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147th IPU Assembly

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Governing Council
Item 14(c)

CL/212/14(c)-R.2
Luanda, 27 October 2023

Committee on the Human Rights of Parliamentarians

*Decisions adopted by the IPU Governing Council at its 212th session
(Luanda, 27 October 2023)*

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Democratic Republic of the Congo

*Decision adopted unanimously by the IPU Governing Council at its 212th session
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Jean Marc Kabund © Twitter

COD-150 – Jean Marc Kabund

Alleged human rights violations

- ✓ Threats, acts of intimidation
- ✓ Arbitrary arrest and detention
- ✓ Lack of due process in proceedings against parliamentarians
- ✓ Lack of due process at the investigation stage
- ✓ Violation of freedom of opinion and expression
- ✓ Failure to respect parliamentary immunity

A. Summary of the case

On 9 August 2022, Mr. Jean Marc Kabund, member of parliament and former First Deputy Speaker of the National Assembly, was arrested and prosecuted for defaming the authorities, public insults and spreading false rumours after he delivered a speech on 18 July 2022 where he criticized the President of the Republic.

Mr. Kabund was arrested after the Bureau of the National Assembly allegedly authorized proceedings against him by lifting his parliamentary immunity on 8 August 2022. The Bureau of the National Assembly had allegedly already criticized the member of parliament's speech in an official statement published on 21 July 2022.

The acts of which Mr. Kabund is accused are covered under Ordinance Law No. 300 of 16 December 1963 on defamation against the Head of State and other articles of the criminal law of the Democratic Republic of the Congo.

According to the complainant, the allegations against Mr. Kabund are a violation of his right to freedom of expression and are politically motivated given the growing political differences between the member of parliament and the party of President Tshisékédi to which Mr. Kabund belonged until he decided to join the opposition and create a new political party – *l'Alliance pour le changement* (the Alliance for Change) – on 18 July 2022. The complainant claims that the case is part of a political strategy aimed at intimidating and instrumentalizing justice against President Tshisékédi's political opponents.

On 12 August 2022, the Court of Cassation ordered that the member of parliament be placed under house arrest. However, this decision was never implemented. At the first hearing of the trial, which

Case COD-150

Democratic Republic of the Congo:
Parliament affiliated to the IPU

Victim: An opposition member of parliament

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

Submission of the complaint: August 2022

Recent IPU decision: February 2023

Recent IPU mission(s): - - -

Recent Committee hearing(s): Hearing with the delegation of the DRC at the 147th IPU Assembly (October 2023)

Recent follow-up:

- Communication from the authorities: Letter from the First Deputy Speaker of the Senate (September 2022)
- Communication from the complainant: September 2023
- Communications to the authorities: letters to the Speaker of the National Assembly (July and September 2023)
- Communication to the complainant: September 2023

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took place on 5 September 2022, Mr. Kabund's lawyers demanded that the said decision be implemented before proceeding with the trial, which was postponed at their request. On 12 September 2022, the date of the adjournment, Mr. Kabund did not attend the hearing for medical reasons. His lawyers reported that Mr. Kabund's health had deteriorated. The case was adjourned to 17 October 2022.

At the hearing on 14 November 2022, Mr. Kabund's lawyers raised an objection of unconstitutionality concerning the number of offences brought against him. While the National Assembly reportedly authorized proceedings against the member of parliament for only five offences, the Public Prosecutor prosecuted Mr. Kabund for 12 violations. Following the rejection of this objection by the Court of Cassation, Mr. Kabund's lawyers filed a complaint with the Constitutional Court. The proceedings were therefore suspended until 27 April 2023, when the Constitutional Court rejected Mr. Kabund's complaint on the grounds that it was admissible but unfounded and referred the case back to the Court of Cassation.

On 13 September 2023, the Court of Cassation sentenced Mr. Kabund to seven years' imprisonment for "defamation against the Head of State" and "spreading false rumours". Mr. Kabund's lawyers stressed that this sentence was unjust and excessive, adding that they had no other means of appeal due to the lack of any reform with respect to judicial proceedings applicable to members of parliament allowing the possibility of appeal.

At a hearing with the Committee on the Human Rights of Parliamentarians at the 147th IPU Assembly in October 2023, the Congolese delegation led by the First Deputy Speaker of the National Assembly stated that the National Assembly had followed the required procedure to protect the member of parliament's rights of defence, enabling him to continue to enjoy his immunities during the judicial investigation phase. At the end of this investigation, the Public Prosecutor's Office found that the offences committed by Mr. Kabund were sufficiently serious to require the lifting of his parliamentary immunity in order to prosecute him. However, before lifting his immunity, the Bureau of the National Assembly reportedly invited Mr. Kabund to meet with its members in the presence of a lawyer, an invitation he allegedly declined on two occasions. Instead, Mr. Kabund is said to have asked the Bureau to stay the proceedings against him, which the Bureau was unable to accommodate, considering that this request fell outside its remit. The President of the Bureau of the National Assembly therefore referred the matter to the plenary, which decided to lift Mr. Kabund's parliamentary immunity.

Asked about the severity of the sentence handed down against Mr. Kabund simply for making remarks, the First Deputy Speaker pointed out that, under Congolese law, judges have the discretionary power to impose sentences ranging from one to 10 years' imprisonment for similar offences. Thus, although the sentence handed down against Mr. Kabund appears severe, it remains within the limits of the law. Furthermore, the delegation pointed out that the National Assembly could not interfere with the Congolese justice system, in accordance with Article 149 of the Constitution, which enshrines the independence of the judiciary. The Congolese authorities nevertheless stressed the importance they attach to the right to freedom of expression, which should not be used to infringe the Constitution.

With regard to the political climate, the First Deputy Speaker stated that the Democratic Republic of the Congo was preparing to hold presidential elections on 20 December 2023, and asserted that the Congolese authorities were committed to these elections being fair, credible, transparent and inclusive, in accordance with the Congolese Constitution. Nevertheless, the delegation stressed that the Congolese authorities continued to encounter considerable security challenges in the east of the DRC, owing to the serious violations committed by rebel fighters belonging to the M23 (March 23 Movement) armed militia, which had resulted in significant loss of life and the internal displacement of several thousand people.

B. Decision

The Governing Council of the Inter-Parliamentary Union

1. *Thanks* the Congolese delegation, in particular the First Deputy Speaker of the National Assembly, for the information provided at the 147th IPU Assembly;

2. *Is concerned* at the severity of Mr. Kabund's sentence of seven years' imprisonment for making critical remarks against the Head of State and government policy; *considers* that, even if these remarks were provocative in nature, they were part of the exercise of his fundamental right to freedom of expression and were in no way accompanied by hostile acts aimed at disrupting public order;
3. *Reaffirms* that, despite the measures taken by the National Assembly to guarantee Mr. Kabund's rights of defence, his right to freedom of expression as a national member of parliament has not been sufficiently protected by the parliamentary authorities, who condemned his remarks without conducting an independent investigation into what he said; *calls on* the National Assembly, once again, to protect its members' right to freedom of expression, regardless of their political affiliation, by taking all necessary measures to strengthen protection of this fundamental right, including by repealing Ordinance Law No. 300 of 16 December 1963 on offences constituting defamation against the Head of State or by bringing it into line with international human rights standards, as soon as possible, in order to prevent the recurrence of such cases; and *wishes* to be kept informed in this regard;
4. *Deeply regrets* the absence of the possibility of appeal in legal proceedings against members of parliament of the Democratic Republic of the Congo; *recalls* that the possibility of appeal constitutes one of the main elements of due process; and *calls on* the Parliament of the Democratic Republic of the Congo to create this possibility of appeal, so that parliamentarians' right to a defence in legal proceedings is protected in the same way as that of other citizens of the Democratic Republic of the Congo;
5. *Encourages* the Congolese authorities in this election year, when tensions may lead to new violations against certain members of the National Assembly, to take all necessary steps to guarantee the fundamental rights of all parliamentarians, in particular the right to freedom of expression, in order to ensure that political debate reflects all opinions, including those critical of the Head of State and government policy;
6. *Expresses the wish* for a delegation from the Committee on the Human Rights of Parliamentarians to visit the DRC after the elections to meet the relevant Congolese authorities, in particular the Speaker of the National Assembly, the Prosecutor General and the Minister of Justice, as well as Mr. Kabund and relevant third parties, in order to promote a satisfactory settlement of Mr. Kabund's case; and *hopes* to receive a positive response and the National Assembly's support to this end, to enable the mission to take place under the best possible conditions;
7. *Requests* the Secretary General to convey this decision to the parliamentary authorities, the complainant and any third party likely to be in a position to supply relevant information;
8. *Requests* the Committee to continue examining the 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 212th session
(Luanda, 27 October 2023)*



© Papy Niango Iziamay Munshemvula



© Henri Mova Sakanyi



© Marie-Ange Mushobekwa Likulia

COD-151 – Papy Niango Iziamay Munshemvula
COD-152 – Henri Mova Sakanyi
COD-153 – Marie-Ange Mushobekwa Likulia

Alleged human rights violations

- ✓ Threats, acts of intimidation
- ✓ Lack of due process in proceedings against parliamentarians
- ✓ Lack of due process at the investigation stage
- ✓ No right of appeal
- ✓ Violation of freedom of opinion and expression
- ✓ Undue invalidation, suspension, revocation or other acts obstructing the exercise of the parliamentary mandate
- ✓ Abusive revocation or suspension of the parliamentary mandate
- ✓ Abusive application of parliamentary sanctions
- ✓ Other violations

A. Summary of the case

On 15 June 2022, the mandates of Mr. Papy Niango Iziamay Munshemvula (Mr. Niango), Mr. Henri Mova Sakanyi and Ms. Marie Ange Mushobekwa, then opposition members of parliament, were invalidated for absenteeism following a report issued by an *ad hoc* special committee created on 28 April 2022 and tasked with examining reports of unauthorized and unjustified absences at National Assembly plenary sittings by several members of parliament, including the three individuals.

The National Assembly reportedly adopted the conclusions of the special committee at a closed plenary sitting held on 15 June 2022, at the end of which it invalidated the parliamentary mandates of the three individuals, despite them having submitted proof of absence for medical reasons. The plenary sitting allegedly ignored this proof and considered that their absence from two consecutive sittings justified the invalidation of their mandates. Furthermore, the invalidation decision was taken in violation of Articles 19(3) and 61 of the Constitution, which guarantee the right of defence, since the National Assembly adopted the conclusions of the special committee's report without having first

Case COD-COLL-04

Democratic Republic of the Congo:
Parliament affiliated to the IPU

Victims: Three opposition members of parliament (two male and one female)

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

Submission of the complaints: October 2022 and January 2023

Recent IPU decision: March 2023 (concerns Mr. Niango alone)

Recent IPU mission(s): - - -

Recent Committee hearing(s): Hearing with the delegation of the DRC at the 147th IPU Assembly (October 2023)

Recent follow-up:

- Communication from the authorities: - - -
- Communication from the complainant: August 2023
- Communications to the authorities: July and September 2023
- Communication to the complainant: August 2023

heard the three individuals concerned in plenary sitting when the report was adopted on 15 June 2022. It is to be noted that the three individuals were heard by the committee.

