Inter-Parliamentary Union
For democracy. For everyone.

139th IPU ASSEMBLY AND RELATED MEETINGS

Geneva, 14 – 18.10.2018

Governing Council
Item 11(b)

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Geneva, 18 October 2018

Committee on the Human Rights of Parliamentarians

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Democratic Republic of the Congo

Decision adopted unanimously by the IPU Governing Council at its 203rd session (Geneva, 18 October 2018)

Opposition political leader Etienne Tshisekedi (Centre R) listens alongside opposition leader Eugène Diomi Ndongala (Centre L) during a "Peace in the East" mass on 22 June 2012 © AFP Photo / Junior Didi Kannah

COD-71 – Eugène Diomi Ndongala

Alleged human rights violations:

- ✓ Arbitrary arrest and detention
- ✓ Torture, ill-treatment and other acts of violence
- ✓ Threats, acts of intimidation
- ✓ Lack of due process at the investigation stage
- ✓ Lack of fair trial proceedings
- ✓ Right of appeal
- ✓ Abusive revocation of the parliamentary mandate

A. Summary of the case

Mr. Ndongala has been subjected to a campaign of political and legal harassment aimed at removing him from the political process since June 2012. In April 2013, he was arrested and, on 26 March 2014, he was sentenced to 10 years' imprisonment for rape (for engaging in sexual relations with consenting children in return for payment) following a trial marred by serious irregularities. The Committee concluded that the case was highly political and that Mr. Ndongala's fundamental rights had been violated. On 3 November 2016, the United Nations Human Rights Committee reached similar conclusions and called for his release.

Mr. Ndongala has been detained in a Kinshasa hospital since 21 April 2017. According to the complainant, he needs medical care that is not available in the Democratic Republic of the Congo (DRC). There has been no reply to his lawyer's request for medical transfer abroad.

Despite the adoption of a recommendation in favour of his

Case COD-71

Democratic Republic of the Congo: Parliament affiliated to the IPU

Victim: Male opposition member of parliament

Qualified complainant(s): Section I (1) (a) and (d) of the Committee Procedure (Annex 1)

Submission of complaint: July and December 2012

Recent IPU decision: October 2017

IPU mission: June 2013

Recent Committee hearing: Hearing with the delegation of the DRC at the 152nd session (January 2017)

Recent follow-up
- Communication from the authorities: Letter from the Speaker of the National Assembly (October 2017)
- Communication from the complainant: September 2018
- Communication from the IPU: Letter addressed to the Speaker of the National Assembly (September 2018)
- Communication addressed to the complainant: September 2018

release in the final report of the national consultations held between the political forces of the majority and the opposition in September 2013, no decision to this effect has been taken by the Head of State. Mr. Ndongala's name is on the list of political prisoners to be released in the political agreement of 31 December 2016 as part of the so-called "trust-building" measures ahead of the elections to be held on 23 December 2018. The terms of the agreement, adopted on 27 April 2017, provided for the release of political prisoners within five days. However, the agreement has not been respected, despite interventions by the National Human Rights Commission (NHRC-DRC) and the National Council for Follow-Up on the Agreement and Electoral Process (CNSA).

B. Decision

The Governing Council of the Inter-Parliamentary Union

1. *Deplores* the continuing detention of Mr. Ndongala for more than five years, following his sentencing in a political trial marred by serious irregularities and despite the fact that he is on the list of political prisoners who should have been released under the political agreement of 31 December 2016; again *urges* the DRC authorities to release him at once;

2. *Notes with concern* that Mr. Ndongala, like other political prisoners and leading opposition figures, will not be able to take part in the forthcoming elections, as the trust-building measures aimed at guaranteeing inclusive elections are not being implemented; *emphasizes* that the DRC has subscribed to the international obligations set out in the International Covenant on Civil and Political Rights and, in keeping with article 25 of the Convention, has to guarantee its citizens the right and opportunity, without any distinctions, to take part in the conduct of public affairs, to vote and to be elected, and to have access to public service in their country, under general conditions of equality;

3. *Reminds* the DRC authorities, in particular the parliamentary authorities, that it is their duty and obligation to guarantee the respect and protection of the fundamental rights of all parliamentarians, irrespective of their political affiliation; *emphasizes* that the integrity and independence of parliamentary institutions, in their entirety, are at risk when they allow such situations to occur and re-occur, in particular in a tense political context where only a genuine and inclusive political dialogue that is respectful of the role of the opposition can offer any hope of regular democratic and credible elections that will truly be beneficial to the Congolese population;

4. *Deeply regrets* that the National Assembly of the DRC has failed to provide the information requested by the Committee on the Human Rights of Parliamentarians, and that the delegation of the DRC has not replied to the invitation extended to it by the Committee during the 139th Assembly;

5. *Calls on* all IPU Member Parliaments, including Member Parliaments of the African Geopolitical Group, and IPU permanent observers, parliamentary assemblies and associations active in the region, to take the necessary steps for Mr. Ndongala's release; *also calls on* the international community to take action to this end; and *hopes* to be able to rely on the assistance of all relevant regional and international organizations;

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

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

Democratic Republic of the Congo

Decision adopted unanimously by the IPU Governing Council at its 203rd session (Geneva, 18 October 2018)

Franck Diongo, President of the MLP, Congolese Opposition Party © AFP Photo / Papy Mulongo

COD-86 – Franck Diongo

Alleged human rights violations:

- ✓ Arbitrary arrest and detention
- ✓ Torture, ill-treatment and other acts of violence
- ✓ Impunity
- ✓ Lack of due process at the investigation stage and lack of fair trial proceedings
- ✓ Right of appeal
- ✓ Violation of freedom of opinion and expression
- ✓ Violation of freedom of assembly and of association
- ✓ Failure to respect parliamentary immunity

A. Summary of the case

Mr. Diongo, an opposition member of parliament, was arrested together with several activists from his political party at his home on 19 December 2016 by presidential guard soldiers. He was reportedly tortured and then summarily tried under an accelerated procedure, despite a worrying medical condition as a result of ill-treatment in detention. On 28 December 2016, he was sentenced, in both the first and the last instance, to five years' imprisonment for arbitrary arrest and illegal detention aggravated by torture. He has been serving his sentence at Kinshasa prison since that time. The party activists arrested with Mr. Diongo were tried separately and were acquitted or sentenced to several months in prison. The Supreme Court rejected a request for a retrial. The authorities have taken no action to punish any of the perpetrators of the acts of torture committed against the member of parliament.

Case COD-86

Democratic Republic of the Congo: Parliament affiliated to the IPU

Victim: Opposition member of parliament

Qualified complainant(s): Section I (1) (a) of the Committee Procedure (Annex 1)

Submission of complaint: July and December 2012

Recent IPU decision: October 2017

IPU mission: - - -

Recent Committee hearing: Hearing with the delegation of the DRC at the 152nd session (January 2017)

Recent follow-up
- Communication from the authorities: Letter from the Speaker of the National Assembly (October 2017)
- Communication from the complainants: September 2018
- Communication from the IPU: Letter addressed to the Speaker of the National Assembly (September 2018)
- Communication addressed to the complainants: September 2018

Mr. Diongo's arrest and conviction occurred amidst protests prompted by the postponement of elections in the Democratic Republic of Congo (DRC), the extension of President Kabila's term in office (which

was supposed to end on 19 December 2016) and increasing repression of members of the opposition and civil society. Moreover, his arrest occurred amidst a wave of arrests and acts of violence on 19 and 20 December 2016 unleashed by the Congolese security forces to prevent any demonstrations by the opposition taking place. Mr. Diongo was the only politician who dared to continue calling on the people to protest on that symbolic date. Mr. Diongo is deemed a political prisoner by the Congolese opposition. Despite the authorities' commitment to releasing political prisoners under the political agreement of 31 December as part of the so-called "trust-building" measures, no progress has been made. The presidential and legislative elections will take place on 23 December 2018.

B. Decision

The Governing Council of the Inter-Parliamentary Union

1. *Deplores* the continuing detention of Mr. Diongo, despite the fact that he is on the list of political prisoners who should have been released under the political agreement of 31 December 2016; and *again urges* the DRC authorities to release him at once; *also deplores the fact* that no action has been taken by the Congolese authorities to independently and impartially investigate the torture inflicted on the member of parliament and other suspects arrested with him, and to punish the soldiers responsible for these acts, despite the complaint filed by Mr. Diongo with the military courts;

2. *Considers* that Mr. Diongo's conviction is the result of a political trial marred by serious irregularities and that his fundamental rights to freedom of expression, peaceful assembly and a fair trial have neither been observed nor protected by the executive, judicial and legislative authorities of the DRC; *firmly believes* that Mr. Diongo was arrested and sentenced to prevent him from continuing to express his opposition to the extension of the Head of State's mandate, and so as to put an end to the protests organized by the opposition;

3. *Notes with concern* that Mr. Diongo, like other political prisoners and leading opposition figures, will not be able to take part in the forthcoming elections, as the trust-building measures aimed at guaranteeing inclusive elections are not being implemented; *emphasizes* that the DRC has subscribed to the international obligations set out in the International Covenant on Civil and Political Rights and, in keeping with article 25 of the Convention, has to guarantee its citizens the right and opportunity, without any distinctions, to take part in the conduct of public affairs, to vote and to be elected, and to have access to enter public service in their county, under general conditions of equality;

4. *Reminds* the authorities of the DRC, in particular the parliamentary authorities, that it is their duty and obligation to guarantee respect and protection of the fundamental rights of all parliamentarians, irrespective of their political affiliation; *emphasizes* that the integrity and independence of parliamentary institutions, in their entirety, are at risk when they allow such situations to occur and re-occur, in particular in a tense political context where only a genuine and inclusive political dialogue that is respectful of the role of the opposition can offer any hope of regular democratic and credible elections that will truly be beneficial to the Congolese population;

5. *Deeply regrets* that the National Assembly of the DRC has failed to provide the information requested by the Committee on the Human Rights of Parliamentarians for information, and that the delegation of the DRC has not replied to the invitation extended to it by the Committee during the 139th Assembly;

6. *Calls on* all IPU Member Parliaments, including Member Parliaments of the African Geopolitical Group, and IPU permanent observers, parliamentary assemblies and associations active in the region, to take the necessary steps for Mr. Diongo's release; *also calls on* the international community to take action to this end; and *hopes* to be able to rely on the assistance of all relevant regional and international organizations;

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

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

Mauritania

Decision adopted unanimously by the IPU Governing Council at its 203rd session (Geneva, 18 October 2018)

Mohamed Ould Ghadda

MRT-02 - Mohamed Ould Ghadda

Alleged human rights violations:

- ✓ Arbitrary arrest and detention
- ✓ Lack of due process at the investigation and fair trial proceedings stages
- ✓ Violation of freedom of opinion and expression
- ✓ Failure to respect parliamentary immunity

A. Summary of the case

The complainants allege that Mr. Mohamed Ould Ghadda, opposition member of the Senate, was arbitrarily arrested on 10 August 2017 and detained for 10 days, with no access to his family or lawyer. He was allegedly only informed of the charges against him on 1 September, when his detention was officially converted into pretrial detention in the context of a judicial investigation into corruption.

The complainants consider that the charges against Mr. Ould Ghadda are unfounded and that his defence rights were violated. According to the complainant, the senator is being punished by the current government for having galvanized the opposition to vote against draft amendments to the Constitution, and against the referendum held on 5 August 2017, one of the aims of which was to abolish the Senate. In their view, he is also being punished for reporting, during a parliamentary inquiry, acts of corruption implicating persons close to the Head of State.

Case MRT-02

Mauritania: Parliament affiliated to the IPU

Victim: Male, former opposition member of the Senate

Qualified complainant(s): Section I (1) (a), (b) and (d) of the Committee Procedure (Annex 1)

Submission of complaint: January 2018

Recent IPU decision: March 2018

IPU mission: - - -

Recent Committee hearing: - - -

Recent follow-up

- Communication from the authorities: - - -
- Communication from the complainants: September 2018
- Communications from the IPU: Letter to the President of the National Assembly (April and July 2018)
- Communications from the IPU to the complainant: October 2018

Several international organizations have expressed their concern at Mr. Ould Ghadda's arbitrary detention. The case has also been referred to the United Nations Working Group on Arbitrary Detention, which regarded Mr. Ould Ghadda's detention as arbitrary and called on the Mauritanian authorities to release him immediately.

Having been charged in another defamation case, Mr. Ould Ghadda was sentenced on 13 August 2018 to six months' imprisonment. The complainant refutes the accusations of defamation, considering it simply to be an attempt to silence the former senator. However, on 1 September 2018, Mr. Ould Ghadda was released pending trial under court supervision. Owing to his prolonged detention, Mr. Ould Ghadda was not able to participate in the legislative elections held in September 2018, which were won by the ruling party.

B. Decision

The Governing Council of the Inter-Parliamentary Union

1. *Regrets* the lack of response from the parliamentary authorities and *invites* the new authorities elected in the legislative elections of September 2018 to provide their observations and the information requested as soon as possible; *hopes to be able to count on* the assistance of the National Assembly in relaying its concerns to the relevant executive and judicial authorities and to provide it with their views on the case;

2. *Notes with concern* that the prosecution of Mr. Ould Ghadda for corruption appears to be stalled and that he has been held for over a year in pretrial detention without any apparent progress in the proceedings, which are reportedly still at the preliminary investigation stage, according to the complainant;

3. *Calls on* the Mauritanian authorities to either close the file without further action, or to hold a public, impartial and fair trial as soon as possible, in compliance with the relevant national and international standards; *decides* to send an independent observer to attend the trial; and *wishes* to be kept informed of the hearing dates;

4. *Considers* that the rejection of Mr. Ould Ghadda's candidacy for the recent parliamentary elections without valid legal reason and the fact that he was released on a date that would no longer allow him to take part in the elections, giving even more weight to the complainant's allegation that the proceedings appear to be the consequence of the political positions taken by the senator criticizing the current government; *is further concerned* that Mr. Ould Ghadda remains under court supervision, continues to be subject to a judicial investigation and faces a 10- to 20-year prison term in the event of a conviction;

5. *Considers* that Mr. Ould Ghadda's parliamentary immunity was not respected, as his arrest on 10 August 2017 had not been authorized by the Senate, which was not abolished until 15 August 2018; and *highlights* that the United Nations Working Group on Arbitrary Detention had concluded that the arrest and detention of the senator was arbitrary, in particular given his initial incommunicado detention without arrest warrant or access to his family and lawyer, and the excessive duration of his police custody, in violation of Mauritanian law;

6. *Wishes* to receive a copy of the reasoned decision in the defamation case in order to understand the facts and the legal basis that led to the conviction of Mr. Ould Ghadda; *also wishes* to know whether Mr. Ould Ghadda has appealed this decision;

7. *Requests* the Secretary General to convey this decision to the competent authorities, the complainant and any third party likely to be in a position to supply relevant information, and to take the necessary measures to organize the trial observation requested by the Committee;

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

Senegal

Decision adopted by consensus by the IPU Governing Council at its 203rd session (Geneva, 18 October 2018)[1]

Dakar's mayor and head of the African Union's observation team, Khalifa Ababacar Sall, speaks during a press conference, on 13 March 2011 AFP Photo/Seyllou

SEN-07 – Khalifa Ababacar Sall

Alleged human rights violations:

- ✓ Arbitrary arrest and detention
- ✓ Lack of due process at the investigation stage and lack of fair trial proceedings
- ✓ Failure to respect parliamentary immunity

A. Summary of the case

Mr. Khalifa Ababacar Sall, mayor of the city of Dakar at the time of the alleged offences, was elected as a member of parliament in the legislative elections of 30 July 2017 while on remand in custody since 7 March 2017 by the Public Prosecutor in connection with allegations of misappropriation of public funds amounting to around 1.8 billion CFA francs. On 13 November 2017, members of the National Assembly sent a letter to the Speaker of the National Assembly calling for the release of Mr. Sall and a stay of proceedings against him because he is entitled to parliamentary immunity. The Public Prosecutor then applied to the National Assembly, through the Ministry of Justice, to have his parliamentary immunity lifted. Following this request, the National Assembly met in plenary session on 25 November 2017, without inviting Mr. Sall – thereby depriving him of his right to defend himself publicly – and lifted his parliamentary immunity.

