights of Parliamentarians, in the absence of any further communication from the complainant;

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

Turkey

TK126 - Garo Paylan

Decision adopted by the Committee on the Human Rights of Parliamentarians at its 155th session (Geneva, 25 January - 2 February 2018)

The Committee,

Seized of the case of Mr. Garo Paylan, a member of the Turkish parliament and belonging to the People's Democratic Party (HDP),

1. *Notes* that the communication was submitted in due form by a qualified complainant under Section I(1)(b) and (c), of the Procedure for the examination and treatment of complaints (Annex I of the Revised Rules and Practices of the Committee on the Human Rights of Parliamentarians);

2. *Notes* that communication concerns an incumbent member of parliament at the time of the initial allegations;

3. *Notes* that the communication concerns an alleged violation of freedom of opinion and of expression, an allegation that falls within the Committee's mandate;

4. *Considers,* therefore, that the complaint is admissible and *declares itself* competent to examine the case.

Turkey

TK127 - Osman Baydemir

Decision adopted by the Committee on the Human Rights of Parliamentarians at its 155th session (Geneva, 25 January - 2 February 2018)

The Committee,

Seized of the case of Mr. Osman Baydemir, a member of the Turkish Grand National Assembly belonging to the People's Democratic Party (HDP),

1. *Notes* that the communication was submitted in due form by a qualified complainant under Section I, (1)(b) and (c), of the Procedure for the examination and treatment of complaints (Annex I of the Revised Rules and Practices of the Committee on the Human Rights of Parliamentarians);

2. *Notes* that the communication concerns an incumbent member of parliament at the time of the initial allegations;

3. *Notes* that the communication concerns an alleged violation of freedom of expression, an allegation that falls within the Committee's mandate;

4. *Considers,* therefore, that the complaint is admissible and *declares itself* competent to examine the case.

Iraq

IQ60 - Hareth Al-Obaidi

Decision adopted by the Committee on the Human Rights of Parliamentarians at its 155th session (Geneva, 25 January - 2 February 2018)

The Committee,

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

Recalling the following information on file:

- On 12 June 2009, Mr. Al-Obaidi, a Sunni member of the Council of Representatives, Vice-Chairperson of the parliamentary committee on human rights and leader of the National Concord Front parliamentary group, was shot dead along with his bodyguard in the Yarmouk mosque in Baghdad;
- The day before his death, Mr. Al-Obaidi and fellow parliamentarians had called for the establishment of a commission of inquiry into cases of torture, rape and death in Iraqi prisons. Mr. Al-Obaidi had also announced his intention to summon the Ministers of the Interior, Justice and Defence to answer questions in this regard;
- The then Prime Minister of Iraq forcefully condemned the murder and ordered the establishment of a commission of inquiry to identify the culprits. The then Speaker of Parliament reportedly stated that "Mr. Al-Obaidi was a human rights defender and a moderate who had rejected violence and called for unity". At the hearing held in October 2009, a member of the delegation of Iraq to the IPU Assembly stressed that Mr. Al-Obaidi had been a widely respected personality, known for his human rights work, and the fifth member of the Council of Representatives, all belonging to different political groups, to be killed;
- The President of the High Judicial Council indicated in December 2009 that the assassination had been investigated by the Counter-Terrorism Bureau of the Criminal Justice Section of Al-Karkh, under the jurisdiction of the Criminal Tribunal of Al-Karkh, and that 20 people had been arrested as a result. However, after interrogation, only four were kept in custody for further investigation and arrest warrants were issued for a further 10 people, all of whom remained at large at that time;
- In June 2010, the President of the High Judicial Council reported that the investigation was still under way and that one of the suspects, an Al-Qaida affiliate named Manaf Al-Rawi, had confessed to the crime. Suspicions of Al-Qaida involvement had been previously referred to in media reports, according to which Mr. Ahmed Abed Oweiyed, the Deputy Commander of the military branch of Al-Qaida in Iraq, was arrested on 17 June 2009 in connection with the murder;
- The President of the High Judicial Council stated in October 2011 that the Court of Cassation had concluded in July 2011 that the case had erroneously been referred to the central criminal tribunal of Al-Karkh, through three different indictments, and he therefore ordered a new decision regarding which court had jurisdiction,

Recalling that the member of the Iraqi delegation at the 130th IPU Assembly (Geneva, March 2014) had stated that the investigation into the murder had concluded, and that Mr. Al-Rawi was convicted of the crime, sentenced to death, and subsequently executed by the Iraqi judicial authorities, and that details would be provided in the future by the House of Representatives in that respect,

Considering that no further information has been conveyed to the IPU Secretary General by the authorities of Iraq since that date, despite repeated requests to that end, and that it has not received updated information from the complainant for several years,