Furthermore, the National Assembly reportedly decided to submit the invalidation of the three individuals' mandates to voting by a show of hands, in disregard of rule 93(3) of the Standing Orders, which stipulates that "in the event of deliberations concerning individuals, the vote shall be by secret ballot". The three individuals lodged an application for reconsideration by the National Assembly against the invalidation of their mandates. No action was taken in response to the applications.

According to the complainant, the invalidation procedure and the creation of the special committee to examine the unjustified absences of the three individuals are an attempt to silence the opposition.

At a hearing with the Committee on the Human Rights of Parliamentarians at the 147th IPU Assembly, in October 2023, the Congolese delegation, led by the First Deputy Speaker of the National Assembly, said that in view of the many cases of absenteeism at the National Assembly, the Assembly had decided to establish a special committee responsible for examining the unjustified absences of over 100 members of parliament. When the Committee had completed its work, the mandates of only 10 members of parliament had been invalidated under Article 110(6) of the Congolese Constitution, according to which "a member of parliament's mandate shall end in the case of his unjustified and unauthorized absence from more than a quarter of the meetings of a session". Those members of parliament, including the three covered by the present decision, had reached the total number of unauthorized absences and thus had their mandates invalidated in accordance with this article.

According to the First Deputy Speaker, the committee noted that the members of parliament whose mandates were invalidated had submitted fake medical supporting documents and fake invitations to receive medical care abroad. In the same way as Mr. Niango, Mr. Sakanyi and Ms. Mushobekwa had the opportunity, according to the delegation, to express their views to the special committee and to present their defence. As regards the plenary decision to vote on the invalidation of their mandates by show of hands rather than by secret ballot, the First Deputy Speaker said that the plenary had the discretionary power to decide on the appropriate voting method.

With regard to the political climate, the First Deputy Speaker stated that the Democratic Republic of the Congo was preparing to hold presidential elections on 20 December 2023, and asserted that the Congolese authorities were committed to the elections being fair, credible, transparent and inclusive, in accordance with the Congolese Constitution. Nevertheless, the delegation stressed that the Congolese authorities continued to encounter considerable security challenges in the east of the DRC, owing to the serious violations committed by rebel fighters belonging to the M23 (March 23 Movement) armed militia, which had resulted in significant loss of life and the internal displacement of several thousand people.

B. Decision

The Governing Council of the Inter-Parliamentary Union

1. *Thanks* the Congolese delegation, in particular the First Deputy Speaker of the National Assembly, for the information provided at the 147th IPU Assembly;
2. *Notes* that the complaints in the cases relating to Mr. Henri Mova Sakanyi (Mr. Sakanyi) and Ms. Marie-Ange Mushobekwa Likulia (Ms. Mushobekwa) are admissible, considering that the complaints: (i) were submitted in due form by a qualified complainant under section I.1(a) of the Procedure for the examination and treatment of complaints (Annex I of the revised Rules and Practices of the Committee on the Human Rights of Parliamentarians); (ii) concern two incumbent members of parliament at the time of the initial allegations; and (iii) that the complaint concerns threats, acts of intimidation; lack of due process in proceedings against parliamentarians; lack of due process at the investigation stage; lack of right of appeal; violation of freedom of opinion and expression; undue invalidation, suspension, revocation or other acts obstructing the exercise of the parliamentary mandate; abusive revocation or suspension of the parliamentary mandate; and abusive application of parliamentary sanctions, which are allegations falling under the Committee's mandate; and *notes* that the Committee decided to merge its consideration of the situation of these two individuals with the case relating to

Mr. Niango, given the similar nature of the alleged violations and the proceedings taken out against them;

3. *Remains concerned* at the fact that a copy of the report by the special committee responsible for examining cases of unauthorized and unjustified absences was not given to Mr. Niango, Mr. Sakanyi or Ms. Mushobekwa, thus depriving them of their right to know the exact reason why the committee decided to recommend to the National Assembly that their mandates be invalidated; *regrets* that the National Assembly did not respond to the requests of the two parliamentarians to be given a copy of the said report, in violation of the adversarial principle, according to which all parties have the right to know the material and legal arguments and evidence on the basis of which they shall be judged; therefore *calls on* the authorities to provide the complainants and the Committee with a copy of the said report, in order to understand the exact reasons why their mandates were invalidated;
4. *Notes with concern* that the situation of Mr. Niango, Mr. Sakanyi and Ms. Mushobekwa is not an isolated case, since cases of invalidation for various reasons have previously been submitted to it, and remain under examination; *also notes* that their cases are set in a political context that is hostile to dissident opposition voices; and *reiterates* that invalidation of a member of parliament's parliamentary mandate must follow a clear procedure that complies with the provisions of the National Assembly's standing orders and the principles of the Constitution;
5. *Calls on* the parliamentary authorities to consider the applications for reconsideration submitted by Mr. Niango, Mr. Sakanyi and Mushobekwa as soon as possible and to grant them the required reparation if the alleged violations are borne out; and *encourages* the Congolese authorities, in this election year where tensions could lead to new violations against members of the opposition, to take all necessary measures to guarantee the fundamental rights of all members of the National Assembly, former or current, regardless of their political affiliation, in order to guarantee that invalidation of the parliamentary mandate is not used to remove members of parliament because of their political ideas;
6. *Reiterates* its deep concern at the lack of possibility of appeal in the judicial proceedings relating to members of parliament in the Democratic Republic of the Congo and recalls that the existence of the possibility of appeal is one of the main safeguards of a fair trial; therefore *calls again on* the Congolese Parliament to establish the possibility of appeal so that a member of parliament's right to a defence in judicial proceedings is protected in the same way as that of other Congolese citizens;
7. *Expresses the wish* for a delegation from the Committee on the Human Rights of Parliamentarians to visit the DRC after the elections to meet with the competent Congolese authorities, in particular the Speaker of the National Assembly, the Public Prosecutor and the Minister of Justice, as well as Mr. Niango, Mr. Sakanyi and Ms. Mushobekwa, and relevant third parties, to help settle these cases in a satisfactory manner; and *hopes* to receive a positive response and support from the National Assembly to this end, to ensure the mission is conducted in the best possible conditions;
8. *Requests* the Secretary General to convey this decision to the relevant authorities, the complainant and any third party likely to be in a position to supply relevant information;
9. *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 212th session
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Chérubin Okende Senga © Complainant

COD-158 – Chérubin Okende Senga

Alleged human rights violations

- ✓ Murder
- ✓ Abduction

A. Summary of the case

On 13 July 2023, Mr. Chérubin Okende – opposition member of parliament, former Minister of Transport and spokesperson for the *Ensemble pour la République* (Together for the Republic), a political party led by opposition candidate in the presidential elections Mr. Moïse Katumbi – was found murdered in his vehicle, shot in the head. The vehicle was abandoned on a road near Kinshasa city centre. Mr. Okende had reportedly disappeared the day before he was killed.

The same day, the Public Prosecutor's Office at Kinshasa-Gombe High Court, on the instruction of the Prosecutor General at the Court of Cassation, opened a murder investigation against persons unknown. However, the circumstances and possible motives for Mr. Okende's murder have not yet been clarified.

Mr. Chérubin Okende's murder is set within a particularly difficult context for political opponents in the Democratic Republic of the Congo, where the democratic space is shrinking and violations are committed against those speaking out against the incumbent regime. This crime also raises many questions relating to safety in the DRC, particularly the safety of political opponents.

At a hearing before the Committee on the Human Rights of Parliamentarians at the 147th IPU Assembly in October 2023, the Congolese delegation, chaired by the First Deputy Speaker of the National Assembly, said that the Speaker of the National Assembly had expressed his deep concern at the murder of Mr. Okende, in his speech marking the opening of the autumn session in September 2023. A number of members of parliament, including the First Deputy Speaker, had visited Mr. Okende's family to support them, and the National Assembly continued to provide financial support to his family and to the group of lawyers in charge of his case.

The First Deputy Speaker also confirmed that the Public Prosecutor had opened a judicial investigation, seeking the assistance of international experts from Belgium, South Africa and the United Nations Organization Stabilization Mission in the DRC, who agreed to collaborate with the

Case COD-158

Democratic Republic of the Congo:
Parliament affiliated to the IPU

Victim: An opposition member of parliament

Qualified complainant(s): Section 1.1(a) of the Committee Procedure (Annex I)

Submission of the complaint: July 2023

Recent IPU decision(s): - - -

Recent IPU mission(s): - - -

Recent Committee hearing: Hearing with the delegation of the DRC at the 147th IPU Assembly (October 2023)

Recent follow-up:

- Communication(s) from the authorities: - - -
- Communication from the complainant: July 2023
- Communications to the authorities: letters to the Speaker of the National Assembly (July and September 2023)
- Communication to the complainant: September 2023

Congolese authorities on this case. The delegation said that the report drawn up at the end of this judicial investigation would be published very shortly (the following week) and that the National Assembly would send a copy of the report to the Committee as soon as it was available.

With regard to the political climate, the First Deputy Speaker stated that the Democratic Republic of the Congo was preparing to hold presidential elections on 20 December 2023, and asserted that the Congolese authorities were committed to these elections being fair, credible, transparent and inclusive, in accordance with the Congolese Constitution. Nevertheless, the delegation stressed that the Congolese authorities continued to encounter considerable security challenges in the east of the DRC, owing to the serious violations committed by rebel fighters belonging to the M23 (March 23 Movement) armed militia, which had resulted in significant loss of life and the internal displacement of several thousand people.

B. Decision

The Governing Council of the Inter-Parliamentary Union

1. *Thanks* the Congolese delegation, in particular the First Deputy Speaker of the National Assembly, for the information provided at the 147th IPU Assembly;
2. *Notes* that the complaint concerning the case of Mr. Chérubin Okende is admissible, considering that the complaint: (i) was submitted in due form by a qualified complainant under section I.1(a) of the Procedure for the examination and treatment of complaints (Annex I of the revised Rules and Practices of the Committee on the Human Rights of Parliamentarians); (ii) concerns an incumbent member of parliament at the time of the initial allegations; and deals with (iii) allegations of murder and abduction, allegations that fall under the Committee's mandate;
3. *Is shocked* at the murder of opposition member of parliament Mr. Chérubin Okende, an unprecedented act of violence in the Democratic Republic of the Congo, which takes place in a period of political tension in the run-up to the presidential elections scheduled for December 2023; and *considers* that the commission of such an act must incur the adoption of all necessary measures to identify and punish the perpetrators;
4. *Notes with satisfaction* the efforts made by the Congolese authorities to ensure that this murder does not go unpunished, including through the opening of a judicial investigation by the Public Prosecutor, and their willingness to cooperate with international experts from Belgium, South Africa and the United Nations Organization Stabilization Mission in the DRC; *is confident* that the means employed to conduct the investigation will produce concrete results in the coming weeks, including information on any persons behind the crime and the motive for the crime; and *wishes* to receive a copy of the investigation report as soon as it becomes available;
5. *Encourages* the Congolese authorities, in this election year when tensions may lead to new violations against certain members of the National Assembly, to take all necessary measures to guarantee the physical integrity and fundamental rights of all members of parliament, former and current, whatever their political affiliation, in order to ensure that a similar crime never occurs again;
6. *Expresses the wish* for a delegation from the Committee on the Human Rights of Parliamentarians to visit the DRC after the elections to meet with the Congolese authorities, in particular the Speaker of the National Assembly, the Public Prosecutor and the Minister of Justice, in order to accompany and support the search for justice in the case at hand; *considers* it essential that the delegation also meets with Mr. Okende's family and lawyers and relevant third parties; and *hopes* to receive a positive response from and the support of the National Assembly to ensure the mission is conducted in the best possible conditions;
7. *Requests* the Secretary General to convey this decision to the relevant authorities, the complainant and any third party likely to be in a position to supply relevant information;
8. *Requests* the Committee to continue examining this case and to report back to it in due course.