At the conclusion of a trial lasting nearly two and a half months, Mr. Sall was sentenced on 30 March 2018 to five years in prison without parole and a fine of 5 million CFA francs. Following referral of Mr. Sall's case, the Economic Community of West African States (ECOWAS) Community

Case SEN-07

Senegal: Parliament affiliated to the IPU

Victim: Opposition member of parliament and mayor of the city of Dakar

Qualified Complainant(s): Section I (1) (a) of the Committee Procedure (Annex 1)

Submission of complaint: November 2017

Recent IPU decision: - - -

IPU mission: - - -

Recent Committee hearing: Meeting between Committee Secretary and Mr. Khalifa Sall's lawyers on the occasion of the OIF-UPR seminar in Dakar (July 2018)

Recent follow-up
- Communication from the authorities: Letter from the Speaker of the National Assembly (January 2018)
- Communication from the complainant: September 2018
- Communication from the IPU: Letter to Speaker of the National Assembly (February 2018)
- Communications from the IPU to the complainant: July and September 2018)

[1] The delegation of Senegal expressed its reservations regarding the decision.

Court of Justice highlighted several judicial irregularities in the conduct of the trial and the preliminary investigation. The findings of the ECOWAS court and the irregularities it identified were not taken into account by the Court of Appeal, which upheld the lower court's decision on 30 August 2018. Mr. Sall's lawyers withdrew from the appeal proceedings in order to denounce the arbitrariness of the trial. They appealed to the Court of Cassation, the remedy of last possible resort.

B. Decision

The Governing Council of the Inter-Parliamentary Union

1. *Takes note* of the information provided by the parliamentary authorities in January 2018; *regrets*, however, the lack of any subsequent reply to the requests, including information on the nature of the allegations against Mr. Sall;

2. *Considers* that the ECOWAS court's findings, namely the failure to respect the principle of the presumption of innocence, given that the content of the investigations carried out was made public, the arbitrary nature of Mr. Sall's detention, since following his election he enjoyed parliamentary immunity, and the rejection without examining the merits of the various appeals lodged by him with the investigating judge, largely confirm the complainant's allegations that the proceedings against Mr. Sall had been marred by serious flaws;

3. *Notes* that Mr. Sall's lawyers withdrew from the appeal proceedings in order to denounce the various judicial irregularities and other inconsistencies at the appeals stage, as well as the summary nature of justice served;

4. *Notes with concern* that these judicial irregularities are due to the political nature of the case because, according to the complainant, Mr. Sall is subject to politically motivated legal proceedings, as the allegations of corruption were made only a few months before the July 2017 legislative elections and after Mr. Sall had announced his intention to stand; that these proceedings are also intended to invalidate Mr. Sall's candidacy for the next presidential elections scheduled for February 2019, a candidacy he made official from his cell; that his opposition to the constitutional amendments initiated by the President has also been a motivating factor in proceedings against him;

5. *Underscores* that Mr. Sall challenged the appellate court's decision in the Court of Cassation and that, if the latter upholds the first- and second-instance decisions, Mr. Sall will be permanently removed from the presidential race; *hopes* that the remedy of last resort will be examined in an independent and impartial manner and in compliance with relevant national and international standards;

6. *Considers* that the allegations of misappropriation of funds for which Mr. Sall was convicted are connected to the use of funds allocated to an "advance fund" placed at his disposal when he was mayor, a facility created several years ago and reportedly used by his predecessors without ever being challenged, according to the complainant; *reiterates* its wish to receive information in this respect from the parliamentary authorities in order to better understand the substance of the allegations;

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

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

Uganda

Decision adopted unanimously by the IPU Governing Council at its 203rd session (Geneva, 18 October 2018)

Mr. Robert Kyagulanyi, better known as Bobi Wine, appears at the High Court in Gulu, northern Uganda, on 27 August 2018. Stringer/AFP

UGA-19 – Robert Kyagulanyi Ssentamu (also known as Bobi Wine)
UGA-20 – Francis Zaake
UGA-21 – Kassiano Wadri
UGA-22 – Gerald Karuhanga
UGA-23 – Paul Mwiru

Alleged human rights violations:

- ✓ Torture, ill-treatment and other acts of violence
- ✓ Arbitrary arrest and detention
- ✓ Lack of due process at the investigation stage and lack of fair trial proceedings
- ✓ Violation of freedom of opinion and expression
- ✓ Impunity

Case UGA-COLL-01

Uganda: Parliament affiliated to the IPU

Victims: Five male parliamentarians (including three young parliamentarians and one parliamentarian-elect); four independent parliamentarians and one opposition parliamentarian

Qualified complainant(s): Section I (1) (a) and (d) of the Committee Procedure (Annex 1)

Submission of complaint: August 2018

Recent IPU decision: September 2018

IPU mission: - - -

Recent Committee hearing: Hearing with the Ugandan delegation at the 139th IPU Assembly (October 2018)

Recent follow-up:
- Communication from the authorities: Letter from the parliamentary authorities and the Attorney General (October 2018)
- Communication from the complainant: September 2018
- Communication from the IPU: Letters to the executive, judicial and parliamentary authorities (September and October 2018)
- Communication from the IPU addressed to the complainant: October 2018

A. Summary of the case

Five opposition parliamentarians were violently arrested on 14 August 2018, together with 29 other people, in the district of Arua, after President Yoweri Museveni's convoy was reportedly pelted with stones. According to credible reports, two of the parliamentarians, Mr. Kyagulanyi and Mr. Zaake, were tortured on 14 August 2018. All those arrested, including the five parliamentarians, were charged with treason, which in Uganda carries the death penalty. Judicial proceedings have been adjourned until early December 2018.

The complainants claim that due process guarantees have been violated from the outset and that the parliamentarians are victims of political repression, as there is no evidence to support the charges brought against them.

The incidents took place on the last day of campaigning ahead of the Arua district by-elections held on 15 August 2018.

Mr. Kyagulanyi had travelled to Arua with the other parliamentarians to canvass support for Mr. Wadri, an independent candidate who was competing against candidates from the ruling party, the National Resistance Movement (NRM), and the largest opposition party, the Forum for Democratic Change (FDC). Mr. Kyagulanyi is a popular young parliamentarian and a well-known singer who enjoys wide popularity among young people. Through his songs and, since 2017 through his parliamentary work, he has been a vocal critic of President Museveni and his government. Given Mr. Kyagulanyi's successful backing of other independent candidates in the recent by-elections, he has increasingly been regarded as a threat to the political establishment. Following his arrest, many people took to the streets throughout Uganda to demand his release.

An ad hoc parliamentary committee was immediately set up by the Speaker of the Parliament of Uganda to investigate the incidents and to visit the parliamentarians in detention. It concluded that at least four of the five parliamentarians had sustained injuries as a result of the violence inflicted upon them by the security forces, that there was a lack of due process in the proceedings against the parliamentarians and that the security officials responsible acted with impunity. It also concluded that accountability for these transgressions should be established. The Speaker of Parliament wrote to the President on 27 August 2018 and expressed concern that, "no effort has been made to arrest the security officers from the SFC, Military Police and Uganda Police Force who were involved in the violent actions against unarmed civilians. This conduct is in breach of the Prevention and Prohibition of the Torture Act 2012 (…). This is, therefore, to demand that the officers concerned be apprehended at the earliest opportunity and presented in court. Unless this is done, it will be very difficult to conduct government business in parliament. The Uganda Parliament will not condone or acquiesce in acts of torture (…)".

President Museveni's response of 31 August 2018 advised that, "we await the outcome of the investigations (into the allegations of wrong doing if any) currently being carried out under the leadership of the Chief of Defence Forces and the Inspector General of Police and refrain from the use of the word "torture" until we establish the full facts of the events of that day. However, I am sure you are aware that security forces are entitled to use reasonable force while dealing with a suspect who is resisting arrest in the execution of their mandate to protect civilians under threat by rioters or terrorists or even threat to property". The President stated that he had instructed the members of the Special Forces Command (SFC) to assist the police in dispersing the "menacing opposition groups" who "were clearly so intoxicated that they saw no problem in stoning the vehicle of the President of Uganda", and that "unfortunately one Ugandan was killed in this hooliganism, a number were injured by bullets and many were injured by stones". The President added, "I am most pleased with the actions of the security forces in dealing with the menace of rioters and minimizing the loss of life and property".

In his letter of 3 October 2018, the Attorney General stated that his office was still awaiting the reports of the police and defence forces and that indications so far pointed to the fact that, "the injuries that the two members of parliament may have suffered would be the result of the scuffles that characterized their apprehension due to their unwillingness to submit themselves to the arrest process".

B. Decision

The Governing Council of the Inter-Parliamentary Union

1. *Thanks* the delegation of Uganda for the information and extensive documentation provided and for meeting with the Committee on the Human Rights of Parliamentarians during the 139th IPU Assembly to discuss the cases and concerns at hand;

2. *Commends* the Parliament of Uganda for its swift and decisive efforts to establish the facts at hand, to condemn the torture of two members of parliament by the security forces and the other serious violations of the fundamental rights of members of parliament, and to demand immediate accountability under the Prevention and Prohibition of the Torture Act;

3. *Is deeply concerned* at the lack of accountability, to the present day, of the security officers responsible, against whom no arrests have been ordered and no investigation completed two months after these incidents;

4. *Is also deeply concerned* about the alleged serious violations of the right to a fair trial in proceedings initiated against the persons arrested in Arua on 13 and 14 August, including the five members of parliament, and about the nature and severity of the charge of treason, which carries the death penalty, especially in view of the allegations that it is unsupported by evidence and the facts at hand;

5. *Concurs* with the delegation of Uganda to the 139th IPU Assembly that an attack against an individual member of parliament, irrespective of his/her political affiliation, is an attack against the entire house of parliament; and *recalls* that the protection of the rights of parliamentarians is a necessary prerequisite to enabling them to protect and promote human rights and fundamental freedoms in their country; *further recalls* that impunity presents a serious threat to members of parliament and to those they represent and that, accordingly, it also affects the ability of parliament to fulfil its role as an institution;

6. *Urges* all branches of power to respect and protect the fundamental rights of members of parliament and of all Ugandan citizens by holding those responsible to account without further delay; *fails to understand* the current response of the executive, security and judicial authorities of Uganda and the difference in treatment between the members of parliament and their political supporters on the one hand, and the members of the security forces on the other;

7. *Requests* the Committee on the Human Rights of Parliamentarians to send a delegation to Uganda at the earliest convenience to conduct a fact-finding mission and meet all relevant executive, security and judicial authorities – including the President, the Chief of the Defence Forces, the Inspector General of Police and the Attorney General – so as to obtain clarifications on their response; *mandates* the delegation to also meet with the Speaker and all relevant parliamentary authorities, the five members of parliament concerned and their legal counsels, representatives of the National Human Rights Commission of Uganda, of the main political parties, of civil society and of any other organizations and persons in a position to supply relevant information; *is confident* that, in light of the invitation extended by the Ugandan delegation, which met the Committee during the 139th IPU Assembly, the mission to Uganda can soon be organized; *hopes* that all three branches of power will fully cooperate and that the mission will contribute to bringing about prompt satisfactory solutions to the case in compliance with international human rights standards;

8. *Decides* to mandate a trial observer to monitor the upcoming court proceedings against the members of parliament; and *wishes to be kept informed* of the dates of the trial when available and of any other relevant judicial developments in the case;

9. *Calls* on all IPU Member Parliaments, including Member Parliaments of the African Geopolitical Group, and IPU permanent observers, parliamentary assemblies and associations active in the region, to take concrete actions in support of the urgent resolution of this case; and *hopes* to be able to rely on the assistance of all relevant regional and international organizations;

10. *Requests* the Secretary General to convey this decision to the Parliament of Uganda, the complainants and any third party likely to be in a position to supply relevant information, and to proceed with all necessary arrangements to organize the fact-finding mission and trial observation mission;

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

Venezuela

Decision adopted by consensus by the IPU Governing Council at its 203rd session (Geneva, 18 October 2018) [2]

Maria G. Hernández, Nora Bracho, Stalin González and Delsa Solórzano at the National Assembly, March 2018 © D. Solórzano

VEN-10 - Biagio Pilieri
VEN-11 - José Sánchez Montiel
VEN-12 - Hernán Claret Alemán
VEN-13 - Richard Blanco
VEN-16 - Julio Borges
VEN-19 - Nora Bracho (Ms.)
VEN-20 - Ismael Garcia
VEN-22 - William Dávila
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VEN-25 - Julio Ygarza
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VEN-46 - Marco Bozo
VEN-47 - José Brito
VEN-48 - Yanet Fermin (Ms.)
VEN-49 - Dinorah Figuera (Ms.)
VEN-50 - Winston Flores
VEN-51 - Omar González
VEN-52 - Stalin González
VEN-53 - Juan Guaidó
VEN-54 - Tomás Guanipa
VEN-55 - José Guerra
VEN-56 - Freddy Guevara
VEN-57 - Rafael Guzmán
VEN-58 - María G. Hernández (Ms.)
VEN-59 - Piero Maroun
VEN-60 - Juan A. Mejía
VEN-61 - Julio Montoya
VEN-62 - José M. Olivares
VEN-63 - Carlos Paparoni
VEN-64 - Miguel Pizarro
VEN-65 - Henry Ramos Allup
VEN-66 - Juan Requesens
VEN-67 - Luis E. Rondón
VEN-68 - Bolivia Suárez (Ms.)
VEN-69 - Carlos Valero
VEN-70 - Milagro Valero (Ms.)
VEN-71 - German Ferrer
VEN-72 - Adriana d'Elia (Ms.)
VEN-73 - Luis Lippa
VEN-74 - Carlos Berrizbeitia
VEN-75 - Manuela Bolivar (Ms.)

[2] A Venezuelan MP from the governing party and the delegations of Bolivia, Cuba, Nicaragua and Serbia expressed their reservations regarding the decision.

