



Inter-Parliamentary Union

For democracy. For everyone.

Democratic Republic of the Congo

DRC/49 - Albert Bialufu Ngandu
DRC/50 - André Ndala Ngandu
DRC/51 - Justin Kiluba Longo
DRC/52 - Shadrack Mulunda Numbi Kabange
DRC/53 - Héritier Katandula Kawinisha
DRC/54 - Muamus Mwamba Mushikonke
DRC/55 - Jean Oscar Kiziamina Kibila
DRC/56 - Bonny-Serge Welo Omanyundu
DRC/57 - Jean Makambo Simol'imasa
DRC/58 - Alexis Luwundji Okitasumbo
DRC/59 - Charles Mbuta Muntu Lwanga
DRC/60 - Albert Ifefo Bombi
DRC/61 - Jacques Dome Mololia
DRC/62 - René Bofaya Botaka
DRC/63 - Jean de Dieu Moleka Liambi
DRC/64 - Edouard Kiaku Mbuta Kivuila
DRC/65 - Odette Mwamba Banza (Ms.)
DRC/66 - Georges Kombo Ntonga Booke
DRC/67 - Mabuya Ramazani Masudi Kilele
DRC/68 - Célestin Bolili Mola
DRC/69 - Jérôme Kamate
DRC/70 - Colette Tshomba (Ms.)
DRC/73 - Bobo Baramoto Maculo
DRC/74 - Anzuluni Bembe Isilonyonyi
DRC/75 - Isidore Kabwe Mwehu Longo
DRC/76 - Michel Kabeya Biaye
DRC/77 - Jean Jacques Mutuale
DRC/78 - Emmanuel Ngoy Mulunda
DRC/79 - Eliane Kabare Nsimire (Ms.)

Decision adopted by the Committee on the Human Rights of Parliamentarians at its 146th session (Geneva, 24-27 January 2015)

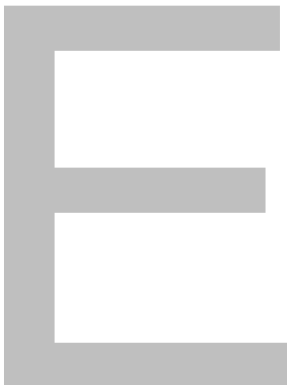
The Committee,

Referring to the case of 29 former members of the National Assembly of the Democratic Republic of the Congo (DRC) disqualified by the Supreme Court decision of 25 April 2012, and to the decision adopted at its 143rd session (January 2014),

Bearing in mind the letter of 13 January 2015 from the Speaker of the National Assembly and the information provided by the complainants,

Bearing in mind also the report of the mission conducted to the DRC from 10 to 14 June 2013 (CL/193/11b)-R.2),

Recalling the following information on file: having heard the electoral dispute on the results of the legislative elections of 28 November 2011, the Supreme Court, sitting provisionally as the Constitutional Court, which has jurisdiction over electoral disputes, invalidated the elections of 32 members of parliament; 30 of those members contested the decisions and immediately filed applications for rectification of clerical errors, the only remedy available to them under Congolese legislation; on 4 May 2012, the National Assembly voted in plenary to execute the Supreme Court decisions even though those applications remained pending before the Court; the disqualified members of parliament were replaced by new members who were proclaimed elected by the Supreme Court after the vote in the National Assembly; the applications were denied by the Supreme Court in late August and early September 2012; given that they had exhausted all internal remedies and that the invalidation decisions remained arbitrary, the disqualified members of parliament requested compensation for the damages they had suffered and payment of the balance of their parliamentary allowances for the period in which they had sat in the National Assembly,



Recalling also that, in the resolution it adopted at its 191st session (October 2012), the Governing Council observed with deep concern that the Supreme Court decisions of 25 April 2012 invalidating the elections of 32 parliamentarians had been marred by serious procedural flaws and violations of the rights of defence, that the applications for rectification of clerical errors introduced by 30 of the disqualified parliamentarians had not allowed the cases to be re-examined on the merits, and that there was therefore in practice no remedy in Congolese law with respect to Supreme Court decisions on electoral disputes, which was tantamount to a denial of justice,