Eswatini

*Decision adopted unanimously by the IPU Governing Council at its 212th session
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Members of the Royal Eswatini Police Service (REPS) monitor affiliates of the Trade Union Congress of Eswatini (TUCOSWA) as they sing political slogans in central Manzini, on 28 October 2021 during a pro-democracy protest. Michele Spatari - AFP

SWZ-02 – Mduduzi Bacede Mabuza
SWZ-03 – Mthandeni Dube
SWZ-04 – Mduduzi Gawuzela Simelane

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
- ✓ Excessive delays
- ✓ Violation of freedom of opinion and expression
- ✓ Violation of freedom of assembly and association
- ✓ Failure to respect parliamentary immunity
- ✓ Other acts obstructing the exercise of the parliamentary mandate

A. Summary of the case

Parliamentarians Mduduzi Bacede Mabuza and Mthandeni Dube were arrested in the evening of 25 July 2021 and have been held in detention ever since, first at Mbabane police station and then at the Matsapha Correctional Centre. A third parliamentarian, Mr. Mduduzi Simelane, fled the country before an arrest warrant could be implemented. Mr. Mabuza and Mr. Dube were charged under the Suppression of Terrorism Act, two murder charges and a charge for contravening COVID-19 regulations. The accused made several bail applications, which were all rejected.

The legal action against the parliamentarians was taken in the following context. In May 2021, calls for political reform started circulating on various platforms across Eswatini, with the aforesaid three parliamentarians also

Case SWZ-COLL-01

Eswatini: Parliament affiliated to the IPU

Victims: Three independent members of parliament

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

Submission of complaint: January 2022

Recent IPU decision: March 2023

Recent IPU mission: Trial observation (November 2022)

Recent Committee hearing: Hearing with the delegation of Eswatini to the 145th IPU Assembly in Kigali (October 2022)

Recent follow-up:

- Communications from the authorities: Letters from the Clerk of the House of Assembly (October 2023)
- Communication from the complainant: September 2022
- Communication to the authorities: Letter to the Speaker of the House of Assembly (March 2023)
- Communication to the complainant: October 2023

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advocating for these changes. To prove that these members of parliament had the mandate from their constituencies to make this call resulted in a series of petitions being delivered to parliament in support of the call for change. Protesters were calling for constitutional and political reforms, were lamenting the Government's reported failure to deliver basic services to its citizens, demanded responses to socioeconomic challenges, and invoked alleged ill-treatment by police. Petitions were delivered to various *tinkhundla* centres, predominantly by young people, to their members of parliament as an endorsement of the call for constitutional and political reforms. These calls were heightened during protests against alleged "police brutality" following the death of a University of Eswatini law student, Mr. Thabani Nkomonye. On 24 June 2021, the then acting Prime Minister, Deputy Prime Minister, Mr. Themba N. Masuku, issued a ban on the delivery of these petitions, saying that this was "a conscious decision to maintain the rule of law and de-escalate tensions that had turned the exercise into violence and disorder". Protesters continued to deliver petitions in spite of the ban and were blocked by the police.

In its report released at the very end of June 2021 regarding the events that had occurred earlier that month, the Eswatini Commission on Human Rights and Public Administration (the Commission) – which is Eswatini's national human rights institution – found that human rights violations and abuses had been perpetrated during the unrest.

According to the complainant, the charges against Mr. Mabuza, Mr. Dube and, potentially, Mr. Simelane serve as reprisals and aim to silence them, given that they have been at the forefront of the aforesaid demands for democratic reforms in Eswatini, an absolute monarchy led by King Mswati III for over 30 years, where political parties are not legally recognized.

Mr. Rahim Kahn, a distinguished attorney and former acting chief magistrate in Botswana, with over 40 years of legal experience, was designated by the IPU to attend and follow the final trial proceedings against Mr. Mabuza and Mr. Dube, namely those which took place from 8 to 10 and 14 to 16 November and on 13 December 2022.

In his report, the trial observer states that, "[T]he basis of the charges were statements made by the two accused persons in which they encouraged members of the public to deliver petitions, and to reject the appointment of the acting Prime Minister. Neither of the accused persons explicitly encouraged or incited any acts of violence but were arrested on charges of acts of terrorism and sedition because they expressed a lack of support for the appointment of the acting Prime Minister. They expressed an opinion that proved to be controversial, but they neither encouraged violence nor incited public displays of disobedience. Their arrest and detention was an infringement of their constitutional rights to freedom of thought and conscience". The trial observer furthermore states that, "[T]he two accused persons made statements at a public gathering in which they expressed their opinions on the acting Prime Minister. These opinions did not include explicitly hateful speech, nor explicit incitement of acts of public disorder or acts of terrorism. Therefore, their arrest and detainment on the basis of these statements was essentially punishment for their exercise of the rights to freedom of expression and opinion".

The trial observer furthermore states that, "It is submitted that the present matter has similarly also not been properly handled. It was within the State's authority to arrest and detain the two accused persons for making statements which the authorities believed to be detrimental to public stability and contributing towards acts of terrorism, acts of sedition and other acts of violence. However, the delay between the accused's detention and their first opportunity to make an application for bail was an infringement of their right to personal liberty and freedom of movement. Furthermore, the nature of their statements did not justify their detention for 15 months in the interim between their arrest and the adjudication upon their matter. It is submitted that their arrest and extended detention was an infringement of their rights to freely express themselves, and their right not to be arbitrarily detained".

The trial observer moreover points out that, "[T]he two members of parliament have been denied bail essentially as they are considered flight risks, notwithstanding their official positions as members of parliament, have fixed assets in the country, have clean records, have not interfered with witnesses and are willing to offer a sum of money to secure their attendance. It appears extremely surprising that their bail has been consistently refused".

In his general comments and assessment of the trial, the trial observer stated that, "the trial is being continuously postponed, mainly at the instance of the Crown", and that the judge "does not direct any detailed questions to the Crown ... and grants them far too much latitude to conduct the trial as they wish".

On 31 January 2023, the defence and the Crown Prosecutor made final submissions in the criminal proceedings against Mr. Mabuza and Mr. Dube, after which the judge in the case reserved judgment. On 1 June 2023, the judge found them guilty of all charges, except for the charge related to the COVID-19 regulations with respect to Mr. Mabuza, and reserved sentencing for a hearing in December 2023. The terrorism charge relates to the accusation that the two parliamentarians incited the population to revolt against the constitutionally elected government. The murder charges relate to the death of two people who were run over by a motor vehicle that hit seven people at Nkwalini at the roadblock. The judge acknowledged that the two parliamentarians were nowhere near the scene of the crime when the two victims died, and that they had at no point advocated for violence during their calls to the people. The judge nevertheless found them guilty on the basis of the principle of *dolus eventualis* – foresight and foreseeability – given that they should have foreseen the consequences of their actions, bearing in mind that some protests in Eswatini had become violent. It should be noted, however, that with regard to both the terrorism and murder charges, an analysis of the parliamentarians' calls to the people shows that they simply demanded constitutional and institutional change and at no point asked for the people to do so in a violent and unlawful manner.

In the early hours of 22 September 2022, the two detained parliamentarians were allegedly assaulted by prison guards who entered their cells and started beating them up for no reason. According to the Speaker, an inquiry into the matter has been opened in accordance with the Correctional Services Act, No. 13 of 2017, read in conjunction with the Prison Regulations of 1965. The former Speaker stated that, "We are eager for the resultant recommendations and further action which the inquiry may further recommend. The legal processes have not been finalized and we hope that the above allegations shall be adequately addressed". It is alleged that on 29 September 2023, Mr. Mabuza was again beaten by a correctional services officer.

In response to the IPU's wish to send a delegation from the Committee on the Human Rights of Parliamentarians to Eswatini, at a hearing held at the 145th IPU Assembly in October 2022 the then Speaker responded that he would welcome such a delegation. Subsequent attempts by the IPU to organize the mission have not yet borne fruit with the Eswatini authorities, who indicated early on that important national events prevented them from receiving the mission before the end of the first half of 2023. In response to the most recent IPU letter about the matter, on 5 March 2023, the Speaker stated in writing that, "The concern of the IPU Committee on the Human Rights of Parliamentarians is acknowledged and appreciated. The Parliament of the Kingdom of Eswatini is currently addressing a decision of SADC Heads of States on the same matter. It is our well-considered view that the IPU Committee shares similar sentiments with the SADC Troika and therefore would be satisfied to receive a report detailing all processes to be undertaken towards our national dialogue. Suffice to mention that some major processes and commitments are already ongoing. It is against this background that we kindly request your indulgence in bearing with us on this issue".

On the night of 21 January 2023, Eswatini human rights defender and lawyer Mr. Thulani Maseko – the former lawyer representing both parliamentarians – was killed. United Nations and African Union experts immediately condemned the killing as "abhorrent" and demanded an impartial investigation. Mr. Maseko was a member of Lawyers for Human Rights Swaziland and chairperson of the Multi-Stakeholder Forum, a coalition of political opposition groups and civil society activists calling for constitutional reform in Eswatini. His murder remains unresolved to this day.

Parliamentary elections took place on 29 September 2023. As political parties are banned in Eswatini, candidates ran individually. Most of those who were elected are seen as loyal to the King.

Since the protests broke out in Eswatini in 2021, SADC and other international partners have strongly encouraged the Eswatini authorities to conduct a meaningful, substantive and inclusive national dialogue to discuss options for democratic and institutional reforms. Several voices in Eswatini have stated, however, that the way in which the authorities are setting up the dialogue is leaving full control in the hands of the King by framing it within the strict constraints of "Sibaya" – the traditional engagement of the King with his people. The Multi-Stakeholder Forum has rejected Sibaya as a vehicle for political dialogue. Moreover, they say that Mr. Thulani Maseko's absence as the

chairperson of the Multi-Stakeholder Forum has seriously impeded the effectiveness of different voices coming together to contribute to the national dialogue.