Alleged human rights violations:

- ✓ Torture, ill-treatment and other acts of violence
- ✓ Threats, intimidation
- ✓ Arbitrary arrest and detention
- ✓ Lack of due process at the investigation stage
- ✓ Excessive delays
- ✓ Violation of the right to freedom of opinion and expression
- ✓ Violation of freedom of assembly and association
- ✓ Violation of freedom of movement
- ✓ Abusive revocation or suspension of the parliamentary mandate
- ✓ Failure to respect parliamentary immunity
- ✓ Other acts obstructing the exercise of the parliamentary mandate

Case VEN-COLL-06

Venezuela: Parliament affiliated to the IPU

Victims: 60 opposition members of parliament (45 men and 15 women)

Qualified complainant(s): Section I (1) (c) of the Committee Procedure (Annex 1)

Submission of complaint: March 2017

Recent IPU decision: March 2018

IPU missions: - - -

Recent Committee hearings: Hearing with the Venezuelan delegation at the 139th IPU Assembly (October 2018)

Recent follow-up
- Communication from the authorities: Meeting between the IPU Secretary General and the Permanent Representative of Venezuela to the United Nations and other International Organizations in Geneva (June 2017)
- Communication from the complainant: March 2018
- Communication from the IPU: Letter to the Speaker of the National Assembly (February 2018)
- Communication from the IPU to the complainant: March 2018

A. Summary of the case

The case concerns credible and serious allegations of human rights violations affecting 60 parliamentarians from the coalition of the Democratic Unity Party (MUD) against the backdrop of continuous efforts by Venezuela's executive and judicial authorities to undermine the functioning of the National Assembly and to usurp its powers. The MUD opposes President Maduro's Government and obtained a majority of seats in the National Assembly following the parliamentary elections of 6 December 2015.

Soon after the elections, on 30 December 2015, the Electoral Chamber of the Supreme Court ordered the suspension of four members of parliament, three of them from the MUD, following allegations of fraud. The National Assembly first decided to disregard the ruling, considering the allegations to be baseless, which led the Supreme Court to declare all of the Assembly's decisions null and void. The members of parliament were finally sworn in at the National Assembly on 16 July 2018, failing any effort to examine the alleged fraud.

Since March 2017, close to 40 parliamentarians have been attacked with impunity by law enforcement officers and pro-government supporters during demonstrations. These protests intensified after President Maduro announced the convening of a Constituent Assembly, which was subsequently elected on 30 July 2017, to rewrite the Constitution.

Invoking *flagrante delicto*, Mr. Juan Requesens was arrested and detained on 7 August 2018 on accusations of involvement in the alleged assassination attempt on President Maduro three days earlier. There are serious concerns about his treatment in detention and respect for due process following the immediate lifting of his parliamentary immunity, not by the National but the Constituent Assembly. The complainant alleges that Mr. Requesens is being coerced into confessing responsibility for the crime. Nine other members of the National Assembly have spent up to four years in detention in recent years, without respect for their parliamentary immunity, before being released and continue to be subject to reportedly politically motivated legal proceedings.

In 2017, six members of parliament had their passports confiscated arbitrarily in connection with their international parliamentary work. Two other members of parliament were disbarred from holding public office, allegedly in the absence of any legal basis. Six members of parliament, including former Speaker Borges, left Venezuela and obtained asylum abroad in the face of continued harassment and intimidation, whereas the then Deputy Speaker, Mr. Freddy Guevara, sought protection at the Chilean Embassy in Caracas, where he has been since November 2017. Until today, many parliamentarians continue to face regular harassment, such as in the case of Mr. Tomás Guanipa, who has faced

physical attacks, baseless accusations, a plan to have him assassinated and house searches. A June 2018 UN human rights report documented extensively the attacks against political opponents, social activists and human rights defenders.

The Government has not provided any funding to the National Assembly since August 2016. In its decision of 18 August 2017, the Constituent Assembly invested itself with legislative powers. The Constituent Assembly has taken over many of the premises of the National Assembly. Even the limited space used by the National Assembly has been invaded and occupied, with several members of parliament taken hostage and beaten up by government supporters, with impunity, most notably on 27 June and 5 July 2017. Until today, members of the National Assembly are reportedly being harassed by government supporters, who are often allowed in by security personnel, when they approach and enter parliament.

Long-standing efforts since 2013 to send a delegation of the Committee on the Human Rights of Parliamentarians to Venezuela have failed in the absence of clear authorization from the Government to welcome and work with the delegation.

At the beginning of 2018, widespread demonstrations began across Venezuela in protest against the dire economic situation and the electoral process related to the decision to hold snap presidential elections on 20 May 2018. In early 2018, the MUD was excluded by the judicial authorities from presenting a joint candidate and, of the individual parties belonging to the MUD, only *Acción Democrática* (Democratic Action, AD) and other minor opposition parties were allowed to participate. The majority of popular leaders of the MUD and other members of the opposition are either in prison, disqualified from standing in the elections or in exile. The MUD announced in February 2018 that it would boycott the elections, considering the electoral system rigged in favour of President Maduro, who obtained the most votes on 20 May 2018 in elections that were widely criticized by the international community.

Since May 2016, mediation efforts, primarily by stakeholders in the region, have failed to bring the Government and the opposition together, and on 7 February 2018 the talks were suspended "indefinitely".

B. Decision

The Governing Council of the Inter-Parliamentary Union

1. *Is deeply concerned* at the apparent impunity with which opposition members of the National Assembly have been, and continue to be, repressed, ranging from physical attacks, arbitrary arrests and detention, politically motivated proceedings, lack of respect for parliamentary immunity, arbitrary revocation and suspension of parliamentary mandates and the arbitrary confiscation of passports;

2. *Urges* the authorities to put an immediate stop to this harassment and intimidation, to take effective action to hold to account those responsible and to ensure that all relevant state authorities respect the human rights and parliamentary immunity of members of the National Assembly; *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. *Remains deeply concerned* about the continued efforts to undermine the integrity and autonomy of the National Assembly of Venezuela; *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 information urgently on steps taken to this end;

4. *Is deeply concerned* about Mr. Juan Requesens' arrest, which is yet another example of total disregard for parliamentary immunity, in particular the very serious indications that he may have been drugged to testify against himself, his detention at the headquarters of the National

Bolivarian Intelligence Service and the poor conditions in which he is allegedly being kept, with very limited, if any, contact with his family; *is shocked* that the authorities appeared to have publicly released videos showing Mr. Requesens in an undignified and dishevelled state, apparently confessing to his criminal responsibility in order to show his guilt, hence also flouting his presumption of innocence; *urges* the authorities to investigate these matters without delay and to ensure that he is kept in dignified conditions; *requests* the relevant authorities to provide official information on these points and on the facts underpinning the very serious charges brought against him;

5. *Deeply regrets* that the human rights mission to Venezuela has still not taken place; *remains convinced* that such a mission could help address the concerns at hand; *requests once again*, therefore, the Secretary General to work with the executive authorities of Venezuela with a view to the mission taking place as soon as possible;

6. *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* the IPU's readiness to assist with these efforts; and *requests* the relevant authorities to provide further official information on how this assistance can best be provided;

7. *Reiterates* its invitation to the global parliamentary community to engage urgently, given the escalating political and humanitarian crisis in Venezuela, in efforts to address the concerns raised in this decision and resolve the current crisis in a manner consistent with democratic and human rights values, including in particular joint efforts by IPU Member Parliaments and other relevant international, regional and domestic stakeholders to facilitate the resumption of political dialogue, adopt public statements and make representations to the Venezuelan 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. *Requests* the Committee to continue examining this case and to report back to it in due course.

Afghanistan

Decision adopted unanimously by the IPU Governing Council at its 203rd session (Geneva, 18 October 2018)

Fawzia Koofi © IPU 2018

AFG-05 – Fawzia Koofi
AFG-08 – Maryam Koofi

Alleged human rights violations:

- ✓ Threats, acts of intimidation
- ✓ Impunity
- ✓ Lack of due process at the investigation stage
- ✓ Right of appeal
- ✓ Other violations: Right to take part in the conduct of public affairs

A. Summary of the case

Ms. Fawzia Koofi, a member of the House of the People (Wolesi Jirga) of Afghanistan, has been a long-standing champion of women's rights in Afghanistan. She has been the victim of numerous unpunished attacks and death threats and her case has been before the Committee on the Human Rights of Parliamentarians since 2010. Ms. Maryam Koofi, her sister, is also a member of parliament. The complaint regarding Ms. Maryam Koofi's situation was received recently and relates exclusively to the following developments.

In early August 2018, the Independent Electoral Complaints Commission (IECC) invalidated the candidacies of Ms. Fawzia Koofi and Ms. Maryam Koofi for the 20 October 2018 parliamentary elections on the strength of complaints alleging their affiliation to illegal armed groups. A total of 35 other candidates, including 10 incumbent parliamentarians, were also disqualified. These decisions are final and no domestic legal remedies are available under Afghan law.

Case AFG-COLL-01

Afghanistan: Parliament affiliated to the IPU

Victims: Two opposition female members of parliament

Qualified complainant(s): Section I (1) (a) of the Committee Procedure (Annex 1)

Submission of complaints: April 2010 and September 2018

Recent IPU decision: January 2015

IPU missions: - - -

Recent Committee hearing: Hearing with the complainant at the 139th IPU Assembly (October 2018)

Recent follow-up

- Communication from the authorities: - - -
- Communication from the complainant: October 2018
- Communication from the IPU: Letter addressed to the President of Afghanistan (September 2018), letter addressed to the President of the Wolesi Jirga (August and September 2018); letter addressed to the Independent Election Complaints Commission (August 2018)
- Communications from the IPU to the complainant (September and October 2018)

The complainants allege that the process violated guarantees of due process and the presumption of innocence protected under the Afghan Constitution. The complainants claim that the decisions were politically motivated and excluded the two parliamentarians from the electoral process because they had been critical of the current government. According to the complainants, the accusations against them are false and baseless.

No information has been forthcoming from the Afghan authorities, despite repeated requests.

B. Decision

The Governing Council of the Inter-Parliamentary Union

1. *Deplores* the lack of response from the Afghan authorities;

2. *Deeply regrets* the exclusion of at least two women parliamentarians from running in the upcoming elections, considering their active involvement in promoting women's rights and participation in politics and public life and the importance the IPU attaches to the participation of women in parliament, particularly in countries like Afghanistan, where this remains a significant challenge;

3. *Expresses deep concern* at the alleged serious violations of due process in the disqualification proceedings of the IECC, considering the following: the two women parliamentarians were never officially informed that accusations were levelled against their candidacies until they were informed that they had been disqualified from running in the upcoming elections; they have not been officially notified of the final IECC disqualification decision and its grounds to the present day; the only opportunity for Ms. Koofi to defend herself was during a public hearing held by the IECC, at which she had to appear not knowing against what accusations she should be defending herself; she was officially informed for the first time of the accusations levelled against her during this hearing; she was asked to respond on the spot and given no time to prepare a defence; she was not asked for, or given the opportunity to provide, any counter-evidence; *further notes* that Ms. Maryam Koofi was not even given the opportunity to appear at a hearing;

4. *Is also deeply concerned* at the fact that there appears to be no evidence demonstrating that Ms. Fawzia Koofi and Ms. Maryam Koofi are members or commanders of illegal armed groups, whereas this is the only ground under section 2 of article 44 of the Electoral Law on which invalidation of a candidate can be justified;

5. *Considers* that the Afghan authorities have violated article 25 of the International Covenant on Civil and Political Rights, which guarantees the rights of its citizens to take part in the conduct of public affairs, to vote and to be elected, and to have access, under general conditions of equality, to public service in their country;

6. *Urges* the Afghan authorities to grant appeals before a court of law to Ms. Fawzia Koofi and Ms. Maryam Koofi against the disqualification decisions; and *hopes* that they will be able to obtain redress through a fair and impartial judicial process respectful of the presumption of innocence and standards of due process guaranteed under the Constitution of Afghanistan and international law;

7. *Expresses the wish* for a delegation from the Committee on the Human Rights of Parliamentarians to visit Afghanistan, provided that the delegation is granted the required security measures to ensure their safety, in order to hold meetings with all stakeholders involved, in particular with those in the executive branch and the IECC; *hopes* to receive a positive reply and assistance from parliament to this end, to enable the mission to proceed smoothly;

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

Cambodia

Decision adopted by consensus by the IPU Governing Council at its 203rd session (Geneva, 18 October 2018)[3]

Kem Sokha is escorted by police at his home in Phnom Penh on 3 September 2017 © AFP

KHM-27 - Chan Cheng
KHM-48 - Mu Sochua (Ms.)
KHM-49 - Keo Phirum
KHM-50 - Ho Van
KHM-51 - Long Ry
KHM-52 - Nut Romdoul
KHM-53 - Men Sothavarin
KHM-54 - Real Khemarin
KHM-55 - Sok Hour Hong
KHM-56 - Kong Sophea
KHM-57 - Nhay Chamroeun
KHM-58 - Sam Rainsy
KHM-59 - Um Sam Am
KHM-60 - Kem Sokha
KHM-61 - Thak Lany (Ms.)
KHM-62 - Chea Poch
KHM-63 - Cheam Channy
KHM-64 - Chiv Cata
KHM-65 - Dam Sithik
KHM-66 - Dang Chamreun
KHM-67 - Eng Chhai Eang
KHM-68 - Heng Danaro
KHM-69 - Ke Sovannroth (Ms.)
KHM-70 - Ken Sam Pumsen
KHM-71 - Keo Sambath
KHM-72 - Khy Vanndeth
KHM-73 - Kimsour Phirith
KHM-74 - Kong Bora
KHM-75 - Kong Kimhak
KHM-76 - Ky Wandara
KHM-77 - Lath Littay
KHM-78 - Lim Bun Sidareth
KHM-79 - Lim Kimya
KHM-80 - Long Botta
KHM-81 - Ly Srey Vyna (Ms.)
KHM-82 - Mao Monyvann
KHM-83 - Ngim Nheng
KHM-84 - Ngor Kim Cheang
KHM-85 - Ou Chanrath
KHM-86 - Ou Chanrith
KHM-87 - Pin Ratana
KHM-88 - Pol Hom
KHM-89 - Pot Poeu (Ms.)
KHM-90 - Sok Umsea
KHM-91 - Son Chhay
KHM-92 - Suon Rida
KHM-93 - Te Chanmony (Ms.)
KHM-94 - Tioulong Saumura (Ms.)
KHM-95 - Tok Vanchan
KHM-96 - Tuon Yokda
KHM-97 - Tuot Khoert
KHM-98 - Uch Serey Yuth
KHM-99 - Vann Narith
KHM-100 - Yem Ponhearith
KHM-101 - Yim Sovann
KHM-102 - Yun Tharo
KHM-103 - Tep Sothy (Ms.)

[3] The delegations of Cambodia and China expressed their reservations regarding the decision.