1. *Deeply regrets* that the House of Representatives did not share any information about the conclusions of the investigation and subsequent judicial proceedings leading up to the conviction of the suspect, despite its prior commitment to do so; *would appreciate* receiving the information requested from the House of Representatives;

2. *Decides nevertheless* to close the case pursuant to article 25 of its Procedure for the examination and treatment of complaints, in the light of the conclusion of the judicial proceedings and given that the perpetrator has been held accountable, which constitutes a satisfactory resolution of the case;

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

Lebanon

LEB01 - Gibran Tueni
LEB02 - Walid Eido
LEB03 - Antoine Ghanem
LEB04 - Pierre Gemayel

Decision adopted by the Committee on the Human Rights of Parliamentarians at its 155th session (Geneva, 25 January - 2 February 2018)

The Committee,

Referring to the case of Mr. Gibran Tueni, Mr. Walid Eido, Mr. Antoine Ghanem and Mr. Pierre Gemayel, all members of the National Assembly of Lebanon who were assassinated, and to the decision adopted by the Committee at its 143rd session (January 2014),

Referring to the letter of the Minister of Justice of Lebanon dated 23 October 2015,

Recalling the following:

- Mr. Gibran Tueni was killed by a car bomb in Beirut's Mkalles suburb on 12 December 2005, together with his driver and a security escort. Mr. Tueni's assassination took place one day after his return from Paris, where he had been living in exile owing to death threats. Following his assassination, a Muslim fundamentalist group called "The fighters for the unity and freedom of Bilad El-Cham" faxed a London-based newspaper claiming responsibility for the crime;
- Mr. Pierre Gemayel was shot at point-blank range on 21 November 2006 by several gunmen who drove their car into his vehicle and sprayed it with gunfire. Mr. Gemayel was then rushed to the hospital, where he died;
- Mr. Walid Eido was killed in an explosion in Beirut on 13 June 2007. The blast also claimed the lives of his son, two bodyguards and six civilians and left an additional 11 people wounded. Security sources said that the 80-kilogramme bomb was planted in a car parked some 200 metres from a heavily guarded military beach club;
- Mr. Antoine Ghanem was assassinated along with six others in a car-bomb attack in Beirut on 19 September 2007;
- The assassination of the four members of the National Assembly took place after the murder of former Lebanese Prime Minister Rafiq Hariri in February 2005, which sparked large pro- and anti-Syria rallies in Beirut, prompting the withdrawal of Syrian forces from Lebanon. The fact that all four members of parliament were outspoken critics of Syria's activities in Lebanon has led Lebanese opposition groups to accuse Syria of involvement in the assassination, which Syria denies;
- The National Assembly joined the judicial proceedings initiated by the Public Prosecutor in the case;

Considering that the Minister of Justice stated the following in his letter of 23 October 2015:

- Investigations in the four cases were still ongoing but no suspects had been identified to date. Contrary to what had been previously stated by the Secretary General of the National Assembly in his letter dated 31 December 2013, all cases fell under the sole jurisdiction of the Lebanese judiciary, and not the Special Tribunal for Lebanon;
- In the case of Mr. Tueni's assassination, the military investigative judge had been investigating the case since 2006. The Public Prosecution had presented a claim to the Judicial Council against unknown persons on 19 June 2007. Investigations had followed and letters rogatory had been issued requesting foreign judicial assistance in uncovering the identity of the perpetrators, accomplices and instigators. Some members of

Mr. Tueni's family had lodged a complaint against two persons while presenting documents deemed to be classified as confidential intelligence material. The validity and accuracy of those documents were still under examination and the investigation had been expanded to try to shed light on events surrounding certain people and facts;

- In the case of Mr. Gemayel, the investigation had led to the preparation of an identikit picture of the perpetrator and seizure of the jeep used to commit the crime on the Syrian-Iraqi border, which had been transported back to Lebanon. In the case of Mr. Eido, an identikit picture of the perpetrator had been drawn up. In the case of Mr. Ghanem, no suspects had been identified,

Recalling that the Special Tribunal for Lebanon was established by the United Nations and the State of Lebanon in 2009 to try those responsible for the assassination of former Prime Minister Rafiq Hariri, who was murdered in a car-bomb explosion on 14 February 2005; that it can declare that it has jurisdiction in respect of other attacks in certain conditions set out in its Statutes; that in such cases, it must establish its jurisdiction by a judicial decision showing the existence, inter alia, of a connection with the attacks of 14 February 2005; that under the Special Tribunal's current case law such a connection is established by a combination of the following elements: the *modus operandi*, the purpose behind the attacks, the nature of the victims targeted and the perpetrators; that for attacks carried out after 12 December 2005 (the case of all the attacks against the four aforesaid parliamentarians except Mr. Tueni), the Special Tribunal must also obtain the agreement of the United Nations and the Republic of Lebanon and the accord of the United Nations Security Council before declaring itself competent to try the perpetrators; and that the Lebanese judicial authorities continue to have exclusive jurisdiction in respect of attacks for which a connection has not yet been established by the Special Tribunal,