B. Decision

The Governing Council of the Inter-Parliamentary Union

1. *Thanks* the Clerk of the House of Assembly for his recent letter;
2. *Is deeply concerned* that Mr. Mabuza and Mr. Dube were found guilty as a result of a trial that had shown serious deficiencies, as identified in the trial observer's report; *considers* that this report, and the reasons given by the judge for the verdict she reached, give serious weight to the complainant's assertion that the criminal case came in response to the parliamentarians' public appeal to strengthen democracy, which falls squarely within the legitimate exercise of their right to freedom of expression; *is convinced*, therefore, that both men should never have been detained and prosecuted in the first place; *sincerely hopes* that the matter will still be resolved, in a way that is in line with applicable human rights standards, before the men are sentenced; and *is eager* to be kept informed of developments in this regard;
3. *Is deeply concerned* that Mr. Mabuza was reportedly again the victim of an assault in detention; *deplores* that it has not received any report on the investigation that was said to have been initiated with regard to the alleged assault in September 2022 of the two parliamentarians in detention; *reiterates its views* that a situation of *de facto* impunity can only facilitate, if not encourage, further crimes, since perpetrators know they will be shielded from legal action; *urges* the authorities to carry out effective and independent investigations into both alleged assaults, to take whatever measures are necessary to establish accountability, and to avoid a repeat of these incidents; and *wishes* to receive detailed information on the measures taken to this effect;
4. *Notes with great interest* the efforts under way to have a national dialogue in Eswatini; *considers* that such a dialogue can only be fully successful if all stakeholders have the opportunity to contribute to it freely and effectively; *wishes* to receive official information on how the organizers of the dialogue plan to achieve this; and *affirms* that the IPU stands ready to provide any assistance that may be considered useful in this regard;
5. *Sincerely believes* that, over and above ongoing and new efforts to strengthen democracy in Eswatini, a mission by the IPU Committee on the Human Rights of Parliamentarians, which would include meetings with all the relevant authorities, a meeting with the two members of parliament and their lawyers, along with meetings with relevant third parties, would offer a useful opportunity to discuss the issues that have emerged in the case at hand and to examine possible solutions; *sincerely hopes*, therefore, that the Eswatini authorities will soon be able to receive this mission; and *requests* the Secretary General to continue to engage with the newly elected parliamentary authorities of Eswatini with a view to dispatching the mission as soon as possible;
6. *Requests* the Secretary General to convey this decision to the Speaker of the House of Assembly, the complainant and any third party likely to be in a position to supply relevant information;
7. *Requests* the Committee to continue examining this case and to report back to it in due course.

Iraq

Decision adopted unanimously by the IPU Governing Council at its 212th session (Luanda, 27 October 2023)



Mr. Al-Alwani five weeks after his sentencing, photo dated 2 January 2015
© Photo courtesy of Mr. Ahmed Jamil Salman Al-Alwani's family

IRQ-62 – Ahmed Jamil Salman Al-Alwani

Alleged human rights violations

- ✓ Torture, ill-treatment and other acts of violence
- ✓ Arbitrary arrest and detention
- ✓ Failure to respect parliamentary immunity
- ✓ Lack of fair trial proceedings

A. Summary of the case

Mr. Al-Alwani was arrested on 28 December 2013 during a raid conducted by Iraqi security forces on his home in Ramadi, in the Al-Anbar Governorate. His arrest was reportedly in retaliation for his outspoken support of the grievances of the Sunni population and his vocal opposition to the Iraqi Prime Minister at the time, Mr. Nouri Al-Maliki. The case of Mr. Al-Alwani has also to be seen against the backdrop of sectarian tension and violence in the country.

Mr. Al-Alwani was initially held in secret detention centres, was exposed to ill-treatment and torture, did not receive a fair trial and saw his right to mount an adequate defence violated. The United Nations Working Group on Arbitrary Detention confirmed these allegations in its 2017 report (Opinion No. 36/2017), particularly following Mr. Al-Alwani's conviction in 2014 for murder and incitement to sectarian violence and his sentencing in 2016 to the death penalty under the Anti-Terrorism Law. Mr. Al-Alwani's lawyers have appealed the court rulings, which are still under review in cassation proceedings, as confirmed by the complainants and the President of the Supreme Judicial Council. Under the General Amnesty Law No. 27 of 2016, Mr. Al-Alwani submitted applications for pardon in three cases, which were subsequently rejected.

In 2020 and 2022, a parliamentary delegation and representatives from the Human Rights Directorate of the Ministry of Justice visited Mr. Al-Alwani at the Al-Kadhimiya detention centre, located in northern

Case IRQ-62

Iraq: Parliament affiliated to the IPU

Victim: A male opposition member of parliament

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

Submission of complaint: December 2013

Recent IPU decision: November 2021

IPU mission: August 2023

Recent Committee hearing: Hearing with the Iraqi delegation during the 147th IPU Assembly (October 2023)

Recent follow up:

- Communications from the authorities: Message from the Department of Public Relations and Parliamentary Protocols (July 2022); letter from the Deputy Secretary General conveying a letter from the Ministry of Justice (June 2022)
- Communication from the complainants: October 2022
- Communications to the authorities: Letters to the Speaker of the Council of Representatives (February 2023)
- Communication to the complainants: October 2022

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Baghdad, to ensure that he was in good health, given that he had allegedly not received visits in the previous four months due to the COVID-19 pandemic. The Ministry's Human Rights Directorate's team found that Mr. Al-Alwani was in good health and was not suffering from any chronic diseases and stated that he had not been subjected to torture.

During a hearing with the IPU Committee on the Human Rights of Parliamentarians at the 146th IPU Assembly in March 2023, the Iraqi delegation stated that the Human Rights Committee of the Council of Representatives had visited Mr. Al-Alwani on 8 March 2023. This was not the delegation's first visit to Mr. Al-Alwani, whose case continues to be monitored by the Council of Representatives through its Human Rights Committee. The latter had expressed its concerns about this case, given the allegations of torture, mistreatment and abuse, unfair proceedings, non-respect of parliamentary immunity and the political dimension of the charges levelled against Mr. Al-Alwani. Although Mr. Al-Alwani's detention conditions have improved, the delegation underlined that he is still facing four life sentences and two death sentences as a result of politically motivated charges.

Regarding the visit carried out by the Human Rights Directorate of the Ministry of Justice in 2022, the Iraqi delegation stated that the visit was the result of the IPU Committee's work on the case. Its most recent decision on Mr. Al-Alwani's situation was referred to the Minister of Justice, who had formed a committee in charge of monitoring the case and instructed it to visit the former parliamentarian in detention. The delegation thanked the IPU Committee for its work on the case and expressed its hope that both the Committee's work and the efforts made by the Iraqi authorities so far would lead to the release of Mr. Al-Alwani and the final resolution of his case.

The delegation also recalled that, prior to his arrest in 2013, Mr. Al-Alwani had given a speech in which he had allegedly insulted Shia leaders. The Council of Representatives had therefore created a committee to investigate the incident and reportedly found that Mr. Al-Alwani had not insulted Shia leaders or the Shia community. This incident was used by Mr. Al-Alwani's political opponents to garner hatred against him and incite sectarian tensions and violence in the country. However, the Committee has yet to receive a copy of the report from the investigative committee with its findings.

Following several requests by the IPU Committee, the Council of Representatives of Iraq welcomed a delegation for its first official visit to Iraq in August 2023 to promote a satisfactory resolution of Mr. Al-Alwani's case.

As part of its findings, the Committee welcomed the Iraqi authorities' openness to resolving Mr. Al-Alwani's case, including the steps taken by the judicial authorities, which have deliberately stalled the case before the court of cassation, and therefore the execution of the death sentence, to enable a tribal resolution that would pave the way for a pardon. However, while the Committee acknowledges the right of the family of the soldier killed during the raid conducted against Mr. Al-Alwani to reparation and financial compensation pursuant to Iraqi laws, it also found that owing to the serious violations committed against Mr. Al-Alwani, including the breach of his parliamentary immunity, his incommunicado detention in a secret location, allegations of torture that have never been investigated, and his confession allegedly signed under torture but accepted as a primary source of evidence by the Central Criminal Court, the judicial authorities should have declared a mistrial and released Mr. Al-Alwani immediately.

During a hearing with the Committee at the 147th IPU Assembly in October 2023, the Iraqi delegation thanked the Committee for its mission report and pledged to continue monitoring Mr. Al-Alwani's case while pushing for his release. Considering the information collected during the mission regarding the transfer of Mr. Al-Alwani to another detention facility, the delegation reiterated its commitment to respecting Mr. Al-Alwani's detention conditions, including by placing him in a private cell and ensuring the respect of his visiting rights.

B. Decision

The Governing Council of the Inter-Parliamentary Union

1. *Thanks* the Iraqi authorities, in particular the parliamentary authorities, for their cooperation during the recent mission by the Committee on the Human Rights of Parliamentarians to Iraq and for facilitating its smooth conduct, including the meetings with Mr. Al-Alwani in prison; and

thanks the Iraqi delegation to the 147th IPU Assembly for meeting with the Committee and commitment to protecting Mr. Al-Alwani's detention conditions should he be transferred to another detention facility;

2. *Fully endorses* the findings and recommendations contained in the mission report;
3. *Welcomes* the Iraqi authorities' openness to resolving the case of Mr. Al-Alwani; and *notes with satisfaction* that political figures across the board have expressed their solidarity with Mr. Al-Alwani and their willingness to help settle his case using all possible means at their disposal;
4. *Takes note* of the Iraqi laws and customs that are relevant in this case; *urges*, nevertheless, the judicial authorities to lift the death sentence passed against Mr. Al-Alwani, to release him promptly and grant him appropriate compensation in light of the flawed legal proceedings and the abuses he suffered in the early stages of his detention;
5. *Calls on* the Iraqi authorities to end impunity by investigating Mr. Al-Alwani's allegations of torture immediately and holding accountable those responsible, given the information collected during the mission, namely Mr. Al-Alwani's statement that he still remembers the faces of his tormentors, which indicates that the authorities could have identified the perpetrators at the time and could still do so;
6. *Reiterates its calls on* the executive authorities in Iraq, political and religious leaders across the board and all members of parliament, regardless of their political affiliation, to stand united for the protection and promotion of human rights by taking up Mr. Al-Alwani's case before the highest authority in the country to promote his release, uphold his human rights and ensure that he will not be executed as a result of politically motivated charges;
7. *Stands ready* to continue supporting the Iraqi authorities' efforts in promoting a satisfactory resolution of Mr. Al-Alwani's case, including by carrying out a follow-up mission to Baghdad to meet with political and religious leaders whose influence could help resolve the case and send a strong message to the international community about Iraq's willingness to promote diversity, peace and justice for all Iraqis irrespective of their religious affiliation; and *calls on* the parliamentary authorities, particularly the Committee on the Human Rights of the Council of Representatives, the advisers to the Prime Minister on human rights and tribal affairs, to take a leading role in promoting a tribal resolution of Mr. Al-Alwani's case and to keep the Committee informed of any progress achieved on that front;
8. *Requests* the Secretary General to convey this decision to the Iraqi parliamentary authorities, the Prime Minister, the President of the Supreme Judicial Council, the complainants and any third party likely to be in a position to provide relevant information;
9. *Requests* the Committee to continue examining this case and to report back to it in due course.