Alleged human rights violations:

- ✓ Violation of freedom of opinion and expression
- ✓ Violation of freedom of assembly and association
- ✓ Abusive revocation of the parliamentary mandate
- ✓ Lack of due process at the investigation stage
- ✓ Lack of fair trial proceedings and excessive delays
- ✓ Failure to respect parliamentary immunity
- ✓ Violation of freedom of movement
- ✓ Threats and acts of intimidation
- ✓ Torture and ill-treatment
- ✓ Impunity
- ✓ Arbitrary arrest and detention
- ✓ Inhumane conditions of detention

Case KHM-COLL-03

Cambodia: Parliament affiliated to the IPU

Victims: 57 former opposition parliamentarians (50 male and seven female, 55 from the National Assembly and two from the Senate)

Qualified complainant(s): Section I (1) (c) of the Committee Procedure (Annex 1)

Submission of complaint: November 2011

Recent IPU decision: March 2018

IPU mission: February 2016

Recent Committee hearings: Hearing with the Cambodia delegation to the 139th IPU Assembly (October 2018)

Recent follow-up:
- Communication from the authorities: Letter from the Secretary General of the National Assembly (March 2018)
- Communication from the complainant: September 2018
- Communication from the IPU to the Secretary General of the National Assembly (September 2018)
- Communication from the IPU to the complainant: September 2018

A. Summary of the case

On 16 November 2017, the Supreme Court dissolved the sole opposition party in Cambodia, the Cambodian National Rescue Party (CNRP). It also banned 118 CNRP leaders (including all 55 CNRP members of the National Assembly) from political life for five years with no possibility of appeal. Their parliamentary mandates were immediately revoked and their seats reallocated to non-elected political parties allegedly aligned with the ruling party. The Supreme Court decision was based on charges of conspiracy with a foreign country to overthrow the legitimate government brought against the President of the CNRP, Mr. Kem Sokha. Most former parliamentarians subsequently fled Cambodia and went into exile.

The dissolution of the CNRP left the ruling Cambodian People's Party (CPP) – and Prime Minister Hun Sen – with no viable challengers for the July 2018 elections to the National Assembly. The authorities stated that the National Assembly remained a multi-party parliament composed of four political parties, in line with the Constitution of Cambodia. The CPP gained all 125 seats in the National Assembly elections, after having already gained all seats in the Senate elections in February 2018.

The dissolution of the CNRP took place against the backdrop of long-standing and repeated threats and groundless criminal charges against its members of parliament. They had been repeatedly warned by the Prime Minister that their only choice was to join the ruling party or be prepared for the dissolution and ban of their party. Since 2013, some 13 CNRP members of parliament have faced criminal accusations in relation to protests or statements critical of the CPP and the Prime Minister. All proceedings concluded with systematic convictions and raised serious issues of due process and lack of judicial independence. Two members of parliament were subjected to physical attacks that have gone unpunished.

After one year of detention in solitary confinement, which was considered as arbitrary and politically motivated by the United Nations Working Group on Arbitrary Detention in late April 2018, Mr. Kem Sokha was placed under house arrest on 10 September 2018 in response to a request made by his family on the basis of his poor state of health in detention. The possibility for him to receive visitors remains very restricted and is subject to prior authorization by the Cambodian authorities. Opposition members and foreign officials continue to be denied access to him, according to the complainants and diplomatic sources.

Judicial proceedings are still ongoing against Mr. Sam Rainsy and Mr. Kem Sokha. The latter's first-instance trial has not yet been completed. Mr. Kem Sokha risks a 30-year prison term for planning to overthrow the Government, on the basis of a 2013 TV speech in which he called for peaceful political change in Cambodia, without at any point inciting violence or hatred or uttering defamatory words. This is also the basis of the dissolution of the opposition party, although Mr. Kem Sokha's guilt has not been established by any criminal court decision to the present day.

B. Decision

The Governing Council of the Inter-Parliamentary Union

1. *Thanks* the Cambodian delegation to the 139th IPU Assembly for meeting with the Committee on the Human Rights of Parliamentarians, while *deeply regretting* that this dialogue has not been conducive to progress;

2. *Is appalled* to learn that Mr. Kem Sokha's health has seriously deteriorated and that this is the only reason why he is now under house arrest rather than still detained in solitary confinement in prison; *notes with concern* that he is still being given limited opportunities to receive visitors, and then only subject to prior official authorization;

3. *Notes with concern* that the delegation of Cambodia to the 139th IPU Assembly invited the Committee on the Human Rights of Parliamentarians to visit Cambodia again to "see the reality on the ground" but stated that it would not be authorized to meet with Mr. Kem Sokha; *stresses* that the Committee has decided that it would only send a delegation to Cambodia if that delegation is allowed to meet Mr. Kem Sokha and firm written assurances are received to that end; *urges* the Cambodian authorities to grant the Committee authorization to meet with Mr. Kem Sokha;

4. *Recalls* its findings and recommendations following the Committee's 2016 fact-finding mission to Cambodia; and *observes* that the Cambodian authorities have failed to take any steps to implement them and resume political dialogue with the opposition; *also recalls* that its prior request to visit Mr. Kem Sokha in detention had been denied by the Cambodian authorities and that no foreign delegation has been authorized to meet Mr. Kem Sokha since his arrest;

5. *Reaffirms its prior conclusions* that the fundamental rights of all former opposition parliamentarians have been blatantly violated by the authorities of Cambodia, which have failed to respect and protect the rights to freedom of expression, association and peaceful assembly of opposition members of parliament, as well as due process guarantees enshrined in the Constitution and laws of Cambodia; *remains deeply concerned* that these violations are reminiscent of a long-standing pattern of abuse against the opposition that has been documented by the IPU at each past election;

6. *Denounces* the fact that all 55 parliamentarians of the only opposition party elected to the National Assembly were stripped of their parliamentary mandates and were banned from political life for five years as a result of a Supreme Court ruling and on the basis of legislation, which ran completely counter to their individual and collective rights to take part in the conduct of public affairs and their right to a fair trial;

7. *Denounces furthermore* the fact that the Supreme Court dissolved the opposition party on the grounds that its leader, Mr. Kem Sokha, planned to overthrow the Government by organizing a so-called "colour revolution", even though Mr. Kem Sokha's trial is still ongoing, and that he and all other opposition members of parliament – who have not been prosecuted for these charges – should be presumed innocent until proven guilty by a final court decision; *considers* that the presumption of innocence and the rule of law have been clearly violated in the present case; and *wishes* in this regard to put on official record the statement made by the Cambodian delegation to the 139th IPU Assembly that, "if the opposition members remain quiet, they will be able to resume their political activities" in four years, once the political ban expires, but that in the meantime "they must serve their sentences";

8. *Further recalls* its prior findings that the so-called evidence against Mr. Kem Sokha includes videos of a 2013 speech of Mr. Kem Sokha that contains nothing whatsoever that could constitute a criminal offence; *points out* that Mr. Kem Sokha at no point incited hatred or violence or uttered defamatory words in the incriminated videos and that he has emphasized that he aimed at bringing political change by winning the elections; *deplores* that this video has been used as evidence of treason, for which Mr. Kem Sokha faces up to 30 years in prison; *is also alarmed* at the clear violation of his parliamentary immunity in the absence of any criminal offence and of any *flagrante delicto*;

9. *Urges once again* all Cambodian authorities to immediately release Mr. Kem Sokha and drop the charges, to allow him to resume his duties as president of the opposition without further delay and restriction and to reinstate the CNRP;

10. *Renews its call* on all IPU Member Parliaments, including Member Parliaments of the Asia-Pacific Geopolitical Group, and IPU permanent observers, parliamentary assemblies and associations active in the region, to take concrete actions in support of the urgent resolution of this case in a manner consistent with democratic and human rights values; and *hopes to be able to rely* on the assistance of all relevant regional and international organizations;

11. *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;

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

Malaysia

Decision adopted unanimously by the IPU Governing Council at its 203rd session (Geneva, 18 October 2018)

Mr. Anwar Ibrahim and his wife, at IPU headquarters, Geneva, 2005 © IPU

MYS-15 - Anwar Ibrahim

Alleged human rights violations:

- ✓ Lack of fair trial proceedings
- ✓ Abusive suspension of the parliamentary mandate

Case MYS-15

Malaysia: Parliament affiliated to the IPU

Victim: Opposition member of parliament

Qualified complainant(s): Section I (1) (a) of the Committee Procedure (Annex 1)

Submission of complaint: January 2010

Recent IPU decision: April 2017

IPU mission: July 2015

Recent Committee hearings: Hearing with the Malaysian delegation at the 139th IPU Assembly (October 2018)

Recent follow-up:
- Communication from the authorities: October 2018
- Communication from the complainant: October 2018
- Communication from the IPU: Letter to the Speaker of the House of Representatives (September 2018)
- Communication from the IPU to the complainant: October 2018

A. Summary of the case

Dato Seri Anwar Ibrahim, former Deputy Prime Minister and Finance Minister of Malaysia, was charged with sodomy on 6 August 2008 for the second time while he was the leader of the opposition and in the midst of an election campaign. The trial started in January 2010. On 16 May 2011, the trial judge ruled that there was a *prima facie* case and that the accused had a defence to enter. There have been serious concerns regarding the fairness of the proceedings, in particular regarding the defence's access to essential prosecution evidence. An IPU observer was present at a number of hearings and considered, after the revelation of a love affair between a member of the prosecution team and the complainant (the person allegedly sodomized), that the trial was compromised to the point where "the public interest would justify discontinuing the proceedings". Following the closure of the prosecution case, the judge ruled in May 2011 that the defence had a case to answer. Mr. Anwar Ibrahim was acquitted at first instance on 9 January 2012.

The Attorney General launched an appeal. On 7 March 2014, Mr. Anwar Ibrahim was convicted and sentenced to a five-year prison term. An IPU trial observer attended and reported extensively on the appeal proceedings (see trial observation reports). Mr. Anwar Ibrahim appealed the sentence and was freed on bail until the final appeal was dealt with. On 10 February 2015, the Federal Court confirmed Mr. Anwar

Ibrahim's conviction and sentence, to be served in Sungai Buloh Prison in Selangor. The IPU trial observer produced a separate report containing his findings with regard to the Federal Court's ruling.

On 14 December 2016, the Federal Court rejected Mr. Anwar Ibrahim's application for review of sentence. On 15 July 2018, the Kuala Lumpur High Court dismissed Mr. Anwar Ibrahim's bid to challenge the decision of the Pardon Board rejecting his petition for a royal pardon.

An on-site mission went to Malaysia (June-July 2015) and was able to meet with Mr. Anwar Ibrahim in detention.

On 16 May 2018, Mr. Anwar Ibrahim was released upon receiving a full royal pardon that same day. On 13 October 2018, Mr. Anwar Ibrahim ran and won the by-election in Port Dickson. He was sworn into parliament on 15 October 2018.

B. Decision

The Governing Council of the Inter-Parliamentary Union

1. *Is deeply gratified* that Mr. Anwar Ibrahim was released upon receiving a full pardon and was able to return to parliamentary life; *decides* therefore to close any further examination of the case in line with Article 25 of the Annex I to the Revised Rules and Practices of the Committee on the Human Rights of Parliamentarians;

2. *Deeply regrets*, nevertheless, that Mr. Anwar Ibrahim was convicted and spent well over three years in prison as the result of trial proceedings that were clearly flawed, as clearly and extensively documented by the IPU trial observer;

3. *Requests* the Secretary General to convey this decision to the Malaysian authorities, the complainants and any third party that has taken an interest in the case.

Malaysia

Decision adopted unanimously by the IPU Governing Council at its 203rd session (Geneva, 18 October 2018)

Nurul Izzah, daughter of Malaysian opposition leader, Anwar Ibrahim, speaks to the media after being released on bail on 17 March 2015 © AFP Photo/Manan Vatsyayana

MYS-21 - N. Surendran
MYS-23 - Khalid Samad
MYS-24 - Rafizi Ramli
MYS-25 - Chua Tian Chang
MYS-26 - Ng Wei Aik
MYS-27 - Teo Kok Seong
MYS-28 - Nurul Izzah Anwar (Ms.)
MYS-29 - Sivarasa Rasiah
MYS-30 - Sim Tze Sin
MYS-31 - Tony Pua
MYS-32 - Chong Chien Jen
MYS-33 - Julian Tan Kok Peng
MYS-35 - Shamsul Iskandar
MYS-38 - Nga Kor Ming
MYS-39 - Teo Nie Ching (Ms.)
MYS-40 - Azmin Ali

Alleged human rights violations:

- ✓ Arbitrary arrest and detention
- ✓ Violation of freedom of opinion and expression
- ✓ Violation of freedom of assembly and association

Case MYS-COLL-01

Malaysia: Parliament affiliated to the IPU

Victims: 16 opposition members of parliament (14 men and two women)

Qualified complainant(s): Section I (1) (a) of the Committee Procedure (Annex 1)

Submission of complaint: September 2014

Recent IPU decision: February 2017

IPU mission: July 2015

Recent Committee hearing: Hearing with the Malaysian delegation at the 133rd IPU Assembly (October 2015)

Recent follow-up
- Communication from the authorities: Letter from International Relations and Protocol Division, Parliament of Malaysia (October 2018)
- Communication from the complainant: October 2018
- Communication from the IPU: Letter addressed to the Speaker of the House of Representatives (September 2018)
- Communication addressed to the complainant: October 2018

A. Summary of the case

The case concerns 16 then opposition members of the Malaysian House of Representatives. Mr. Khalid Samad, Mr. N. Surendran, Mr. Ng Wei Aik and Mr. Sivarasa Rasiah were charged under paragraphs (a), (b) and (c) of section 4(1) of the Sedition Act of 1948, while five other opposition members of parliament, namely Mr. Rafizi Ramli, Ms. Nurul Izzah Anwar, Mr. Tony Pua, Mr. Nga Kor Ming and Ms. Teo Nie Ching, were being investigated for this

crime. In recent months, charges against the four members of parliament were all withdrawn, whereas with regard to the five under investigation no charge was finally brought against three of them, while an instruction for no charge to be brought against the two others is in the hands of the Attorney General's Office. However, on 29 September 2016, Mr. Chua Tian Chang was sentenced to a three-month prison term and fined RM 1,800 for sedition. Another charge of sedition against him was discontinued by the prosecution after his acquittal at first instance.

With regard to seven of these parliamentarians, the action taken against them under the Sedition Act was wholly or partly related to criticism they voiced about the conviction and sentence that the Federal Court handed down in February 2015 against Mr. Anwar Ibrahim. The Sedition Act was amended in 2015. As a result, criticism of the Government and the judiciary is no longer punishable under the act. There were concerns that the Sedition Act in its current form remains outdated, runs counter to human rights and is being used to attack and silence the political opposition.

Four parliamentarians, namely Mr. Chong Chien Jen, Mr. Julian Tan Kok Peng, Mr. Shamsul Iskandar and Mr. Sim Tze Tzin, were charged under section 4(2)(c) of the Peaceful Assembly Act (PAA) in connection with their participation in demonstrations. They have all claimed that the legal action taken against them runs counter to their right to freedom of assembly. They have now been discharged and acquitted, some of them in recent months.

On 14 November 2016, Mr. Ramli was sentenced under the Official Secrets Act to an 18-month prison term for unauthorized possession of the 1MDB audit report and for exposing it to the media. The Appellate Court upheld the conviction but varied the sentence: instead of imprisonment, it ordered Mr. Ramli to be bound over for two years on a good behaviour bond of RM 10,000 in one surety. It appears that Mr. Ramli remains subject to other charges or criminal investigations.