Considering that the annual report of the Special Tribunal for Lebanon for 2016–2017 reiterated that it lacked jurisdiction over cases not falling within its mandate – including the case of the four parliamentarians concerned – so that, unless such jurisdiction is sought, it remains for the Lebanese judicial authorities to investigate and prosecute the cases,

Bearing in mind that, since 2014, the parliamentary authorities have never responded to the Committee's outstanding request for a visit to Lebanon to meet with the judicial authorities and the families of the parliamentarians concerned, and that the National Assembly also failed to respond to the Committee's requests for updated information or to invitations to attend a hearing during an IPU Assembly to discuss the case with its members,

Noting that the IPU Secretary General has not received updated information from the complainants for several years and that sustained efforts to reach out to the families of the assassinated members of parliament have remained unanswered,

1. *Remains deeply concerned* that, more than 11 years after the attacks, none of the perpetrators has yet been held to account; c*oncludes* that the Lebanese authorities have failed to provide justice and appropriate redress to the victims' families; and yet *acknowledges* the complexity of the cases and the difficulty of investigating them in light of the political context in which the crimes occurred;

2. *Firmly believes* that impunity, a serious human rights violation in itself, undermines the rule of law and respect for human rights in the country and is bound to encourage the repetition of similar crimes; *urges* the Lebanese authorities to show persistence and genuine determination in their efforts to shed light on the circumstances of these assassinations; *invites* them to share impending developments in the case whenever available in the future; and *expresses the hope* that justice will eventually be done;

3. *Deeply regrets* the lack of cooperation from the National Assembly of Lebanon, and in particular its failure to answer the Committee's requests for authorization to visit Lebanon in order to better understand the situation;

4. *Decides to close* the case in accordance with Article 25 (b) of Annex I of its Procedure for the examination and treatment of complaints, given that, despite repeated requests, the complainant has provided no updated information over a prolonged period of time, thus making it impossible for the Committee to effectively continue its examination of the case;

5. *Requests* the Secretary General to convey this decision to the parliamentary authorities, the Minister of Justice and to the complainant.

Palestine

PAL91 - Mohammad Dahlan

Decision adopted by the Committee on the Human Rights of Parliamentarians at its 155th session (Geneva, 25 January - 2 February 2018)

The Committee,

Seized of the case of Mr. Mohammad Dahlan, a member of the Palestinian Legislative Council,

1. *Notes* that the communication was submitted in due form by a complainant qualified under Section I, 1 (a), of the Procedure for the examination and treatment of complaints (Annex 1 of the Revised Rules and Practices of the Committee on the Human Rights of Parliamentarians);

2. *Notes* that the complaint concerns an incumbent member of parliament at the time of the initial allegations;

3. *Notes* that the communication concerns allegations of failure to respect parliamentary immunity, violation of freedom of opinion and expression, and lack of due process, allegations that fall within the Committee's mandate;

4. *Considers,* therefore, that the communication is admissible and *declares itself* competent to examine the case.

Palestine

PAL92 - Shami Al-Shami
PAL93 - Nasser Juma
PAL94 - Jamal Tirawi
PAL95 - Nayema Sheikh Ali
PAL96 - Rajai Mahmoud Baraka
PAL97 - Yahya Mohammad Shamia
PAL98 - Ibrahim Al Masdar
PAL99 - Ashraf Jumaa
PAL100 - Majid Abu Shamala
PAL101 - Abdul Hamid Al-Alia
PAL102 - Alaa Yaghi

Decision adopted by the Committee on the Human Rights of Parliamentarians at its 155th session (Geneva, 25 January - 2 February 2018)

The Committee,

Seized of the case of the above-mentioned members of the Palestinian Legislative Council,

1. *Notes* that the communication was submitted in due form by a complainant qualified under Section I, 1 (a), of the Procedure for the examination and treatment of complaints (Annex 1 of the Revised Rules and Practices of the Committee on the Human Rights of Parliamentarians);

2. *Notes* that the communication concerns incumbent members of parliament at the time of the initial allegations;

3. *Notes* that the communication concerns allegations of failure to respect parliamentary immunity, of violations of freedom of opinion and expression and freedom of movement, as well of threats and acts of intimidation, allegations that fall within the Committee's mandate.

4. *Considers,* therefore, that the communication is admissible and *declares itself* competent to examine the case.

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