Myanmar

*Decision adopted unanimously by the IPU Governing Council at its 212th session
(Luanda, 27 October 2023)*



Prison officials stand outside Insein prison in Yangon on 12 February 2022| STRINGER/AFP

Parliamentarians who were arbitrarily detained:

| | |
|---------------------------------|----------------------------------|
| MMR-267 - Win Myint | MMR-318 - Ba Myo Thein |
| MMR-268 - Aung San Suu Kyi (Ms) | MMR-319 - Soe Win (a) Soe Lay |
| MMR-269 - Henry Van Thio | MMR-320 - U Mann Nyunt Thein |
| MMR-270 - Mann Win Khaing Than | MMR-321 - Khin Myat Thu |
| MMR-272 - Tun Hein | MMR-323 - Hung Naing |
| MMR-274 - Than Zin Maung | MMR-324 - Shwe Pon (Ms.) |
| MMR-275 - Dr. Win Myat Aye | MMR-325 - Wai Lin Aung |
| MMR-276 - Aung Myint | MMR-326 - Pyae Phyoo |
| MMR-277 - Ye Khaung Nyunt | MMR-327 - Mr. Lin Oo |
| MMR-278 - Dr. Myo Aung | MMR-328 - Kyaw Lin |
| MMR-280 - Win Mya (Ms.) | MMR-329 - Tin Htwe |
| MMR-281 - Kyaw Min Hlaing | MMR-330 - Aung Myint Shain |
| MMR-285 - Mya Thein | MMR-331 - Pital Aung |
| MMR-286 - Tint Soe | MMR-332 - Ohn Win |
| MMR-287 - Kyaw Thaug | MMR-333 - Ma Lay (Ms.) |
| MMR-309 - Aung Kyaw Oo | MMR-334 - Win |
| MMR-310 - Naung Na Jatan | MMR-335 - Hla Than |
| MMR-311 - Myint Oo | MMR-336 - Tun Wai |
| MMR-312 - Nan Mol Kham (Ms.) | MMR-337 - Win Myint Aung |
| MMR-313 - Thant Zin Tun | MMR-338 - Aung Lin |
| MMR-314 - Maung Swe | MMR-339 - Aung Min Tun |
| MMR-315 - Thein Tun | MMR-340 - Khin Sain Hlaing (Ms.) |
| MMR-316 - Than Htut | MMR-341 - Aung Sein |
| MMR-317 - Aung Oo | MMR-342 - Hla Moe |

Parliamentarians who were subjected to threats and intimidation:

| | |
|------------------------------|---------------------------------|
| MMR-283 - Okka Min | MMR-302 - Myat Thida Htun (Ms.) |
| MMR-291 - Htun Myint | MMR-303 - Saw Shar Phaung Awar |
| MMR-292 - Naing Htoo Aung | MMR-304 - Robert Nyal Yal |
| MMR-293 - Dr. Wai Phyoo Aung | MMR-305 - Lamin Tun (aka Aphyo) |
| MMR-298 - Nay Myo | MMR-306 - Aung Kyi Nyunt |

MMR-299 - Zaw Min Thein
MMR-300 - Win Naing
MMR-301 - Zay Latt

MMR-307 - Lama Naw Aung
MMR-308 - Sithu Maung

Parliamentarians who died while avoiding arrest:

MMR-345 - Tin Ye (Ms)
MMR-346 - Htike Zaw
MMR-347 - Myint Win
MMR-348 - Saw Tin Win
MMR-349 - Thein Shwe

Parliamentarians who were arbitrarily stripped of their nationality:

MMR-289 - Phyu Thin (Ms.)
MMR-290 - Ye Mon (aka Tin Thit)
MMR-294 - Zin Mar Aung (Ms.)
MMR-295 - Lwin Ko Latt

Alleged human rights violations

- ✓ Murder
- ✓ Enforced disappearance
- ✓ Torture, ill-treatment and other acts of violence
- ✓ Threats, acts of intimidation
- ✓ Arbitrary arrest and detention
- ✓ Inhumane conditions of detention
- ✓ Lack of fair trial proceedings
- ✓ Violation of freedom of opinion and expression
- ✓ Violation of freedom of assembly and association
- ✓ Violation of freedom of movement
- ✓ Arbitrary invalidation of the election of a parliamentarian
- ✓ Abusive revocation or suspension of the parliamentary mandate
- ✓ Failure to respect parliamentary immunity
- ✓ Other acts obstructing the exercise of the parliamentary mandate
- ✓ Other violations: unlawful revocation of citizenship
- ✓ Other violations: right to health

A. Summary of the case¹

After refusing to recognize the results of the November 2020 parliamentary elections, the military declared a state of emergency and proceeded to seize power by force on 1 February 2021, the day that the new parliament was due to take office. The state of emergency was extended on 1 February 2023, effectively nullifying the promise to hold elections by August 2023. Although the military authorities allowed overwhelmingly peaceful protests to take place at first, the situation in Myanmar took a devastating turn for the worse in March 2021, with reports of live automatic ammunition and artillery used against civilians. The United Nations Special Rapporteur has recognized the widespread and systematic nature of the violations carried out by the military (known as the “*Tatmadaw*”) and declared that their scale met the threshold of crimes against humanity. According to the Assistance Association for Political Prisoners (AAPP), as of 29 September 2023, some 4,131 people have been killed and 24,858 have been arbitrarily arrested since the coup, while 19,286 remain in detention. In 2022, the AAPP published a report claiming that the widespread and systematic use of arbitrary

Case MMR-COLL-03

Myanmar: Parliament affiliated to the IPU

Victims: 72 parliamentarians from the opposition (62 male and 10 female)

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

Submission of complaint: March 2021

Recent IPU decision: October 2022

Recent IPU Mission(s): - - -

Recent Committee hearing: Hearing with the United Nations Special Rapporteur on the situation of human rights in Myanmar (March 2022)

Recent follow-up:

- *Note verbale* from the Permanent Mission of the Republic of the Union of Myanmar to the United Nations Office and other international organizations in Geneva: August 2023
- Communication from the complainant: September 2023
- *Note verbale* to the Permanent Mission of the Republic of the Union of Myanmar to the United Nations Office and other international organizations in Geneva: October 2023
- Communication to the complainant: September 2023

¹ For the purposes of this decision, the term “opposition” relates to members of parliament from political groups or parties whose decision-making power is limited and who are opposed to the ruling power.

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detention without judicial control, accompanied by the concealment of the whereabouts of victims, amounted to enforced disappearances, which also falls under crimes against humanity.²

The complainant reports that the Speaker of the Parliament of Myanmar (*Pyidaungsu Hluttaw*), State Counsellor Aung San Suu Kyi and six other parliamentarians were placed under house arrest on the day of the coup, while 20 other members of parliament were arbitrarily arrested shortly thereafter. The violent arrest of Mr. Htay Min Thein on 4 April 2023 brought the total number of parliamentarians arbitrarily detained to 40, of whom 31 are still in detention. Of those detained, many are reportedly being held in secret locations in overcrowded prisons, where they are facing mistreatment and torture, with little or no access to medical care or legal counsel, a fate that is shared by thousands of arbitrarily detained citizens according to human rights reports. The complainant has also reported that five elected parliamentarians have died while avoiding arrest.

According to the complainant, on 4 February 2021, some 70 elected members of parliament met in the capital Naypyidaw and took an oath of office pledging to abide by the mandate granted to them by the people. On 5 February, 300 members of parliament met online and established the Committee Representing the *Pyidaungsu Hluttaw* (CRPH). The CRPH is considered as a terrorist organization by the military-appointed State Administration Council. On 31 March 2021, the CRPH appointed a National Unity Government (NUG), which they see as the legitimate interim government. According to the complainant, the CRPH members have been forced into hiding, fearing reprisals because of their political activities, and four of them have been arbitrarily stripped of their nationality. In addition, the relatives of the CRPH members have allegedly been repeatedly subjected to harassment and abuse by the military, with the father of Mr. Sithu Maung allegedly being tortured to death after his arrest. The former Speaker of the upper house of parliament and Prime Minister of the NUG, Mr. Mann Win Khaing Than, has reportedly been charged with high treason, while several other members of parliament face criminal charges for inciting civil disobedience and other charges carrying heavy penalties. On 16 November 2021, Ms. Aung San Suu Kyi and 15 other senior politicians were charged with election fraud during the 2022 elections, and on 5 December 2021 she was found guilty and convicted to four years in prison, which was followed by another conviction on 10 January 2022 on three separate charges. Altogether, she has been sentenced to 27 years in prison. However, the complainant has confirmed that the military authorities have released eight members of parliament since the coup.

On 24 April 2021, the Association of Southeast Asian Nations (ASEAN) held a leaders' meeting, inviting a representative from the military authorities of Myanmar to attend. This meeting led to the adoption of a five-point consensus on Myanmar, calling for the immediate cessation of violence and the nomination of a special envoy to Myanmar to visit the country to meet with all parties concerned. As the military authorities showed no willingness to implement the five-point consensus, they have been excluded from ASEAN meetings as of October 2021.

At a hearing with the IPU Committee on the Human Rights of Parliamentarians in March 2022, the UN Special Rapporteur called for more concerted pressure on the military authorities by the entire international community. He also renewed his call to halt the flow of arms towards the military, which had reportedly received weapons that were used against the civilian population from a limited number of countries well after the coup d'état, as described in one of his reports.³ Meanwhile, the IPU Secretariat has received correspondence from the military authorities accusing the CRPH of choosing the path of confrontation and fostering terrorism and disorder, which has allegedly claimed over 1,000 lives. They also indicated a commitment to implementing the five-point consensus and the possibility of resuming dialogue, provided that trust and confidence-building measures are taken first.

In July 2022, the complainant communicated that the situation of detained members of parliament had deteriorated further, as the military authorities had banned all visits and communication with detained members of parliament, who have reportedly been transported to secret locations. The whereabouts of some members of parliament has been hidden by the authorities, prompting fears that they may be victims of enforced disappearance. This move followed the news that the *Tatmadaw* had executed

2 https://aappb.org/wp-content/uploads/2022/07/AAPP_Crimes-Against-Humanity-Report_8-Jul-2022-English.pdf.

3 Report by the United Nations Special Rapporteur on the situation of human rights in Myanmar – *Enabling Atrocities: UN Member States' Arms Transfers to the Myanmar Military*. Available at: <https://reliefweb.int/sites/reliefweb.int/files/resources/Myanmar.pdf>.

four democracy activists – including former member of parliament Mr. Phyo Zayar Thaw – which provoked consternation and unrest among prisoners; some have reportedly gone on hunger strike. After the first executions in three decades, the *Tatmadaw* claimed that more would follow.