An on-site mission went to Malaysia in June to July 2015 and was able to meet with most of the parliamentarians who were the subject of the original complaint.

Parliamentary elections took place on 9 May 2018. The new Cabinet has set up a working group, which includes the Attorney General's office, National Human Rights Commission, Bar Council, civil society and others, to review all security-related legislation, including the amended Sedition Act. Until the working group reaches its conclusions, the Cabinet has placed a moratorium on the Sedition Act, suspending its implementation.

B. Decision

The Governing Council of the Inter-Parliamentary Union

1. *Thanks* the Malaysian delegation for the information provided at the hearing with the Committee on the Human Rights of Parliamentarians during the 139th IPU Assembly and the parliamentary authorities for the written details submitted recently;

2. *Is pleased* that seven parliamentarians are no longer subject to sedition charges or to an investigation into alleged sedition; *reaffirms its view* that their statements amounted to no more than criticism of the Government and the judiciary, which is no longer punishable under the amended Sedition Act*; decides* therefore to close further examination of their cases in line with Article 25 of the Annex I to the Revised Rules and Practices of the Committee on the Human Rights of Parliamentarians;

3. *Sincerely hopes* that the Attorney General's Office will heed the instruction for no sedition charge to be brought against Mr. Nga Kor Ming and Ms. Teo Nie Ching and that it will soon be able to close their cases as well;

4. *Trusts* that, all the more so in light of the moratorium, the Attorney General's Office will ask for the conviction of Mr. Chua Tian Chang at first instance on a charge brought under the old Sedition Act to be dismissed in the pending appeal procedure; *wishes* to receive official information regarding this prospect and to be kept informed of the appeal proceedings;

5. *Welcomes* the recent steps taken by the new Malaysian Cabinet to begin a review of the amended Sedition Act as part of a larger legislative review; *sincerely hopes* that this review will result in the adoption of legislation that is fully compliant with international human rights standards; *recalls* in this regard its long-standing view that the amended Sedition Act, which includes a severe mandatory minimum penalty, remains excessively vague and broad, thus leaving the door open to abuse and setting a very low threshold for the type of criticism, remarks and acts that are criminalized; *wishes* to be kept informed of progress made by the working group set up to initiate the review process; *takes note* of the Malaysian delegation's support for the offer of IPU assistance to this endeavour;

6. *Notes* that Mr. Ramli's sentence was significantly reduced because the court of appeal, while reaffirming that he had committed a procedural breach of the Official Secrets Act, also took into account the fact that he had acted in the exercise of his parliamentary immunity in releasing information about 1MDB that was of paramount concern and interest to Malaysian society as a whole; *understands* that Mr. Ramli is, however, still subject to other legal proceedings; *wishes* to receive further official information on the criminal proceedings he is facing and the factual and legal grounds on which they are based;

7. *Is pleased* that the charges under the Peaceful Assembly Act (PAA) against four parliamentarians were dropped; *decides* therefore to close further examination of their cases in line with Article 25 of the Annex I to the Revised Rules and Practices of the Committee on the Human Rights of Parliamentarians;

8. *Sincerely hopes* that the authorities will soon decide to join the overwhelming majority of nations that have ratified the International Covenant on Civil and Political Rights; *points out* in this regard that, if absolutely necessary, Malaysia can make reservations and declarations upon becoming a party to the Covenant, as long as those do not contravene the object and purpose of the treaty;

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

10. *Requests* the Committee to continue its examination of the four remaining cases and to report back to it in due course.

Maldives

Decision adopted unanimously by the IPU Governing Council at its 203rd session (Geneva, 18 October 2018)

Police prevent members of parliament from entering the People's Majlis through the East Gate © Munshid Mohamed, 24 July 2017

MDV-16 - Mariya Didi (Ms.)*
MDV-28 - Ahmed Easa
MDV-29 - Eva Abdulla (Ms.)*
MDV-30 - Moosa Manik*
MDV-31 - Ibrahim Rasheed
MDV-32 - Mohamed Shifaz
MDV-33 - Imthiyaz Fahmy*
MDV-34 - Mohamed Gasam
MDV-35 - Ahmed Rasheed
MDV-36 - Mohamed Rasheed
MDV-37 - Ali Riza
MDV-39 - Ilyas Labeeb
MDV-40 - Rugiyya Mohamed (Ms.)
MDV-41 - Mohamed Thoriq
MDV-42 - Mohamed Aslam*
MDV-43 - Mohammed Rasheed*
MDV-44 - Ali Waheed
MDV-45 - Ahmed Sameer
MDV-46 - Afrasheem Ali
MDV-48 - Ali Azim*
MDV-49 - Alhan Fahmy
MDV-50 - Abdulla Shahid*
MDV-51 - Rozeyna Adam (Ms.)*
MDV-52 - Ibrahim Mohamed Solih
MDV-53 - Mohamed Nashiz
MDV-54 - Ibrahim Shareef*
MDV-55 - Ahmed Mahloof*
MDV-56 - Fayyaz Ismail*
MDV-57 - Mohamed Rasheed Hussain*
MDV-58 - Ali Nizar*
MDV-59 - Mohamed Falah*
MDV-60 - Abdulla Riyaz*
MDV-61 - Ali Hussain*
MDV-62 - Faris Maumoon*
MDV-63 - Ibrahim Didi*
MDV-64 - Qasim Ibrahim*
MDV-65 - Mohamed Waheed Ibrahim*
MDV-66 - Saud Hussain *
MDV-67 - Mohamed Ameeth*
MDV-68 - Abdul Latheef Mohamed*
MDV-69 - Ahmed Abdul Kareem*
MDV-70 - Hussein Areef*
MDV-71 - Mohamed Abdulla
MDV-72 - Abdulla Ahmed
MDV-73 - Mohamed Musthafa
MDV-74 - Ali Shah
MDV-75 - Saudhulla Hilmy
MDV-76 - Hussain Shahudhee
MDV-77 - Abdullah Sinan
MDV-78 - Ilham Ahmed

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

Alleged human rights violations:

- ✓ Torture, ill-treatment and other acts of violence
- ✓ Arbitrary arrest and detention
- ✓ Violation of freedom of opinion and expression
- ✓ Threats, acts of intimidation
- ✓ Murder
- ✓ Other acts obstructing the exercise of the parliamentary mandate
- ✓ Abusive revocation or suspension of parliamentary mandate
- ✓ Violation of freedom of movement

Case MDV-COLL-01

Maldives: Parliament affiliated to the IPU

Victims: 50 opposition members of parliament, except Mr. Afrasheem Ali, a member of the majority (46 men and four women)

Qualified complainant(s): Section I (1) (a) of the Committee Procedure (Annex 1)

Submission of complaint: February 2012

Recent IPU decision: March 2018

IPU missions: March 2018, October 2016, November 2013, November 2012

Recent Committee hearing: Hearing with the Maldives delegation at the 137th IPU Assembly (October 2017)

Recent follow-up:
- Communication from the authorities: Letter from the Deputy Secretary General of the People's Majlis (March 2018)
- Communication from the complainant: October 2018
- Communication from the IPU: Letter addressed to the Speaker of the People's Majlis (May 2018)
- Communication addressed to the complainant: September 2018

A. Summary of the case

Since February 2012, following the controversial resignation of President Mohamed Nasheed (Maldivian Democratic Party – MDP), which he claimed was forced upon him, there have been serious and credible reports and allegations of arbitrary arrest, ill-treatment, attacks and death threats against several opposition members of the People's Majlis, the majority of them belonging to the MDP.

Since the 2014 parliamentary elections, the opposition has repeatedly claimed that the ruling Progressive Party of Maldives (PPM), with the support of the Speaker of the People's Majlis, has systematically limited the opportunities for the opposition to contribute meaningfully to the work of parliament, and that the latter has adopted laws that seriously reduce human rights. The parliamentary authorities have denied these allegations.

Tension and violence erupted once again after an opposition alliance and defections from the PPM galvanized the opposition to move a first no-confidence motion against the Speaker in March 2017. This attempt was followed in the same month by a sudden ruling by the Supreme Court revoking the parliamentary mandates of 12 members of parliament for defecting from the PPM, hence changing the balance of power in parliament back in favour of the ruling party, the physical removal of opposition members of parliament shortly before the vote and a lockdown of parliament, and the arrests and detention of two prominent opposition parliamentarians in July and August 2017.

The political crisis in the Maldives took a further turn for the worse in the aftermath of the ruling by the Supreme Court on 1 February 2018 to release nine high-profile politicians and to reinstate the 12 members of parliament. President Yameen refused to implement the ruling, claiming it unlawful, and declared a state of emergency, which expired on 22 March 2018.

A delegation of the IPU Committee on the Human Rights of Parliamentarians travelled to the Maldives in March 2018, when the state of emergency was in full force, and concluded that the decision to revoke the 12 parliamentary mandates and the charges against the members of parliament who were forcibly removed from the People's Majlis in July 2017 were arbitrary. The delegation expressed deep concern about the wave of arrests launched against members of parliament under the state of emergency, the charges of terrorism brought against six members and the detention of five for the duration of their trials. The delegation called on the authorities to fully ensure their right to a fair trial and suggested that the IPU send a trial observer.

Presidential elections in the Maldives took place on 23 September 2018 and were won by Mr. Ibrahim Mohamed Solih, the joint candidate of four opposition parties. Following his election, all members of parliament in detention were released, apparently on bail. Mr. Qasim Ibrahim, who has been in Germany since being convicted of vote buying in 2017, was also released on bail. On 8 October 2018, the

Supreme Court reinstated four parliamentarians who were deemed to have lost their seats for crossing the floor, with a ruling regarding the other eight whose parliamentary mandates had originally been revoked still pending. On 15 October 2018, the Prosecutor General's office withdrew charges against 12 opposition lawmakers who had been forcibly removed from the People's Majlis in July 2017.

President-elect Solih is due to take up office on 17 November 2018. On 10 October 2018, however, despite having congratulated him on his victory immediately after the vote, the party of outgoing President Yameen suddenly petitioned the Supreme Court to annul the election results, citing fraud and vote rigging, which petition is pending.

B. Decision

The Governing Council of the Inter-Parliamentary Union

1. *Endorses* the findings and recommendations contained in the mission report; *notes* that the Maldivian authorities have not submitted any observations on the report;

2. *Notes with interest* that in recent weeks all detained parliamentarians have been released; *is keen to know* whether they are still subject to legal proceedings and, if so, *wishes* to have information on the precise charges and facts to support them;

3. *Is pleased* that four parliamentarians whose parliamentary mandates were arbitrarily revoked in 2017 have recently been reinstated; *sincerely hopes* that the Supreme Court will likewise rule shortly that the other eight individuals should also recover their parliamentary mandates;

4. *Is also pleased* that charges were dropped against the same 12 individuals for attempting to gain access to parliament in 2017 after the arbitrary revocation of their mandate;

5. *Expresses the hope*, in light of previous concerns, that the ruling parties and the opposition will make genuine use of parliament as the platform to discuss their differences and find common solutions; *sincerely hopes also* that relations between the executive, parliament and the judiciary will improve and that the Maldivian authorities will together tackle the underlying factors of continued political instability in the Maldives, which the mission report identified as a "winner-takes-all" political mentality, lack of a culture of political dialogue, reports of widespread corruption, systematic floor crossing in parliament and the absence of a fully independent judiciary and independent oversight institutions; *reaffirms* that the IPU stands ready to lend its expertise to facilitate constructive dialogue in parliament and between parliament and the other state branches, as well as expertise to help address the aforesaid underlying challenges;

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

7. *Requests* the Committee to continue its examination of the cases at hand and to report back to it in due course.

Philippines

Decision adopted by consensus by the IPU Governing Council at its 203rd session (Geneva, 18 October 2018)[4]

Philippine Senator Leila de Lima is escorted by police after her arrest at the Senate in Manila on 24 February 2017 © Ted Aljibe/AFP

PHL-08 – Leila de Lima

Alleged human rights violations:

- ✓ Threats, acts of intimidation
- ✓ Arbitrary arrest and detention
- ✓ Lack of due process in proceedings against parliamentarians
- ✓ Violation of freedom of opinion and expression

A. Summary of the case

Ms. Leila de Lima served as Chairperson of the Commission on Human Rights (CHR) of the Philippines from May 2008 until June 2010. In that capacity, she led a series of investigations into alleged extrajudicial killings linked to the so-called Davao Death Squad (DDS) in Davao City, where Mr. Duterte had long been mayor, and concluded that Mr. Duterte, now President of the Philippines, was behind the DDS.

In 2010, Ms. de Lima was appointed Secretary of Justice. She resigned from this position in October 2015 to focus on her campaign to gain a seat in the Senate in the elections of May 2016, in which she was successful. In August 2016, as Chair of the Senate Committee on Justice and Human Rights, she initiated an inquiry into the killings of thousands of alleged drug users and drug dealers alleged to have taken place since President Duterte took office in June 2016. Since the start of her term as senator, she has been subjected to widespread intimidation and denigration, including by President Duterte directly.

Case PHL-08

Philippines: Parliament affiliated to the IPU

Victim: Female opposition member of parliament

Qualified complainant(s): Section I (1) (d) of the Committee Procedure (Annex 1)

Submission of complaint: September 2016

Recent IPU decision: October 2017

IPU mission: May 2017

Recent Committee hearings: Hearing with the Filipino delegation to the 136th IPU Assembly (April 2017)

Recent follow-up
- Communication from the authorities: Letter from the President of the Senate (January 2017)
- Communication from the complainant: October 2018
- Communication from the IPU: Letter addressed to the President of the Senate (September 2018)
- Communication from the IPU to the complainant: October 2018

[4] The delegation of the Philippines expressed its reservations regarding the decision.

Senator de Lima was arrested and detained on 24 February 2017 on the basis of accusations that she had received drug money to finance her senatorial campaign. The charges, in three different cases, were brought in the wake of an inquiry by the House of Representatives into drug trading in New Bilibid Prison and Senator de Lima's responsibility in that regard when she was Secretary of Justice. The House inquiry was launched one week after she initiated her inquiry in the Senate into the extrajudicial killings.

On 17 April 2018, the Supreme Court announced that it had denied Senator de Lima's motion for reconsideration of its decision of October 2016 confirming the validity of the arrest and the jurisdiction of the Regional Trial Court in the matters at hand.

On 27 July and 10 August 2018, Senator de Lima was arraigned in two of the three cases that are before Branches 205 and 206 of the Regional Trial Court (RTC) – Muntinlupa City. Hearings to present prosecution witnesses, mostly convicted drug traffickers, have been scheduled until the end of 2018.

A mission of the IPU Committee on the Human Rights of Parliamentarians to the Philippines in May 2017 concluded that there was no evidence to justify the criminal cases against Senator de Lima. Since then, the IPU has called for Senator de Lima's release and for the legal proceedings against her to be abandoned should serious evidence not be forthcoming soon.

Although Senator de Lima remains very politically active from detention and receives newspapers, journals and books, she has no access to the Internet, a computer, TV, radio or to an air-conditioning unit, despite a doctor's order. The Director General of the Philippine National Police has denied her request to use electronic gadgets and have an air-conditioning unit installed, in compliance with the recommendation of the Director of the PNP General Hospital.