Considering that the National Assembly, acting to ease the political tension, agreed to the principle of an amicable settlement with the disqualified members of the National Assembly, that the disqualified members and the Speaker of the National Assembly met several times in 2013 with a view to negotiating a satisfactory solution, that the National Assembly agreed to pay part of the parliamentary allowances owed to the disqualified members of parliament and made partial payments in 2013, but refused to pay compensation for the damages suffered by the members concerned on the grounds that there existed no legal provisions recognizing their right to such compensation,

Recalling, moreover, that, in a letter to the Speaker of the National Assembly dated 15 June 2013, the President of the Senate had considered that the disqualified members of parliament should receive satisfactory compensation, as had those elected in 2006 and disqualified in the same conditions,

Recalling in that respect the following: after the first presidential and legislative elections in the DRC, in 2006, the Supreme Court had also invalidated the elections of parliamentarians while proclaiming the final outcome of the legislative elections; the disqualified members of parliament had brought the case before the Committee, claiming that the Court's decisions were arbitrary (Group of 18 case, DRC/30-45 Tshibundi et al.); in view of the numerous criticisms directed at the Court for the way in which it had ruled on the electoral disputes, the National Assembly had established a special committee tasked with examining the follow-up to be given to Supreme Court decisions on cases involving the election of national members of parliament; that committee had uncovered numerous procedural flaws in the Court's proceedings and the National Assembly had consequently adopted, on 17 July 2007, a resolution denouncing the Court's decisions as "marred by serious irregularities and abuse of rights"; the National Assembly had played a key role, pledging to reform the judicial system, to take the necessary measures to ensure that such cases did not recur and to find means of repairing the injustice suffered by the parliamentarians concerned,

Recalling also the following: the procedure applying to electoral disputes had been modified by the preceding legislature in 2011, which had replaced the previous oral and transparent adversarial system by a written, non-transparent inquisitorial system; after the 2011 elections, the European Union Election Observation Mission had recalled in its final report that, in a situation like that prevailing in the DRC, where some political players did not have confidence in the independence of the judicial branch and had already criticized its lack of transparency, the new procedure had come in for strong criticism, all the more so because the Supreme Court had not followed it, having failed to conduct all the investigations needed to verify the integrity and lawfulness of the provisional results,

Considering that, according to the Speaker of the National Assembly, Parliament had drawn a lesson from the challenges to the process by which the electoral disputes of 2006 and 2011 were managed and the concerns voiced at that time, and intended to amend the electoral law with a view to not only strengthening the eligibility conditions and improving the mechanisms for resolving electoral disputes, but also to ensuring that electoral disputes were dealt with before mandates were confirmed by one or the other house, and that the Speaker of the National Assembly confirmed in February 2014 that Parliament would examine draft legislation amending the electoral law to that end during the regular session in March 2014,

Taking into account that, pursuant to a favourable Supreme Court ruling, Mr. Kiluba Longo was reinstated to the Senate in November 2013 and, according to the letter from the Speaker of the National Assembly of 13 January 2015, three of the disqualified members of parliament were appointed to national or provincial public institutions, with a view to easing the political tension, and that a fourth appointment was anticipated in the near future,

Considering that, according to the complainants, the Speaker of the National Assembly systematically refused to meet with the disqualified members of parliament and pursue the dialogue with them in 2014, despite their repeated letters and requests for a hearing, that the balance of the

allowances owed has yet to be paid and that no progress has been made on the question of compensation for the damages sustained almost three years after the disqualification,

Recalling that the DRC is party to the International Covenant on Civil and Political Rights, Articles 25 and 26 of which establish the right to vote and to be elected at elections guaranteeing the free expression of the will of the electors, and the right to equality before the law,

1. *Notes with regret* that the dialogue between the disqualified members of parliament and the National Assembly was not pursued in 2014 and *trusts* that it will be resumed as soon as possible;
2. *Remains convinced* that a negotiated political settlement is essential to repairing the damages sustained by the disqualified members of parliament and *wishes to be kept informed* by both parties about the progress made to that end;
3. *Wishes to know* whether the amended electoral law has met concerns relating to the procedure for electoral disputes and validation of parliamentary mandates, and if so, how;
4. *Requests* the Secretary General to convey this decision to the parliamentary authorities, the complainants and any third party likely to be in a position to supply relevant information;
5. *Decides* to continue examining this case.