B. Decision

The Governing Council of the Inter-Parliamentary Union

1. *Notes* that the current case also includes a new complaint regarding the situation of Mr. Win, Mr. Htay Win Thein, Ms. Tin Ye, Ms. Htike Zaw, Mr. Myint Win, Mr. Saw Tin Win, and Mr. Thein Shwe; *notes* that the complaint is admissible, considering that: (i) it was submitted in due form by a qualified complainant under section I.1(a) of the Procedure for the examination and treatment of complaints (Annex I of the revised Rules and Practices of the Committee on the Human Rights of Parliamentarians); (ii) it concerns an incumbent member of parliament at the time of the initial allegations; and (iii) it concerns allegations of murder, enforced disappearance, torture, ill-treatment and other acts of violence, arbitrary arrest and detention, inhumane conditions of detention, lack of fair trial proceedings, violation of freedom of opinion and expression, violation of freedom of assembly and association, failure to respect parliamentary immunity and violations of the right to health, allegations that fall under the Committee's mandate; *takes note* of the confirmation by the complainant that Mr. Kyaw Myint (MMR-279), Mr. Nay Lin Aung (MMR-322) and Mr. Zarni Min (MMR-284) have not been arbitrarily arrested, which corresponds to information received from the military authorities in the past; and *decides* to close the examination of their case as a result;
2. *Regrets* the lack of up-to-date information provided by the Permanent Mission of the Republic of the Union of Myanmar to the United Nations Office and other international organizations in Geneva with regard to the concerns expressed in the present case, despite several letters submitted to it by the Committee;
3. *Is dismayed* to learn that five national parliamentarians have lost their lives as they attempted to avoid arbitrary arrest; *is appalled* by eye-witness reports that 31 parliamentarians are being held incommunicado in prisons where they reportedly face ill-treatment, torture and gender-based violence, and that they are being held in inhumane detention conditions with limited access to medical care or legal counsel; *is dismayed* by reports that their situation has deteriorated even further following a ban on all communications and visits enforced by the military authorities after the execution of four men by hanging on 23 July 2022, including former parliamentarian Mr. Phyo Zayar Thaw; and *is appalled* by official declarations that following these first executions in 30 years, more executions would follow, indicating that the lives of detained parliamentarians are threatened;
4. *Demands once again* that the military authorities release the parliamentarians without delay in light of the serious reports of ill-treatment and poor prison conditions and in the absence of any concrete evidence showing that the parliamentarians have done anything other than merely exercise their basic human rights; *urges* the military authorities, for as long as the parliamentarians' release fails to materialize, to provide specific information on each detained parliamentarian, including on their location, state of health and access to humane and safe detention conditions, family visits and confidential meetings with their lawyers, as well as on the trial of each detained parliamentarian; *urges*, once again, the military authorities to allow the International Committee of the Red Cross (ICRC) access to visit parliamentarians in detention; and *demands* that the military authorities cease and desist from any attempts to arrest parliamentarians on political grounds and thus exposing them to the risk of death;
5. *Reiterates its belief* that the release of all detained parliamentarians is an essential step towards ending violence and building the trust that would allow for de-escalation and a return to dialogue, as prescribed by the five-point consensus brokered by ASEAN; *calls on* the military authorities to protect the lives and respect the rights of all members of parliament elected in November 2020 and hence to allow them to associate, assemble, express their views, receive and impart information and move about without fear of reprisals; *urges* the military authorities to refrain from taking physical or legal action against the 20 members of the CRPH, and any other

person elected in November 2020, in connection with their parliamentary activities; *wishes* to receive, as a matter of urgency, specific information on these points from the military authorities; and *urges* the military authorities also to honour their commitment by: implementing in earnest the five-point consensus brokered by ASEAN and Resolution 2669 of the United Nations Security Council; immediately ceasing the use of lethal force against non-combatants and employing genuine restraint against those exercising their human rights; and abiding by the international principles of human rights and international humanitarian law;

6. *Considers* that the silence of the military authorities gives serious weight to reports of the widespread use of torture, rape, enforced disappearance and extrajudicial killings against political prisoners, including elected legislators; and *stresses* that the widespread and systematic practice of enforced disappearance, imprisonment and torture constitutes a crime against humanity;
7. *Calls on* all IPU Member Parliaments to urge their relevant national authorities to exercise their jurisdiction by prosecuting any person responsible for this crime against humanity, in keeping with the principle of universal jurisdiction; *renews its call on* all IPU Member Parliaments and observers, in particular in Asia, to press for respect for human rights and democratic principles in Myanmar and to show solidarity with the members of parliament who were elected in 2020, including members of the CRPH; *welcomes* the actions taken thus far and *calls on* IPU Member Parliaments to do more, including by raising the case publicly; *hopes* to be able to rely on the assistance of all relevant regional and international organizations, including ASEAN, to ensure that justice is done in this case; and *calls on* all IPU Member Parliaments and observers to support the International Parliamentarians Alliance for Myanmar and the United Nations Special Rapporteur on the situation of human rights in Myanmar to that end;
8. *Requests* the Secretary General to convey this decision to the military authorities, the complainant and any third party likely to be in a position to supply relevant information; and *also requests* the Secretary General to explore all other possibilities for the concerns and requests for information raised in this decision to be effectively addressed;
9. *Requests* the Committee to continue examining this case and to report back to it in due course.



Inter-Parliamentary Union
For democracy. For everyone.

Pakistan

Decision adopted unanimously by the IPU Governing Council at its 212th session (Luanda, 27 October 2023)



Security forces stand guard outside Attock prison, where Mr. Imran Khan is being held. | Abdul MAJEED / AFP

PAK-26 – Muhammad Azam Khan Swati
PAK-27 – Imran Khan
PAK-28 – Aliya Hamza Malik (Ms.)
PAK-29 – Ejaz Chaudhary
PAK-30 – Kanwal Shauzab (Ms.)

Alleged human rights violations

- ✓ Enforced disappearance
- ✓ Torture, ill-treatment and other acts of violence
- ✓ Threats, acts of intimidation
- ✓ Arbitrary arrest and detention
- ✓ Inhumane conditions of detention
- ✓ Lack of due process in proceedings against parliamentarians
- ✓ Violation of 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
- ✓ Impunity
- ✓ Other violations: right to privacy
- ✓ Other violations: gender-based discrimination

Case PAK-COLL-01

Pakistan: Parliament affiliated to the IPU

Victims: Five opposition members of the Parliament of Pakistan (two females and three males)

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

Submission of complaints: December 2022 and September 2023

Recent IPU decision: February 2023

IPU Mission(s): - - -

Recent Committee hearing: Hearing with a member of the delegation of the Senate of Pakistan to the 147th IPU Assembly (October 2023).

Recent follow-up:

- Communication from the authorities: October 2023
- Communication from the complainant: October 2023
- Communication to the authorities: September 2023
- Communication to the complainant: October 2023

A. Summary of the case

The current case concerns five parliamentarians from the *Pakistan Tehreek-e-Insaf* (PTI) party who, according to the complainant, have been persecuted as a result of their opposition to the military authorities of Pakistan following a vote of no confidence that ousted Mr. Imran Khan's government on 14 April 2022. The complainant reports that, since then, the authorities have interfered with the demonstrations organized by Mr. Khan by arresting over 400 PTI officials and cancelling rallies over vaguely defined security concerns. According to the complainant, despite mounting pressure, Mr. Khan and his supporters continued their marches to demand fresh elections. The complainant reports that protesters were frequently met with a disproportionate use of force, which left Ms. Shauzab with long-term injuries.

The complainant also reports that, on 13 October 2022, Senator Azam Swati was abducted by armed men belonging to the Federal Investigation Agency (FIA) and tortured and arbitrarily detained following a tweet criticizing military officials. On 26 November 2022, Mr. Swati was arrested by the FIA again hours after making a critical tweet against the outgoing chief of staff and detained at an undisclosed location, raising fears that he was the victim of enforced disappearance. However, after a campaign to secure his release by a number of parliamentarians, he was freed on bail on 3 January 2023. The bail order contained a warning, however, that should Mr. Swati "repeat the offence" the order would be revoked.

The complainant reports that, on 4 November 2022, Mr. Khan was shot and wounded while leading a peaceful protest. The complainant alleges the gun attack was one of several assassination attempts against Mr. Khan and reports that these incidents were not properly investigated, as Mr. Khan's complaints to the police remained unregistered for a prolonged time, prompting the intervention of the Supreme Court. The complainant reports that, on 8 March 2023, the police stormed his residence and brutalized Mr. Khan's staff, leading to the death of a PTI official. According to the complainant, following the attack on Mr. Khan's residence, his supporters were banned from protesting and the media were banned from mentioning Mr. Khan's name.

According to the complainant, on 9 May 2023 Mr. Khan was arrested on a charge of misdeclaration of the proceeds from the sale of state gifts, prompting mass protests and unrest. Some demonstrations became the scene of violence, as several state and military facilities were targeted by arsonists amid an internet blackout. The complainant alleged that the violent incidents were staged by the security sector as part of a false-flag operation to frame Mr. Khan and disintegrate the PTI party. According to the complainant, the authorities were swift in assigning blame to the PTI and unfurled a widespread campaign of violent arrests, killing five PTI activists in the process and detaining over 5,000 people, including Mr. Ejaz Chaudhary and Ms. Aliya Hamza, while Ms. Shauzab, Mr. Swati and other members of parliament went into hiding to avoid further persecution. The complainant adds that dozens of PTI parliamentarians have been intimidated into changing sides or face multiple charges ranging from sedition to terrorism under draconian laws.

According to the complainant, Mr. Khan was later released, following a Supreme Court ruling that his arrest was illegal. However, the complainant reports that Mr. Khan was violently arrested on 5 August 2023 and sentenced to three years in prison, deprived of his seat and barred from taking part in elections for five years over the alleged sale of state gifts. According to the complainant, since then Mr. Khan has faced over 180 charges, including leaking state secrets, corruption, treason and organizing violent protests. On 29 August 2023, the Islamabad High Court suspended his conviction and freed him on bail, yet Mr. Khan remained in prison on the basis of the multitude of charges against him. According to the complainant, Mr. Khan then remained in maximum-security prisons reserved for terrorists and violent militants. According to the complainant, Mr. Khan's health has deteriorated considerably since his arrest on 5 August, raising fears that he is being slowly poisoned through the food he receives in prison. The complainant also shared concerns for the health of Ms. Hamza and Mr. Chaudhary and alleged that they were not receiving the necessary medical assistance while they are being held on remand. According to the complainant, their trials are riddled with violations of due process and excessive delays.

A trial observer mandated by the IPU travelled to Islamabad on 23 July 2023 to follow the trial *in absentia* of Mr. Swati and prepared a report based on the information provided by the state attorneys and his lawyer. According to the report, his arrest and detention "may be described as a punishment for his exercise of the rights to freedom of expression and opinion". The trial observer also concluded that judicial and executive authorities interpret the relevant laws in such a way that "no citizen is allowed to criticize the government or share views against the army". In addition, the report expressed

concern at the use of multiple first information reports (FIRs) by the police for the same occurrence, suggesting that the motive of that practice may be to keep Mr. Swati in custody.