Requests from her defence counsel to the courts that Senator de Lima be granted legislative furlough have remained unanswered.

B. Decision

The Governing Council of the Inter-Parliamentary Union

1. *Reiterates* its call on the relevant authorities to release Senator de Lima immediately and to abandon the legal proceedings against her, given that no serious evidence appears to be forthcoming; *reaffirms* in this regard that the IPU Committee mission report clearly showed that the steps taken against Senator de Lima were in response to her vocal opposition to President Duterte's war on drugs, including her denunciation of his alleged responsibility for extrajudicial killings, and that there is no serious evidence to justify the criminal cases against her;

2. *Maintains* its decision, should charges not be dropped, to send an observer to monitor and report on respect for fair-trial standards in the case before Branch 206 of the Regional Trial Court (RTC) in Muntinlupa City, and the case before Branch 205 of the RTC, should hearings start in that case as well; *notes with concern* in this regard that the judge of RTC Branch 206 denied the motion from Senator de Lima to disqualify 13 prosecution witnesses who are serving sentences for crimes involving moral turpitude that should make them ineligible to testify according to Filipino law, which is closely related to one of the concerns mentioned in the mission report;

3. *Regrets* that, despite the strong arguments at hand, the Supreme Court denied Senator de Lima's motion for reconsideration of its earlier decision validating the legality of her arrest and the jurisdiction of the regional courts;

4. *Remains disturbed* at the public campaign of vilification by the highest state authorities against Senator de Lima, which portrays her as an "immoral woman" and as guilty, even though a trial has yet to commence; *regrets* that the Supreme Court has yet to rule on this matter, thereby missing an important opportunity to condemn and end the public degrading treatment to which she has been subjected as a woman parliamentarian; and *strongly hopes* that it will do so without any further delay;

5. *Reaffirms* that the Senate has a special responsibility to help ensure that its colleagues participate in its deliberations and speak out when they face reprisals for their work; *sincerely hopes* therefore that the Senate as a whole, under the leadership of its new president, will finally be able to act in solidarity with Senator de Lima;

6. *Urges*, in the event that Senator de Lima is not immediately released, the Supreme Court to grant her occasional "legislative furlough"; *wishes* to be kept informed on this point;

7. *Regrets* that Senator de Lima is still not allowed access to the Internet, TV and radio or the use of a tablet or laptop, since this would greatly facilitate her parliamentary work; *regrets* furthermore that the authorities have also yet to provide her with an air-conditioning unit, as ordered by her doctor; *sincerely hopes* that the relevant authorities will take the necessary steps to address these matters for as long as she remains in detention; and *wishes* to be kept informed in this regard;

8. *Considers* that the matters at issue in this case warrant an urgent follow-up visit by the Committee on the Human Rights of Parliamentarians; *requests* the Secretary General to seek the support of the parliamentary authorities for this visit to take place as soon as possible;

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

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

Philippines

Decision adopted by consensus by the IPU Governing Council at its 203rd session (Geneva, 18 October 2018)[5]

Senator Trillanes arrives at the Senate building in Manila on 25 September 2018. Senator Trillanes, a vocal critic of President Duterte, was arrested but posted bail in proceedings that the lawmaker decried as a "failure of democracy" © NOEL CELIS/AFP

PHL-09 – Antonio Trillanes

Alleged human rights violations:

- ✓ Arbitrary arrest and detention
- ✓ Lack of due process at the investigation stage
- ✓ Violation of freedom of opinion and expression

Case PHL-09

Philippines: Parliament affiliated to the IPU

Victim: Male opposition member of parliament

Qualified complainant(s): Section I (1) (a) of the Committee Procedure (Annex 1)

Submission of complaint: September 2018

Recent IPU decision: - - -

IPU mission: - - -

Recent Committee hearing: - - -

Recent follow-up
- Communication from the authorities: - - -
- Communication from the complainant: October 2018
- Communication from the IPU: Letter addressed to the President of the Senate (September 2018)
- Communication from the IPU to the complainant: October 2018

A. Summary of the case

In July 2003, the then Navy Lieutenant Antonio Trillanes was arrested and charged with staging a coup d'état for his participation in what is known as the "Oakwood Mutiny", which took place in July 2003, when more than 300 soldiers took over the Oakwood Premier Hotel in Makati to make known their grievances over bribery and corruption within the army. While in detention, he was allowed to stand in the Senate elections held in May 2007. He was duly elected to the Senate, having received the eleventh highest number of votes. In November 2007, he led another uprising, after walking out of a court hearing and subsequently occupying the Peninsula Hotel in Manila, reportedly calling for the ousting of the then President, Gloria Macapagal-Arroyo.

In November 2010, President Benigno Aquino III issued Proclamation No. 75, which was approved by both houses of Congress, regarding an amnesty for Senator Trillanes and others for their participation in these events. Senator Trillanes' release was finalized in January 2011, when he applied for and was subsequently granted amnesty under the above-mentioned proclamation. In September 2011, the Makati Regional Trial Court Branches (RTC) 148 and 150 therefore dismissed the coup d'état and rebellion charges that were pending against Senator Trillanes.

5 The delegation of the Philippines expressed its reservations regarding the decision.

However, on 31 August 2018, President Duterte, through Proclamation No. 572, decided that Senator Trillanes had not fulfilled the amnesty conditions and ordered his arrest. Senator Trillanes sought protective custody in the Senate until 25 September 2018, when RTC 150, which had dealt with the original rebellion charges, issued a warrant for his arrest, basically reviving those charges. The police subsequently escorted Senator Trillanes out of the Senate building. He was released on bail that same day. RTC 148, which is handling the coup d'état case, is due to pronounce itself shortly on whether or not these charges will be re-opened. If RTC 148 decides that the case should be re-opened, Senator Trillanes will be arrested immediately, as it concerns a non-bailable offence.

The complainant claims that Senator Trillanes had fulfilled all the conditions for amnesty at the time. He has presented witnesses and documentary evidence to show that he completed and submitted the application form for amnesty and admitted his guilt on the relevant part of the form. The complainant points out that not all applicants have a copy of their application forms because they were given only one copy of the form, which they filled out and submitted to the Department of National Defence (DND) during the day of their application. In this regard, the current Defence Secretary has reportedly publicly stated that all amnesty applications are missing from their files.

According to the complainant, President Duterte's Proclamation No. 572 is politically motivated and comes solely in response to Senator Trillanes' vocal opposition to the current administration.

B. Decision

The Governing Council of the Inter-Parliamentary Union

1. *Is deeply concerned* that Senator Trillanes is facing renewed charges of rebellion, and possibly of mounting a coup d'état, with regard to the same incidents that occurred in 2003 and 2007, offences for which he, together with all others involved, was subsequently amnestied in 2011, and which charges run counter to the legal principle that no one shall be tried twice for the same offence; *is deeply concerned* that, as a result, Senator Trillanes may soon be arrested;

2. *Fears* that the sudden questioning of his amnesty, seven years after the amnesty procedure was properly completed, and the exclusive preoccupation of President Duterte's Proclamation No. 572 with Senator Trillanes' situation, when many other individuals were likewise amnestied in connection with the same events, give serious weight to the allegation that this is a targeted attempt to silence Senator Trillanes;

3. *Wishes* to receive detailed information from the relevant authorities on the factual and legal grounds justifying Proclamation No. 572; *decides* to send a trial observer to closely monitor legal proceedings with regard to their compliance with international fair-trial guarantees;

4. C*onsiders* that the matters at hand warrant an urgent visit by the Committee; and *requests* the Secretary General to seek the parliamentary authorities' support for this visit to take place as soon as possible;

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

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

Turkey

Decision adopted by consensus by the IPU Governing Council at its 203rd session (Geneva, 18 October 2018)[6]

Demonstrators hold pictures of Figen Yüksekdağ during the trial in front of the court in Ankara on 13 April 2017 © Adem Altan/AFP

TUR-69 - Gülser Yildirim (Ms.)
TUR-70 - Selma Irmak (Ms.)
TUR-71 - Faysal Sariyildiz
TUR-72 - Ibrahim Ayhan
TUR-73 - Kemal Aktas
TUR-75 - Bedia Özgökçe Ertan (Ms.)
TUR-76 - Besime Konca (Ms.)
TUR-77 - Burcu Çelik Özkan (Ms.)
TUR-78 - Çağlar Demirel (Ms.)
TUR-79 - Dilek Öcalan (Ms.)
TUR-80 - Dilan Dirayet Taşdemir (Ms.)
TUR-81 - Feleknas Uca (Ms.)
TUR-82 - Figen Yüksekdağ (Ms.)
TUR-83 - Filiz Kerestecioğlu (Ms.)
TUR-84 - Hüda Kaya (Ms.)
TUR-85 - Leyla Birlik (Ms.)
TUR-86 - Leyla Zana (Ms.)
TUR-87 - Meral Daniş Beştaş (Ms.)
TUR-88 - Mizgin Irgat (Ms.)
TUR-89 - Nursel Aydoğan (Ms.)
TUR-90 - Pervin Buldan (Ms.)
TUR-91 - Saadet Becerikli (Ms.)
TUR-92 - Sibel Yiğitalp (Ms.)
TUR-93 - Tuğba Hezer Öztürk (Ms.)
TUR-94 - Abdullah Zeydan
TUR-95 - Adem Geveri
TUR-96 - Ahmet Yildirim
TUR-97 - Ali Atalan
TUR-98 - Alican Önlü
TUR-99 - Altan Tan
TUR-100 - Ayhan Bilgen
TUR-101 - Behçet Yildirim
TUR-102 - Berdan Öztürk
TUR-103 - Dengir Mir Mehmet Firat
TUR-104 - Erdal Ataş
TUR-105 - Erol Dora
TUR-106 - Ertuğrul Kürkcü
TUR-107 - Ferhat Encü
TUR-108 - Hişyar Özsoy
TUR-109 - Idris Baluken
TUR-110 - Imam Taşçier
TUR-111 - Kadri Yildirim
TUR-112 - Lezgin Botan
TUR-113 - Mehmet Ali Aslan
TUR-114 - Mehmet Emin Adiyaman
TUR-115 - Nadir Yildirim
TUR-116 - Nihat Akdoğan
TUR-117 - Nimetullah Erdoğmuş
TUR-118 - Osman Baydemir
TUR-119 - Selahattin Demirtaş
TUR-120 - Sirri Süreyya Önder
TUR-121 - Ziya Pir
TUR-122 - Mithat Sancar
TUR-123 - Mahmut Toğrul
TUR-124 - Aycan Irmez (Ms.)
TUR-125 - Ayşe Acar Başaran (Ms.)
TUR-126 - Garo Paylan
TUR-127 - Aysel Tugluk (Ms.)
TUR-128 - Sebahat Tuncel (Ms.)

6 The delegation of Turkey expressed its reservations regarding the decision.

Alleged human rights violations:

- ✓ Failure to respect parliamentary immunity
- ✓ Lack of due process at the investigation stage
- ✓ Lack of fair trial proceedings and excessive delays
- ✓ Violation of freedom of opinion and expression
- ✓ Violation of freedom of assembly and association
- ✓ Arbitrary arrest and detention
- ✓ Ill-treatment
- ✓ Violation of freedom of movement
- ✓ Revocation of the parliamentary mandate

Case TUR-COLL-02

Turkey: Parliament affiliated to the IPU

Victims: 60 individuals (17 parliamentarians and 43 former members of parliament, all members of the opposition (34 men and 26 women)

Qualified complainant(s): Section I (1) (c) of the Committee Procedure (Annex 1)

Submission of complaint: June 2016

Recent IPU decision: March 2018

IPU mission: February 2014

Recent Committee hearing: Hearing with the Turkish delegation and the complainant at the 139th IPU Assembly (October 2018)

Recent follow-up
- Communication from the authorities: Letters from the President of the Turkish IPU Group (May 2018)
- Communication from the complainant: October 2018
- Communication from the IPU: Letter to the President of the Turkish Grand National Assembly (July 2018); letter to the President of the Turkish IPU Group (September 2018)
- Communication from the IPU to the complainant: October 2018

A. Summary of the case

Over 600 criminal and terrorism charges have been brought against the members of parliament of the People's Democratic Party (HDP) since 15 December 2015, when the Constitution was amended to authorize the wholesale lifting of parliamentary immunity. Hundreds of trial proceedings are ongoing against HDP parliamentarians, and former parliamentarians, throughout Turkey. Some of them also continue to face older charges in relation to the KCK first-instance trial that has been ongoing for seven years, while others face more recent charges. In these cases, their parliamentary immunity has allegedly not been lifted.

At least 20 HDP parliamentarians, 11 of whom are women, have received prison sentences of one year or more. The execution of these sentences has not been suspended as stipulated under Article 83(3) of the Constitution. As of early October 2018, nine former members of parliament and one newly elected HDP parliamentarian continued to be held in detention under restrictive conditions applicable to terrorism suspects (video surveillance, seizure of documentation, restricted visits, etc.). No foreign observers have been granted access to them in prison. Parliament also ended the parliamentary mandate of nine of its members (including five women parliamentarians).

One member of parliament – Ms. Figen Yüksekdağ, HDP Co-Chair – was further deprived of her HDP membership and executive position and banned from exercising any political activities pursuant to a final court conviction. Ms. Yüksekdağ remains subject to other criminal proceedings; an IPU trial observer has been attending and monitoring the latest trial against her in September and December 2017, and February, May and September 2018. The defence is currently presenting its case. The next hearing is scheduled for 5 November 2018.

According to the complainant, in addition to trumped-up charges, HDP members and former members face routine verbal and physical harassment and abuse inside and outside of parliament. Impunity continues to prevail in that respect. Their freedom of movement is allegedly restricted and at least 14 members of parliament have sought political asylum abroad. This, together with the multitude of ongoing trials against them throughout Turkey, has restricted their ability to devote themselves meaningfully to the exercise of their parliamentary mandate.

The complainant claims that, through the ongoing proceedings, the ruling party intends to exclude the Kurds, and other marginalized peoples represented by the HDP, from the Parliament of Turkey. According to the complainant, the charges against HDP members of parliament are groundless and violate their rights to freedom of expression, assembly and association. The complainant claims that the evidence adduced to support the charges against the members of parliament relates to public statements, rallies and other peaceful political activities carried out in furtherance of their parliamentary duties and their political party programme. Such activities include mediating between

the PKK and the Turkish Government as part of the peace process between 2013 and 2015, advocating publicly in favour of political autonomy, and criticizing the policies of President Erdoğan in relation to the current conflict in south-eastern Turkey and at the border with Syria (including denouncing the crimes committed by the Turkish security forces in that context). The complainant alleges that such statements, rallies and activities did not constitute any offence, and that they fall under the clear scope and protection of the fundamental rights of members of parliament. The complainant also alleges that proper standards of due process are being disregarded. The complainant does not believe that the judicial process is being administered in a fair, independent and impartial manner. The complainant has submitted extensive and detailed information in support of its claims, including excerpts of indictments and court decisions and the exact words of the incriminating speeches made by the parliamentarians that are being used as evidence of terrorism activities. Many of these claims are the subject of a petition to the European Court of Human Rights, which is pending. The IPU's submission as a third-party intervener has been accepted by the Court.

