



Inter-Parliamentary Union

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Burundi

BDI/42 - Pasteur Mpawenayo

BDI/44 - Hussein Radjabu

***Decision adopted by the Committee on the Human Rights of Parliamentarians
at its 152nd session (Geneva, 23 January to 3 February 2017)***

The Committee,

Referring to the cases of Mr. Hussein Radjabu and Mr. Pasteur Mpawenayo, both former Burundian members of parliament, to the resolution adopted by the Governing Council at its 194th session (March 2014) and to the decision adopted by the Committee at its 146th session (January 2015),

Referring to the letter from the Speaker of the National Assembly of 7 January 2015 and to the information provided by the complainants,

Referring also to the reports of the two missions undertaken by the Committee to Burundi from 25 to 28 September 2011 (CL/190/12(b)-R1) and from 17 to 20 June 2013 (CL/193/11(b)-R.1),

Recalling that this case, which has been before the Committee for many years, originally concerned the revocation of the parliamentary mandate of 22 members of parliament elected in July 2005 on the list of the majority party National Council for the Defence of Democracy – Forces for the Defence of Democracy (CNDD-FDD) and the criminal proceedings brought against some of the members in 2007-2008 following dissension within the party; that these proceedings have been marred by serious flaws and excessive delays; and that the case now only concerns Mr. Hussein Radjabu and Mr. Pasteur Mpawenayo, as the other cases have already been closed,

Recalling the following information provided in the file:

- **Regarding Mr. Radjabu**

- Mr. Radjabu led the CNDD-FDD party until he was ousted in February 2007; the party then split into two, one wing supporting the new party president and the other backing Mr. Radjabu;
- Proceedings were initiated against him in this context; Mr. Radjabu's parliamentary immunity was lifted on 27 April 2007 and he was sentenced on 3 April 2008 to 13 years' imprisonment and stripped of his civil and political rights for endangering State security; the Court found him guilty of likening the Head of State to an empty bottle and, with seven other persons – including Mr. Mpawenayo – of conspiring against State security by inciting citizens to rebel against the authority of the State at a meeting held on 31 March 2007;
- Mr. Radjabu's conviction became final after being upheld in appeal in 2009; he has also exhausted all domestic remedies available to him; his appeal was dismissed, along with his various successive applications for a judicial review, conditional release and presidential pardon;

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- According to the findings of the observer's report commissioned by the Committee (whose findings were rejected by the authorities), Mr. Radjabu's trial was marred by serious flaws such as the use of torture during the interrogation of his co-defendants (whose confessions were used by the Court to convict Mr. Radjabu), the lack of independence of the court judges and the State prosecution service (who were all members of the ruling party) and the absence of any evidence to support the charges; the Committee's mission to Burundi in September 2011 confirmed that no investigation had been conducted into the use of torture;
- The relevant authorities refused to re-open Mr. Radjabu's case, despite Mr. Mpawenayo's acquittal in 2012; both men had been prosecuted on the same charges, facts and testimonies,

- **Regarding Mr. Mpawenayo**

- Mr. Mpawenayo was arrested in July 2008 and charged with being Mr. Radjabu's accomplice and having co-chaired a meeting during which the acts of which he and Mr. Radjabu stand accused were reportedly committed; Mr. Mpawenayo was acquitted at first instance in May 2012 and released after four years on remand in custody;
- The Supreme Court's findings in Mr. Mpawenayo's acquittal, a copy of which was forwarded by the complainants, confirmed that Mr. Mpawenayo had been acquitted of the same charges as those for which Mr. Radjabu had been convicted; the Supreme Court found that the State prosecution service had failed to provide evidence of the charges against Mr. Mpawenayo; the Court held that the witnesses were not credible and that there was no proof of the meeting held on 31 March 2007 at Mr. Radjabu's home, given the absence of any record of the demobilized officers allegedly present at this meeting, and of the audio recordings of the meeting cited by the prosecution; the Court also noted that no evidence of the alleged weapons' seizures had been provided by the prosecution and found that "all the offences of which Mr. Mpawenayo is accused remain(ed) hypothetical";
- The State prosecution service lodged an appeal against the acquittal decision; in his letter of 7 January 2015, the Speaker of the National Assembly noted that the appeals procedure was under way but could not move forward because Mr. Mpawenayo was refusing to appear before the Supreme Court;
- The complainants indicated that Mr. Mpawenayo had not been informed or officially summoned by the judicial authorities; they also stated a number of times that Mr. Mpawenayo had suffered threats and intimidation since his release and that he feared for his life,

Considering that the following new information has been provided by the complainants:

- On 2 March 2015, Mr. Radjabu escaped from Bujumbura prison and reportedly took refuge abroad; Mr. Mpawenayo's security situation has deteriorated further because of the political and security crisis prevalent in Burundi since 2015; the complainant considers that, against this background, it is impossible for the Burundian judiciary to issue an independent ruling on his case,

Considering also that the complainants in Mr. Radjabu's case have not provided any information on the case since the latter's escape in 2015,

Bearing in mind that Burundi has ratified the 2013 Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment; that the United Nations Human Rights Committee expressed the following concerns, inter alia, in its concluding observations on the second periodic report of Burundi of 21 November 2014 (CCPR/C/BDI/CO/2): (i) the high number of cases of torture by the Burundian police and security forces, the fact that the courts admitted as evidence confessions that had been obtained by torture and the impunity enjoyed by the persons responsible; (ii) the disproportionate use of pretrial detention and the frequent failure to respect detainees' basic legal guarantees; (iii) the numerous failures and shortcomings of the Burundian judicial system,

Taking into account that the Human Rights Council, in its resolution A/HRC/33/L.31 adopted on 27 September 2016, expressed deep concern at the continuous and accelerating deterioration of the human rights situation in Burundi; strongly condemned all violations of human rights, including mass arbitrary arrests and detentions, cases of torture and other cruel, inhuman and/or degrading treatment or punishment, extrajudicial killings, enforced disappearances, persecutions of and threats against members of the opposition and restrictions on the freedoms of expression, peaceful assembly and association; and stressed that all this had created a climate of intimidation and fear that paralysed the whole of society,

1. *Regrets* that no reply has been received from the National Assembly;
2. *Again deplores* the numerous and serious flaws in the proceedings that led to Mr. Radjabu's conviction and the systematic rejection by the competent authorities of all the appeals lodged to rectify them; *concludes* that, in this case, Burundi has failed to fulfil its international obligations in respect of ensuring a fair trial and the independence of the judiciary and combating torture;
3. *Notes* Mr. Radjabu's escape and the fact that the complainant has not provided any further information on the former's situation since that date; *considers* that it cannot continue examining his case or find a satisfactory solution under these circumstances, and *decides* to close Mr. Radjabu's case in accordance with article 25(i) and (ii) of its Procedure for the examination and treatment of complaints;
4. *Reiterates* its previous concerns about Mr. Mpawenayo's situation and *decides* to continue examination of his case in due course;
5. *Requests* the Secretary General to convey this decision to the parliamentary authorities, to the complainants and to any third party likely to be in a position to supply relevant information.