The complainant emphasizes that the authorities have targeted female members of parliament and PTI members to silence the voice of women who support the PTI. In particular, the complainant reports that Ms. Hamza is subjected to frequent invasive body searches during the night and held in close proximity to hardened criminals as a way to intimidate her. The complainant further reports that Ms. Shauzab, the President of the PTI women's wing, has received threats calling on her to leave political life, including repeated threats to release indecent videos that would be digitally altered to portray Ms. Shauzab as a participant. The complainant shared copies of these threats with the Secretariat and stressed that her complaints to the authorities were to no avail. The complainant also reported multiple allegations of violations of the rights to privacy of Mr. Swati, Mr. Khan and Mr. Chaudhary as a way to discredit them. According to the complainant, these violations have to be seen within a pattern of state repression and impunity designed to create an atmosphere of fear and intimidation for the opposition and its supporters.

During a hearing with the Committee on the Human Rights of Parliamentarians, a member of the Pakistani delegation to the 147th IPU Assembly indicated that several procedures are available to allow PTI parliamentarians to seek redress, including by requesting that the parliamentary leadership issue production orders to allow detained parliamentarians to take part in parliamentary sessions and invited PTI parliamentarians to follow these procedures. The member of the delegation also emphasized the many challenges faced by Pakistan and reassured the Committee that the authorities remain committed to making improvements in the area of human rights, including through its cooperation with the IPU.

B. Decision

The Governing Council of the Inter-Parliamentary Union

1. *Notes* that the complaint concerning Mr. Imran Khan, Ms. Aliya Hamza Malik and Ms. Kanwal Shauzab, members of the National Assembly, and concerning Senator Ejaz Chaudhary, is admissible, considering that the complaint: (i) was submitted in due form by qualified complainants under section I.1(c) of the Procedure for the examination and treatment of complaints (Annex I of the revised Rules and Practices of the Committee on the Human Rights of Parliamentarians); (ii) concerns incumbent members of parliament at the time that the initial allegations were made; and (iii) concerns allegations of enforced disappearance, torture, ill-treatment and other acts of violence, threats, acts of intimidation, arbitrary arrest and detention, inhumane conditions of detention, lack of due process in proceedings against parliamentarians, violation of 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, impunity, violation of the right to privacy and gender-based discrimination, which are allegations that fall within the Committee's mandate; and *also notes* that the Committee decided to merge the examination of their situation with the case of Mr. Swati (PAK-26), given the similarity of the alleged violations against the parliamentarians;
2. *Thanks* the Parliament of Pakistan and a member of the delegation of Pakistan to the 147th IPU Assembly who attended the hearing with the Committee on the Human Rights of Parliamentarians for the information provided and for their cooperation;
3. *Is profoundly preoccupied* by the increasingly grave allegations conveyed by the complainant in this case, including allegations of torture, inhumane treatment and arbitrary arrest and detention; *is deeply concerned* by reports of the inhumane conditions of detention of the detained parliamentarians, as well as by the practice of issuing numerous first information reports for the same occurrences reported by the independent trial observer mandated by the IPU, which gives serious weight to the allegation that the motive for that practice could be to keep Mr. Khan, Ms. Hamza and Mr. Chaudhary in prison even though they had received several judgments ordering their release; *urges* in this regard the competent authorities to release all detained parliamentarians without delay and to ensure that all their rights are fully respected, including their right to take part in the conduct of public affairs and to vote and be elected; and *wishes* to be informed of the outcome of the actions taken by parliament within its constitutional powers and prerogatives to that end;

4. *Is also concerned* by the persistent pattern of allegations of lack of due process and impunity in previous cases of parliamentarians in Pakistan; *is particularly shocked* by allegations that such violations are being used to pressure opposition parliamentarians into changing their allegiance and by reports that only such parliamentarians who have yielded to pressure are relieved from arbitrary actions against them; and *considers* in this regard that parliament has a vested interest and an undeniable duty to ensure that the rights of all its members, irrespective of their political allegiance, opinion or religion, are fully protected and that no affront to their rights and dignity is left unpunished, irrespective of the position of the violators;
5. *Hopes* to be able to rely on the support of parliament in ensuring that the rights of parliamentarians in this case are protected in full, including their right to a fair trial; and *reiterates its wish* to be kept informed of the dates of the trial and of any other relevant judicial developments in the case, as well as to receive a copy of the relevant legal provisions in preparation for an upcoming trial observation mission to Pakistan;
6. *Is convinced* that, in light of the aforesaid concerns, a Committee mission to Pakistan to discuss the issues at hand directly with all the relevant authorities and other stakeholders is urgently needed and that it will help to find swift satisfactory solutions to these cases in accordance with applicable national and international human rights standards; *sincerely hopes*, therefore, that the Pakistani authorities will be able to receive this mission as soon as practicable; *thanks* the member of the Pakistani delegation to the 147th IPU Assembly for the assurances of support that it has given on this matter; and *requests* in this regard the Secretary General to engage with the parliamentary authorities of Pakistan with a view to the dispatch of the mission ahead of the upcoming session of the Committee, which is scheduled for January 2024;
7. *Requests* the Secretary General to convey this decision to the relevant authorities, the complainant and any third party likely to be in a position to supply relevant information;
8. *Requests* the Committee to continue examining this case and to report back to it in due course.

Philippines

*Decision adopted unanimously by the IPU Governing Council at its 212th session
(Luanda, 27 October 2023)*



Saturnino Ocampo

PH-I02 – Saturnino Ocampo

Alleged human rights violations

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

A. Summary of the case

The original case concerned four persons, including Mr. Saturnino Ocampo, who were elected to the House of Representatives in May 2007 under the Philippine party-list system, which is designed to ensure the representation of underprivileged groups in parliament.

All four victims claim to have been subjected to continuous harassment since May 2007, due to their opposition to the policies of the President of the Philippines at the time, Ms. Gloria Macapagal Arroyo. The rebellion charges brought against them in February 2006 were dismissed with final effect by the Supreme Court on 2 July 2007, and the writ of amparo case against Mr. Ocampo was also dismissed in February 2014. The other charges against the three other individuals – hence other than Mr. Ocampo – were subsequently dismissed or were no longer being pursued. Thereafter, only Mr. Ocampo, whose parliamentary mandate ended in 2010, was subject to the following charges, together with several other Filipino citizens:

- Multiple murder charges (Leyte Murder Case), which concerns the killing of 15 persons allegedly in the period 1985–1991 during a purge of suspected "spies and counter-revolutionaries" within the ranks of the Communist Party of the Philippines and its armed wing, the New People's Army. From the outset, ever since this case emerged in 2006, Mr. Ocampo's lawyers have argued that he could not have possibly been involved in any of these crimes. They have also systematically pointed to the inconsistencies in the evidence by the prosecution. In

Case PHL-02

Philippines: Parliament affiliated to the IPU

Victims: Opposition members of parliament (three men and one woman)

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

Submission of complaints: March and April 2006

Recent IPU decision: April 2019

IPU mission: April 2007

Recent Committee hearing: Hearing with the Filipino delegation at the 130th IPU Assembly (April 2014)

Recent follow-up:

- Communication from the authorities: Letter from the Director General of the Office of International Relations and Protocol of the Senate and Secretary of the IPU Group of the Philippines (April 2021)
- Communication from the complainant: October 2023
- Communication to the authorities: Letter to the President of the Senate (September 2023)
- Communication to the complainant: October 2023

February 2014, Mr. Ocampo's petition with the Supreme Court to dismiss the case was rejected. The Supreme Court ruled that the trial against him should proceed. A subsequent omnibus motion by Mr. Ocampo to quash more recent information brought forward by the prosecution was dismissed by the Regional Trial Court. This decision was appealed to the Court of Appeals. Mr. Ocampo's arraignment took place on 7 May 2015. The pretrial hearings started on 19 October 2015 and Mr. Ocampo was granted bail. Years later, on 16 December 2021, the Manila Regional Trial Court Branch 32 granted Mr. Ocampo's demurrer to evidence, hence recognizing the failure of the prosecution to provide sufficient evidence that would merit a further trial and the dismissal of the charges as a result. On 22 April 2022, the Manila Regional Trial Court Branch 42 turned down the motion for reconsideration of the demurrer to evidence given that the evidence was found wanting. This included the citing of incorrect names, failure to positively identify the accused in the courtroom, inconsistencies as to how the alleged victims were killed, inconsistent accounts as to how the mass grave was discovered, including where the victims were buried, and the incredibility of accounts by supposed witnesses. The judge nevertheless expressed the hope that justice be achieved for the victims of the purported mass grave but added that "it must be the kind of justice sanctioned by our fundamental law, with due regard to all the safeguards afforded to the accused. One cannot right the wrong by taking constitutional shortcuts for the sake of having suspected felons locked up for crimes that cannot be proven beyond reasonable doubt. Such would not be justice, but blind vengeance".

- Murder charge in a related Leyte case – the case was dismissed in January 2020, but the prosecution appealed the dismissal, but the appeal was subsequently rejected.

B. Decision

The Governing Council of the Inter-Parliamentary Union

1. *Is pleased* that the criminal proceedings brought in this case against Mr. Ocampo have finally come to an end;
2. *Regrets*, nevertheless, that Mr. Ocampo had to wait 16 years for justice to be served, all the more so given that the serious concerns about the lack of evidence were known early on; and *recalls* in this regard that the right to be tried without undue delay is an element of the right to a fair trial enshrined in the International Covenant on Political and Civil Rights, to which the Philippines is a party, and that it is designed to ensure that people are not kept in a prolonged state of uncertainty about their fate;
3. *Considers* that, in light of Mr. Ocampo's acquittal, there are no grounds for any further action in this case; and *decides* to close any further examination of the case in line with paragraph 25 of Annex I to the revised Rules and Practices of the Committee on the Human Rights of Parliamentarians;
4. *Requests* the Secretary General to convey this decision to the parliamentary authorities and to the complainant.

Philippines

*Decision adopted unanimously by the IPU Governing Council at its 212th session
(Luanda, 27 October 2023)*



Former Philippine senator and human rights campaigner Leila de Lima (centre) waves as she arrives at the Muntinlupa City Trial Court in Manila on 16 October 2023. | JAM STA ROSA / 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 Philippines Commission on Human Rights from May 2008 to June 2010. In that capacity, she led a series of investigations into alleged extrajudicial killings linked to the so-called Davao Death Squad in Davao City, where Mr. Duterte had been long-time mayor, and concluded that Mr. Duterte, former President of the Philippines, was behind the Davao Death Squad.

In 2010, Ms. de Lima was appointed Secretary of Justice. She resigned from this position in October 2015 to focus on her campaign for a senate seat in the May 2016 elections, a bid that was successful. In August 2016, as Chair of the Senate Committee on Justice and Human Rights, she launched an inquiry into the killings of thousands of alleged drug users and drug dealers, which had reportedly taken place after President Duterte took office in June 2016. After she was elected to the Senate, she became the target of acts of intimidation and denigration, including by the then President Duterte himself.