The Turkish authorities firmly deny all these allegations. They have invoked the independence of the judiciary and the need to respond to security/terrorism threats and legislation adopted under the state of emergency to justify the legality of the measures taken. They have provided detailed information on the "provisional constitutional amendment" made by parliament in relation to parliamentary immunity in May 2016 to prosecute parliamentarians from all parties. They have asserted that there is no "HDP witch-hunt" in Turkey; that women parliamentarians are not specifically targeted; that there is no Kurdish issue in Turkey and no current conflict in south-eastern Turkey; that Turkey is, however, facing a terrorism issue at multiple levels involving the PKK and its "extensions"; that the HDP never publicly denounced the violent activities of the PKK; that its members, including members of parliament, made many statements in support of the PKK and their "extensions"; that they attended funerals of PKK suicide bombers and called for people to take to the streets, which resulted in violent incidents with civilian casualties; that this does not fall within the acceptable limits of freedom of expression; that the constitutional court has reached such conclusions in three cases and that, in other cases, domestic remedies have not yet been exhausted; that the independence of the judiciary and the rule of law in Turkey must be respected. Some detailed information on the charges and ongoing prosecutions was provided by the authorities, but not on the points requested by the Committee on the Human Rights of Parliamentarians, despite repeated requests to that end. Copies of the relevant court decisions were never provided by the authorities.

The Turkish authorities have rejected the Committee's request to conduct a mission to Turkey on two occasions on the grounds that it "could negatively affect the judicial process" and was not considered "appropriate". The mission was approved during the 138th IPU Assembly (April 2018, Geneva) on the condition that the delegation would not seek to meet the detained members of parliament or the judicial authorities. In May 2018, however, the Turkish authorities cancelled the Committee's mission following the announcement of early elections in June.

Early parliamentary and presidential elections took place on 24 June 2018. Out of 600, the ruling Justice and Development Party (AKP) obtained 295 seats, the nationalist party (MHP) 49 seats, the Republican People's Party (CHP) 146 seats, the HDP 67 seats (against 59 at the previous election) and the Ivi Party 43 seats. Sixteen of the HDP members of parliament in the present case were re-elected.

B. Decision

The Governing Council of the Inter-Parliamentary Union

1. *Thanks* the Turkish IPU Group for the information provided and for meeting with the Committee on the Human Rights of Parliamentarians during the 139th IPU Assembly to discuss the cases and concerns at hand; and *takes due note* that the parties continue to hold opposite positions and views about most issues of concern;

2. *Is pleased* that the Turkish authorities granted access to the IPU trial observer during the hearings in the case of Ms Yüksekdag of 17 May and 24 October 2018; *decides* to renew the mandate of the IPU trial observer for future hearings, in particular the next hearing scheduled on 5 November 2018; *looks forward* to receiving a full report on the hearings at the next IPU Assembly;

3. *Remains deeply concerned* at the situation of the members of the HDP, many of whom are no longer parliamentarians after the June 2018 elections; *notes with concern* that, as of October 2018, at least 20 of them have received prison sentences, nine have been stripped of their parliamentary mandate and 14 have gone into exile and have obtained – or are seeking – political asylum abroad, while nine of them continue to be held in detention, including Mr. Selahattin Demirtaş, who was recently convicted to almost five years in prison, together with Mr. Sirri Sürreya Önder, for a speech delivered on peacebuilding during the Newroz celebrations in Istanbul in March 2013, which was considered to be terrorist propaganda despite its apparent peaceful content; *wishes to receive* further information from the authorities about the grounds for this conviction and a copy of the reasoned judgement;

4. *Is concerned* that the facts and evidence supporting the mass terrorism-related charges brought against HDP members appear to be related essentially to statements, participation in protests and funerals and other political activities undertaken by the parliamentarians; *recalls* in this regard its long-standing concerns and recommendations over freedom of expression and association related to anti-terrorist legislation and the offence of membership of a criminal organization;

5. *Reaffirms* that the fundamental rights of parliamentarians must be upheld at all times, that members of parliament should be able to speak freely without fear of reprisals, that parliamentary immunity is crucial to protect members of parliament from politically motivated accusations, but also to protect the independence and integrity of the institution of parliament as a whole; *condemns* the manner in which Turkish parliamentarians were stripped of their parliamentary immunity following the adoption of a provisional constitutional amendment on 20 May 2016 by the Grand National Assembly of Turkey, which suspended the ordinary procedure for the lifting of immunity and authorized a blanket removal of immunity for a total of 139 members of parliament from all political parties, including 55 members of the HDP; *further reaffirms* its long-standing position that parliament should set aside the necessary time to consider requests for the lifting of parliamentary immunity and to apply the basic principles of due process, including a hearing of the parliamentarian(s) affected, and that a decision to lift immunity should always be agreed by a parliamentary vote on a case-by-case basis and should require valid and credible allegations supported by serious evidence; *reiterates* that these requirements were all the more important at a time of increased polarization after the failed coup d'état of 15 July 2016, when the Grand National Assembly of Turkey should have carefully checked that peaceful and legal political activities by Turkish members of parliament were not unduly presented as evidence of criminal and terrorist acts at a time when the prosecutors and judges involved in these cases were massively dismissed and charged with terrorism and other criminal charges themselves as part of the Fethullah Gülen terrorist organization (FETÖ) case;

6. *Deeply regrets* that the Turkish authorities have not responded to the renewed request by the Committee on the Human Rights of Parliamentarians to proceed with its fact-finding mission, even more so given the fact that they are challenging the objectivity of its assessment but not allowing it to verify the facts on the ground; *continues to believe* that a mission of the Committee to Turkey would help the IPU gain a better understanding of the situation of the HDP parliamentarians and former parliamentarians, but also of the broader political, security and human rights situation; *is firmly convinced* that such a mission can only be successful if the delegation is allowed to meet with the parliamentarians and former parliamentarians in prison and with the judicial authorities; therefore *urges* the Turkish authorities to authorize the mission at the earliest convenience on that basis;

7. *Further regrets* that the Turkish authorities have not kept the Committee apprised of developments in the case since the 138th IPU Assembly, nor provided new information at the hearing held during the 139th IPU Assembly; *points out* that the delegation presented an extensive oral statement to the Committee but has not provided any new substantive written information to it, whereas the HDP has provided extensive documentation, including copies of most court decisions recently delivered against HDP members of parliament; *requests* the Committee to conduct an in-depth analysis of these decisions and to report on its findings at the next IPU Assembly; also *welcomes* any additional information that the parties may wish to submit to facilitate the Committee's assessment;

8. *Renews its call* on all IPU Member Parliaments, including Member Parliaments of the Twelve Plus Geopolitical Group, and IPU permanent observers, parliamentary assemblies and associations active in the region, to take concrete actions in support of the urgent resolution of this case; and *hopes* to be able to rely on the assistance of all relevant regional and international organizations;

8. *Requests* the Secretary General to convey this decision to the competent authorities, the complainant and any third party likely to be in a position to supply relevant information, to pursue his efforts to organize the requested mission by a Committee delegation and future trial observation missions, as well as to ensure the timely translation and analysis of the court decisions provided to the Committee;

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

Palestine/Israel

Decision adopted unanimously by the IPU Governing Council at its 203rd session (Geneva, 18 October 2018)

Ramallah, 15 April 2015 – Palestinian protesters wave flags bearing portraits of Fatah leader, Marwan Barghouti, during a march to mark the anniversary of his arrest. AFP Photo/Abbas Momani

PSE-02 – Marwan Barghouti

Alleged human rights violations:

- ✓ Torture, ill-treatment and other acts of violence
- ✓ Arbitrary arrest and detention
- ✓ Lack of fair trial proceedings

A. Summary of the case

Mr. Barghouti, a member of the Palestinian Legislative Council, was arrested on 15 April 2002 in Ramallah by the Israeli Defence Forces and transferred to a detention facility in Israel. He was charged with murder, attempted murder and involvement in terrorist organizations. His trial before the Tel Aviv District Court started on 14 August 2002 and came to a close on 6 June 2004, when the court sentenced him to five life sentences and two 20-year prison terms. The complainants have raised a series of legal objections to Mr. Barghouti's arrest and prosecution, alleging that he was ill-treated, especially at the start of his detention, and was denied access to legal counsel. The Committee appointed a legal expert and lawyer, Mr. Simon Foreman, to report on the trial. His report states that, "the numerous breaches of international law … make it impossible to conclude that Mr. Barghouti was given a fair trial".

On 17 April 2017, Mr. Barghouti initiated a mass hunger strike, joined by more than 1,000 Palestinian inmates, in protest against the abusive and inhumane conditions in which Palestinian inmates were allegedly being held by the Israeli authorities. The strike reportedly ended on 30 May 2017, as the Israeli Prison Service had agreed to grant some of the detainees' requests.

Case PSE-02

Palestine/Israel: The Palestinian Legislative Council and the Parliament of Israel are affiliated to the IPU

Victim: Member of the Palestinian Legislative Council, member of the majority

Qualified complainant(s): Section I (1) (b) of the Committee Procedure (Annex 1)

Submission of complaint: April 2002

Recent IPU decision: October 2017

IPU mission: - - -

Recent Committee hearing: Hearing with the head of the Fatah parliamentary group at the 139th IPU Assembly (October 2018)

Recent follow-up

- Communication from the authorities: Letters from the head of the Knesset delegation to the Inter-Parliamentary Union (January 2018 and September 2017)
- Communication from the complainant: October 2018
- Communication from the IPU to the authorities: September 2018
- Communication from the IPU to the complainant: October 2018

B. Decision

The Governing Council of the Inter-Parliamentary Union

1. *Is extremely concerned* that Mr. Barghouti remains imprisoned, more than 16 years after he was arrested, with no prospect of early release;

2. *Reaffirms its long-standing position* that Mr. Barghouti's arrest and transfer to Israeli territory was in violation of international law and, in the light of the compelling legal arguments put forward in Mr. Foreman's report, his trial failed to meet the fair-trial standards which Israel, as a party to the International Covenant on Civil and Political Rights, is bound to respect, and that his guilt was never established;

3. *Consequently renews its call* on the Israeli authorities to release Mr. Barghouti forthwith;

4. *Is eager to receive*, in light of previous concerns in this regard and concerns expressed by the UN Human Rights Council in March 2018 about the conditions of Palestinian prisoners in Israeli jails, updated information on Mr. Barghouti's current conditions of detention, in particular with respect to the frequency and type of visits he receives and his access to medical care;

5. *Reiterates its long-standing wish* to be granted permission to visit Mr. Barghouti; and *urges* the Israeli authorities to give serious consideration to this request;

6. *Regrets* that the Israeli delegation was unable to meet with the Committee on the Human Rights of Parliamentarians at the 139th IPU Assembly; *requests* the Secretary General to continue his dialogue with the parliamentary authorities and to contact the competent government and administrative authorities, inviting them to provide the requested information, including their views on the proposed visit;

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

Palestine/Israel

Decision adopted unanimously by the IPU Governing Council at its 203rd session (Geneva, 18 October 2018)

Ahmad Sa'adat, the leader of the Popular Front for the Liberation of Palestine, is escorted by Israeli border police to the Ofer military court in the West Bank, north of Jerusalem, 27 March 2006. AFP Photo / Menahem Kahana

PSE-05 - Ahmad Sa'adat

Alleged human rights violations:

- ✓ Arbitrary arrest and detention
- ✓ Inhumane conditions of detention
- ✓ Lack of fair trial proceedings

A. Summary of the case

On 14 March 2006, Mr. Sa'adat was abducted by the Israeli Defence Forces from Jericho Jail and transferred to Hadarim Prison in Israel, together with four other prisoners, after being accused by the Israeli authorities of involvement in the October 2001 murder of Mr. R. Zeevi, the Israeli Minister of Tourism. The Israeli authorities concluded one month later that Mr. Sa'adat had not been involved in the killing but went on to charge the other four suspects. Subsequently, 19 other charges were brought against Mr. Sa'adat, all arising from his leadership of the Popular Front for the Liberation of Palestine (PFLP), which Israel considers a terrorist organization. None of the charges allege direct involvement in crimes of violence. On 25 December 2008, Mr. Sa'adat was sentenced to 30 years in prison. While detained, Mr. Sa'adat reportedly did not receive the medical attention he required or visits from his family. In March and June 2009, he was placed in solitary confinement, prompting him in June 2009 to go on a nine-day hunger strike. He remained in solitary confinement for three years, until May 2012.

In April 2017, Mr. Sa'adat took part in a mass hunger strike by Palestinian detainees to protest against their detention conditions in Israeli prisons. He was reportedly moved at that time to solitary confinement in Ohlikdar Prison.

Case PSE-05

Palestine/Israel: The Palestinian Legislative Council and the Parliament of Israel are affiliated to the IPU

Victim: Majority member of the Palestinian Legislative Council

Qualified complainant(s): Section I (1)(b) of the Committee Procedure (Annex 1)

Submission of complaint: July 2006

Recent IPU decision: October 2017

IPU mission: - - -

Recent Committee hearing:
- Hearing with the head of the Fatah parliamentary group at the 139th IPU Assembly (October 2018)

Recent follow-up
- Communication from the authorities: Letters from the head of the Knesset delegation to the Inter-Parliamentary Union (January 2018 and September 2017)
- Communication from the complainant: October 2018
- Communication from the IPU to the authorities: September 2018
- Communication from the IPU to the complainant: October 2018

B. Decision

The Governing Council of the Inter-Parliamentary Union

1. *Is extremely concerned* that, more than 12 years after his arrest, Mr. Sa'adat remains in detention as a result of a politically motivated trial; *reaffirms* in this regard its long-standing position that Mr. Sa'adat's abduction and transfer to Israel were related not to the original murder charge but rather to his political activities as PFLP General Secretary;

2. *Calls again on* the Israeli authorities to release him without delay;

3. *Is eager* to receive, in light of previous concerns in this regard and concerns expressed by the UN Human Rights Council in March 2018 about the conditions of Palestinian prisoners in Israeli jails, updated information on Mr. Sa'adat's current conditions of detention, in particular with respect to the frequency and type of visits he receives, and his access to medical care;

4. *Reiterates* its long-standing wish to be granted permission to visit Mr. Sa'adat; and *urges* the Israeli authorities to give serious consideration to this request;

5. *Regrets* that the Israeli delegation was unable to meet with the Committee on the Human Rights of Parliamentarians at the 139th IPU Assembly; *requests* the Secretary General to continue his dialogue with the parliamentary authorities and to contact the competent government and administrative authorities, inviting them to provide the requested information, including their views on the proposed visit;

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

Palestine/Israel

Decision adopted unanimously by the IPU Governing Council at its 203rd session (Geneva, 18 October 2018)

Hamas parliamentarians Mr. Ahmed Attoun (R), Mr. Mohammed Totah (second from right) and Mr. Khaled Abu Arafa (L) in front of the International Red Cross offices, where they have been living for the past 162 days fearing expulsion by the Israeli authorities, 9 December 2010 © AFP Photo/Marco Longari

Parliamentarians in administrative detention:
PSE-57 - Hasan Yousef
PSE-82 - Khalida Jarrar (Ms.)

Parliamentarians previously in administrative detention:
PSE-29 - Ahmad Attoun
PSE-32 - Basim Al-Zarrer
PSE-47 - Hatem Qfeisheh
PSE-61 - Mohammad Jamal Natsheh
PSE-62 - Abdul Jaber Fuqaha
PSE-63 - Nizar Ramadan
PSE-64 - Mohammad Maher Bader
PSE-65 - Azam Salhab
PSE-75 - Nayef Rjoub
PSE-84 - Ibrahim Dahbour
PSE-85 - Ahmad Mubarak
PSE-86 - Omar Abdul Razeq Matar
PSE-87 - Mohammad Ismail Al-Tal
PSE-89 - Khaled Tafesh
PSE-90 - Anwar Al Zaboun

Parliamentarians reportedly currently subject to criminal proceedings:
PSE-103 - Naser Abd Al Jawad

Parliamentarians reportedly subject to criminal proceedings in recent years:
PSE-28 - Muhammad Abu-Tair
PSE-78 - Husni Al Borini
PSE-79 - Riyadgh Radad
PSE-80 - Abdul Rahman Zaidan

Parliamentarians subject to the withdrawal of their Jerusalem residence permit:
PSE-28 - Muhammad Abu-Tair
PSE-29 - Ahmad Attoun
PSE-30 - Muhammad Totah

Alleged human rights violations:

- ✓ Arbitrary arrest and detention
- ✓ Inhumane conditions of detention
- ✓ Lack of due process at the investigation stage
- ✓ Lack of fair trial proceedings
- ✓ Violation of freedom of movement

Case PSE-COLL-01

Palestine/Israel: The Palestinian Legislative Council and the Parliament of Israel are affiliated to the IPU

Victims: 25 majority members of the Palestinian Legislative Council (24 men and one woman)

Qualified complainant(s): Section I (1) (d) of the Committee Procedure (Annex 1)

Submission of complaint: June 2014

Recent IPU decision: October 2017

IPU mission: - - -

Recent Committee hearing:
- Hearing with the head of the Fatah parliamentary group at the 139th IPU Assembly (October 2018)

Recent follow-up
- Communication from the authorities: Letters from the head of the Knesset delegation to the Inter-Parliamentary Union (October and January 2018; September 2017)
- Communication from the complainant: October 2018
- Communication from the IPU to the authorities: September 2018
- Communication from the IPU to the complainant: October 2018

A. Summary of the case

The original case concerned parliamentarians who, in mid-2006, were seized by Israeli Defence Forces in the occupied West Bank and Jerusalem and transferred to Israeli prisons. All of the parliamentarians had been elected in January 2006 on the Electoral Platform for Change and Reform (Hamas). On 25 September 2006, an Israeli military appeal court in the West Bank overturned a court decision to release them and ordered that they remain in prison pending trial. All were charged with being members of a terrorist organization, namely Hamas, carrying out activities on its behalf and providing it with services. Most received prison sentences of about 40 months and were released after serving them. Over the years, several have been rearrested, with most of them subject to administrative detention and some to criminal prosecution. Currently, two members of the Palestinian Legislative Council (PLC), namely Mr. Hasan Yousef and Ms. Khalida Jarrar, are in administrative detention and one, Mr. Naser Abd Al Jawad, is reportedly facing criminal proceedings.

Mr. Ahmad Attoun, who was released in February 2009, as well as Mr. Muhammad Abu-Tair and Mr. Muhammad Totah, both released in 2010, had their Jerusalem residence permits withdrawn and were ordered to be deported.

B. Decision

The Governing Council of the Inter-Parliamentary Union

1. *Thanks* the head of the Knesset delegation for his most recent letter; *regrets* nevertheless that the letter does not address the concerns raised in these cases directly; *regrets therefore* all the more that he was unable to meet the Committee on the Human Rights of Parliamentarians at the 139th IPU Assembly;

2. *Notes* that only two PLC members are currently in administrative detention in Israel, down from 10 members when it last commented on this case in October 2017; *considers*, however, that, as the case history shows, even when PLC members are released, they remain subject to renewed arrest and can be placed in administrative detention again at any time and indefinitely, as the repeatedly extended detention of the two PLC members shows;

3. *Remains deeply concerned* in this regard that the practice of administrative detention often relies on classified evidence, as the Israeli authorities acknowledge; *understands* that, at the normative level, and at that of the relevant jurisprudence of the Supreme Court, safeguards are provided for with a view to preventing the abusive use of administrative detention; *underscores* nevertheless that the reality of administrative detention is quite different, mainly owing to the lack of any effective possibility for the detainees to defend themselves, with the result that they are open to arbitrary treatment;

4. *Points out* that UN human rights mechanisms and bodies have long voiced their strong concern about the extensive use of administrative detention by the Israeli authorities, such as most recently the UN Human Rights Council in its resolution adopted in March 2018, and that the UN Human Rights Committee called on the Israeli authorities, in its concluding observations adopted in 2014 on the human rights situation in Israel, "to end the practice of administrative detention and the use of secret evidence in administrative proceedings, and ensure that individuals subject to administrative orders are either promptly charged with a criminal offence, or released*"*;

5. *Calls once again*, therefore, on the Israeli authorities to abandon the practice of administrative detention and to make use only of the regular criminal procedure to justify detention;

6. *Notes* the total absence of information on the reasons for Mr. Naser Abd Al Jawad's detention under – as it appears – the regular criminal procedure; *wishes* to receive information from the Israeli authorities on the facts and legal basis that led to his arrest, on whether he has been charged, and if so, whether trial proceedings are taking place, as well as information on his conditions of detention;

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

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

Palestine

Decision adopted unanimously by the IPU Governing Council at its 203rd session (Geneva, 18 October 2018)

Former Palestinian Security Minister Mr. Mohamed Dahlan (L) speaks to reporters outside the offices of the Palestine Liberation Organization, 8 November 2004. AFP Photo/Jamal Aruri

PSE-91 – Mohamed Yusuf Chaker Dahlan

Alleged human rights violations:

- ✓ Failure to respect parliamentary immunity
- ✓ Violation of freedom of opinion and expression
- ✓ Lack of due process at the investigation stage
- ✓ Lack of fair trial proceedings

A. Summary of the case

Mr. Mohammad Yusuf Chaker Dahlan, a member of the Palestinian Legislative Council (PLC), was deprived of his parliamentary immunity and allegedly subjected to arbitrary proceedings when the Attorney General launched an investigation against him on 3 January 2012 into allegations of corruption and embezzlement of public funds. At the Attorney General's request, the President of the Palestinian National Authority (PNA), Mr. Mahmoud Abbas, issued a decision on the same day ordering the lifting of Mr. Dahlan's parliamentary immunity by decree. Prior to the lifting of his parliamentary immunity, Mr. Dahlan was expelled from his party, Fatah, in October 2011, over alleged corruption and an attempted coup.

In 2013, having criticized the Palestinian security establishment, Mr. Dahlan was also charged with defaming and insulting the State's institutions. On 6 March 2014, the Ramallah Magistrates' Court sentenced Mr. Dahlan in absentia to two years of imprisonment on the defamation-related charges. The Corruption Crimes Court in turn, sentenced Mr. Dahlan on 7 December 2016 to three years of imprisonment and a fine of US$ 16 million. Mr. Dahlan has been living in the United Arab Emirates (Abu Dhabi) in self-exile since 2011 and is unable to travel to Palestine for fear of imprisonment. He is reportedly facing acts of intimidation, as Fatah has launched several campaigns to damage his reputation in Palestine.

Case PSE-91

Palestine: The Palestinian Legislative Council is affiliated to the IPU

Victim: Member of the Palestinian Legislative Council, member of the majority

Qualified complainant(s): Section I (1) (a) of the Committee Procedure (Annex 1)

Submission of complaint: October 2017

Recent IPU decision: January 2018

IPU mission: - - -

Recent Committee hearing: Hearing with the head of the Fatah parliamentary group at the 139th IPU Assembly (October 2018)

Recent follow-up

- Communication from the authorities: Letter from the Speaker of the Palestinian National Council (August 2018)
- Communication from the complainant: (September 2018)
- Communication from the IPU: Letter to the Speaker of the Palestinian National Council (September 2018)
- Communication from the IPU to the complainant: September 2018

B. Decision

The Governing Council of the Inter-Parliamentary Union

1. *Thanks* the delegation of Palestine and Mr. Azzam Al-Ahmad, head of the parliamentary group of Fatah, for the information provided at the hearing with the Committee on the Human Rights of Parliamentarians during the 139th IPU Assembly;

2. *Notes* the exceptional situation in which the PLC finds itself, and which makes it very difficult for parliamentary immunity to be protected in practice; *is nevertheless deeply concerned* about the lifting of Mr. Dahlan's parliamentary immunity by a presidential decree; *notes* that Mr. Dahlan has exhausted all available national remedies to appeal the President's decision and that, in spite of the procedural abnormalities alleged by the complainant and demonstrated by court decisions, the Court of Cassation dismissed Mr. Dahlan's case and confirmed the lifting of his immunity; *further notes with concern* that the presidential decision was confirmed by the ruling of the Constitutional Court established by the President in 2016;

3. *Underlines* the serious procedural and legal irregularities raised by the complainant and that have allegedly marked Mr. Dahlan's trials for defamation and corruption, namely the fact that Mr. Dahlan was convicted of defamation in 2014 while he still enjoyed parliamentary immunity, since the matter was still pending before the court, and that the first- and second-instance courts rejected the corruption charges in 2015, concluding that Mr. Dahlan's parliamentary immunity was still valid;

4. *Understands* that part of the controversy that arises in this case stems from the different interpretations of article 43 of the Palestinian Basic Law; *notes* that Mr. Dahlan's immunity was lifted in 2012, six years following the alleged corruption accusations, which makes the complainant rather doubtful as to the emergency nature of the President's decision; *recalls* that according to article 43, "The President of the [Palestinian] National Authority shall have the right, in cases of necessity that cannot be delayed, and when the [Palestinian] Legislative Council is not in session, to issue decrees that have the power of law. These decrees shall be presented to the [Palestinian] Legislative Council in the first session convened after their issuance; otherwise they will cease to have the power of law. If these decrees are presented to the [Palestinian] Legislative Council, as mentioned above, but are not approved by the latter, then they shall cease to have the power of law";

5. S*incerely hopes* that the PLC will soon be able to reconvene and to protect, as an institution, their own members against possible reprisals, as foreseen by article 43 of the Palestinian Basic Law;

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

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

Palestine

Decision adopted unanimously by the IPU Governing Council at its 203rd session (Geneva, 18 October 2018)


Abdul Hamid Al-Alia © Photo courtesy/Al-Alia family


Ashraf Jumaa © Photo courtesy/Ashraf Jumaa family

PSE-88 - Najat Abu Bakr (Ms.)
PSE-92 - Shami Al-Shami
PSE-93 - Nasser Juma
PSE-94 - Jamal Tirawi
PSE-95 - Nayema Sheikh Ali (Ms.)
PSE-96 - Rajai Mahmoud Baraka
PSE-97 - Yahya Mohammad Shamia
PSE-98 - Ibrahim Al Masdar
PSE-99 - Ashraf Jumaa
PSE-100 - Majid Abu Shamala
PSE-101 - Abdul Hamid Al-Alia
PSE-102 - Alaa Yaghi

Case PSE-COLL-02

Palestine: The Palestinian Legislative Council is affiliated to the IPU

Victims: 12 Members of the Palestinian Legislative Council, members of the majority (10 men and two women)

Qualified complainant(s): Section I (1) (a) of the Committee Procedure (Annex 1)

Submission of complaint: January 2018

Recent IPU decision: January 2018

IPU mission: - - -

Recent Committee hearing: Hearing with the head of the Fatah parliamentary group at the 139th IPU Assembly (October 2018)

Recent follow-up
- Communication from the authorities: Letter from the Speaker of the Palestinian National Council (August 2018)
- Communication from the complainant: September 2018
- Communication from the IPU: Letter to the Speaker of the Palestinian National Council (September 2018)
- Communication from the IPU to complainant: September 2018

Alleged human rights violations:

- ✓ Failure to respect parliamentary immunity
- ✓ Violation of freedom of opinion and expression
- ✓ Violation of freedom of movement
- ✓ Threats, acts of intimidation

A. Summary of the case

The complainant alleges that the 12 parliamentarians, all members of Fatah, were deprived of their parliamentary immunity following a decision issued by Palestinian President Mahmoud Abbas in December 2016, to enable the Public Prosecutor to pursue a criminal investigation against them. The complainant also alleges that the decision to lift the parliamentary immunity of the members of parliament was communicated orally to them, as they never received any written decision providing the reasons justifying such a measure.

The complainant further alleges that the parliamentarians were also deprived of their salaries, which were suspended without notice on 6 June 2017 on the instructions of the Ministry of Finance. According to the complainant, the suspension of salaries came in response to the legitimate exercise of their parliamentary mandate and freedom of opinion, as well as their denunciation of alleged

corruption within the ruling party, Fatah. Some of the parliamentarians decided not to file a complaint before the national jurisdiction, invoking the latter's lack of independence and arbitrariness.

Largely due to internal divisions, the Palestinian Legislative Council (PLC) has not been able to meet since 2007, although individual members of the PLC continue to carry out their parliamentary functions to the best of their abilities.

B. Decision

The Governing Council of the Inter-Parliamentary Union

1. *Thanks* the delegation of Palestine and Mr. Azzam Al-Ahmad, head of the Fatah parliamentary group, for the information shared in the hearing with the Committee on the Human Rights of Parliamentarians held during the 139th IPU Assembly;

2. *Remains* concerned that the parliamentary immunity of the members of the PLC was lifted by presidential decision. This defeats the very purpose that the procedure for lifting parliamentary immunity is meant to serve, namely to shield the institution of parliament and its members from potential encroachment on its powers and privileges by the other branches of State; *acknowledges*, nevertheless, the exceptional situation in which the PLC finds itself, and which makes it very difficult for parliamentary immunity to be protected in practice; *sincerely hopes* that the PLC will soon be able to reconvene and to actively defend, as an institution, the rights of the people who elected it, as well as to protect its own members against possible reprisals because of their work;

3. *Deeply regrets* that the salaries of the 12 parliamentarians have not been reinstated and that the alleged violations of the right to freedom of movement conveyed by the complainants are still ongoing; *is concerned* about Mr. Abu Shamala's inability to renew his diplomatic passport, as his application was allegedly rejected by the competent authorities in the absence of any justification; *recalls* that the 12 parliamentarians filed several complaints with the judicial authorities; *sincerely hopes* that the court will rule swiftly on their complaints in an independent and fair manner; *trusts* that parliament will monitor this matter and assist them during the proceedings, if need be;

4. *Reiterates* its concerns about the lifting of the parliamentary immunity of the 12 parliamentarians through a presidential decision so ordering, which would contradict the principle of the separation of powers and the independence of parliament; *fails* to fully understand the legal grounds justifying this decision;

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

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

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