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 I)

Submission of complaint: September 2016

Recent IPU decision: February 2023

Recent IPU mission: May 2017

Recent Committee hearing(s): - - -

Recent follow-up:

- Communication from the authorities: Letter from the Director General of the Office of International Relations and Protocol of the Senate and Secretary of the IPU Group of the Philippines (April 2021)
- Communication from the complainant: October 2023
- Communication to the authorities: Letter to the President of the Senate (September 2023)
- Communication to the complainant: October 2023

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Luanda, 27 October 2023

On 7 November 2016, Ms. de Lima filed a petition for writ of *habeas data* against the then President Duterte before the Supreme Court, requesting that the Court, *inter alia*, order President Duterte and any of his representatives to cease: seeking details about her private life outside the realm of legitimate public concern or making statements maligning her as a woman and injuring her dignity as a human being; discriminating against her on the basis of gender; describing or publicizing her alleged sexual conduct; engaging in psychological violence against her; and otherwise violating her rights or engaging in acts that are contrary to law, good morals, good customs, public policy and/or public interest. On 18 October 2019, the Supreme Court dismissed the petition for writ of *habeas data* on the grounds that the President is immune from suit during his incumbency and tenure.

Ms. de Lima was arrested and detained on 24 February 2017 over accusations of receiving drug money to finance her campaign for a senate seat. 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 Ms. de Lima's responsibility in such trading while she was Secretary of Justice. The House-led inquiry was launched one week after she initiated her inquiry in the Senate into the extrajudicial killings.

Since July 2018, Ms. de Lima has been charged in the three cases before Branches 205 and 256 of the Regional Trial Court (RTC) – Muntinlupa City. On 17 February 2021, RTC Branch 205 granted Ms. de Lima's demurrer to evidence in case No. 17-166, technically acquitting her, in the absence of sufficient evidence.

The complainant points out that during the presentation of the prosecution's evidence in the first of the two remaining cases (Case No. 17-165), not only was there no physical evidence of the alleged illegal drugs, or the money allegedly delivered to Ms. de Lima as her share in the alleged illegal drug trade, but even the prosecution's own witnesses, mostly criminals serving sentences in the New Bilibid Prison, denied any involvement or even any personal knowledge of the alleged illegal drug trade. Instead, the prosecution spent most of its time attempting to prove the guilt of its own witnesses, including Mr. Peter Co, Mr. Hans Tan and Mr. Vicente Sy, all of whom repeatedly denied any involvement in the illegal drug trade, and whom the prosecution, to this date, has failed to indict as co-conspirators. Conveniently, the only person who was consistently singled out by these witnesses as having personal knowledge of the New Bilibid Prison drug trade and the role of Ms. de Lima died on 26 September 2016. That person, Mr. Tony Co, was an inmate who was stabbed to death in a staged prison riot that targeted inmates who initially refused to testify against Ms. de Lima before the House of Representatives Justice Committee's hearing on the New Bilibid Prison drug trade. Most importantly, the complainant points out that the prosecution's foremost witness in the case, Mr. Rafael Ragos, former National Bureau of Investigation Deputy Director and former Bureau of Corrections Officer-in-Charge, who had been the sole witness to testify that he had delivered money to Ms. de Lima's house on two occasions, recanted all his testimonies and statements against Ms. de Lima on 30 April 2022. In his retraction, Mr. Ragos said that he had been forced to testify against her by the then Secretary of Justice Vitaliano Aguirre II, who had led the witch hunt against Ms. de Lima in the Philippines' House of Representatives Justice Committee's hearings in 2016. In light of Mr. Ragos' recantation of his testimony, Case No. 17-165 was concluded on 12 May 2023 with the acquittal of Ms. de Lima, but the Office of the Solicitor General and the Department of Justice appealed the acquittal to the Court of Appeals, according to the complainant, in violation of the constitutional proscription against double jeopardy.

After Mr. Ragos' recantation, and earlier recantations by Mr. Kerwin Espinosa and co-accused former bodyguard Mr. Ronnie Dayan, in the remaining case (Case No. 17-167), two more witnesses for the prosecution recanted their testimony on 16 October 2023. This was done in a letter handed over to Ms. de Lima, and subsequently shared with the court, in which they said that they were "bothered by their consciences" and that they did not want the accused to be a victim of mistrial. The letter also mentioned that five more witnesses would also recant. Moreover, the complainant underscores that at least two other witnesses, Mr. Joel Capones and Mr. Herbert Colanggo, claim to have engaged in illegal drug trading. Despite these admissions made under oath and in open court, to this day the prosecution has actively refused to charge them, whether as co-conspirators in the same case or in a separate case, hence showing – according to the complainant – that they stand to benefit from incriminating Ms. de Lima. Currently, the case is pending before the RTC of Muntinlupa City (Branch 206), with Judge Gener Gito presiding. Pending before the court is the motion for reconsideration of the court order under the previous judge, Mr. Romeo Buenaventura, who denied Ms. de Lima's application for bail on 7 June 2023. The motion for reconsideration was put forward after it was

discovered that Judge Buenaventura's brother had direct and close links to the president of the aforementioned House of Representatives inquiry into Ms. de Lima in 2016. The complainant states that the court case is moving at a snail's pace and that only one day of every following month, at least until March 2024, will be dedicated to further hearings. A motion for reconsideration of the defence counsel's petition for bail is pending before the current judge. At the hearing on 16 October 2023, the prosecution concluded the presentation of its evidence-in-chief. The court gave the prosecution 20 days to file their formal offer of evidence. The same number of days was given to the defence counsel to file any comments/opposition thereto.

On 30 November 2018, the United Nations Working Group on Arbitrary Detention concluded, echoing the conclusions of an earlier IPU mission to the Philippines, that Senator de Lima's detention was arbitrary and that her immediate release was in order.

Ms. de Lima ran for re-election to the Senate from detention in the elections held in May 2022, but was not re-elected.

B. Decision

The Committee on the Human Rights of Parliamentarians

1. *Expresses grave concern* that more than seven years after she was first charged, Ms. de Lima continues to languish in detention, even though the prosecution's case has collapsed and the latest recantations of witnesses underscore the serious deficiencies that had already been identified early on in the evidence presented against her;
2. *Remains convinced* that the steps taken against Ms. De Lima came in response to her vocal opposition to the way in which the then President Duterte was waging war on drugs, including her denunciation of his alleged responsibility for extrajudicial killings; and *points out* in this regard the inexplicable length of the criminal proceedings, the repeated violation of the principle of the presumption of innocence, the timing of the criminal proceedings, the amendment of the charges, the reliance on testimonies of convicted drug traffickers, who were either given favourable treatment in return, subjected to physical intimidation, including death, in prison, or have an axe to grind against Ms. De Lima as a result of her efforts to dismantle their drug trafficking operations when she was Secretary of Justice, and the pressure exerted on other individuals to testify against her;
3. *Renews its call*, in light of the foregoing, for Ms. de Lima to be released immediately and for the remaining criminal case against her to be dropped; and *urges* the authorities to take the necessary action forthwith;
4. *Requests* the Secretary General to convey this decision to the President of the Philippines, the relevant parliamentary authorities, the complainant and any third party likely to be in a position to supply relevant information;
5. *Requests* the Committee to continue examining this case and to report back to it in due course.

Philippines

*Decision adopted unanimously by the IPU Governing Council at its 212th session
(Luanda, 27 October 2023)*



Philippine Senator Antonio Trillanes, smiles as he speaks to members of the media at the senate building in Manila on 22 October 2018, after a local court denied a motion by the Department of Justice for a warrant of arrest and hold departure order against Senator Trillanes in the 2003 coup d'état case. | TED ALJIBE / 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

A. Summary of the case

In July 2003, the then Navy Lieutenant, Mr. 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 11th 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, Ms. 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

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 I)

Submission of complaint: September 2018

Recent IPU decision: April 2019

IPU mission(s): - - -

Recent Committee hearing(s): - - -

Recent follow-up:

- Communication from the authorities: Letter from the Director General of the Office of International Relations and Protocol of the Senate and Secretary of the IPU Group of the Philippines (April 2021)
- Communication from the complainant: January 2019
- Communication to the authorities: Letter to the President of the Senate (September 2023)
- Communication to the complainant: September 2023

proclamation. In September 2011, the Makati Regional Trial Court (RTC) Branches 148 and 150 therefore dismissed the coup d'état and rebellion charges that were pending against Senator Trillanes.

However, on 31 August 2018, the then 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 Branch 150, which had dealt with the original rebellion charges, issued a warrant for his arrest, basically reviving those charges. Senator Trillanes challenged this decision before the Court of Appeals. The police subsequently escorted Senator Trillanes out of the Senate building. He was released on bail the same day, but with the charges still pending against him. On 1 March 2021, the Court of Appeals (Sixth Division) ruled that Senator Trillanes had in fact been duly given amnesty and that this therefore excluded the possibility of renewed charges against him.

On 22 October 2018, RTC Branch 148, which had handled the original coup d'état case, dismissed the motion from the Department of Justice to issue an arrest warrant against Senator Trillanes, saying that the same court had already dismissed those charges in September 2011 and that that decision "has become final and executory". In reaching its decision, RTC Branch 148 established that there had been only one application form given to each of the 277 amnesty applicants at the time. This single form, once completed, was immediately submitted to the Department of National Defence's Amnesty Committee and kept by the relevant authorities, without giving the applicants a copy of their fully completed form. The RTC Branch 148 also concluded that several witnesses, along with photo evidence, attested to the fact that Senator Trillanes had duly filled out the form, which included a section recognizing admission of participation/involvement and guilt, and that the due completion and submission of the form had been properly verified and validated at the time. The Office of the Solicitor General appealed the decision to the Court of Appeals, which on 31 May 2021 upheld the verdict of the judge of the RTC Branch 148.

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

Having served two terms in the Senate, Senator Trillanes was not eligible to stand again in May 2019.

B. Decision

The Governing Council of the Inter-Parliamentary Union

1. *Is pleased* that the courts have provided clarity on the granting of amnesty to Mr. Trillanes in 2011; and *fully concurs* with their conclusion that at the time Mr. Trillanes had fulfilled the necessary conditions for amnesty;
2. *Reaffirms* its consideration that the sudden calling into question of his amnesty, more than seven years after the amnesty procedure was properly completed, and the exclusive preoccupation of the then President Duterte's Proclamation No. 572 with Senator Trillanes' situation, when many other individuals were likewise amnestied in connection with the same events, gave serious weight to the allegation that this was a targeted attempt to silence the then Senator Trillanes;
3. *Considers* that, in light of the confirmation of the validity of the amnesty granted to Mr. Trillanes, there are no grounds for any further action in this case; and *decides* not to continue examining the case in line with paragraph 25 of Annex I to the revised Rules and Practices of the Committee on the Human Rights of Parliamentarians;
4. *Requests* the Secretary General to convey this decision to the parliamentary authorities and to the complainant.

Philippines

*Decision adopted unanimously by the IPU Governing Council at its 212th session
(Luanda, 27 October 2023)*



France Castro Official portrait, 2019 © Wikipedia

PHI-10 - Francisca Castro
PHI-13 - Sarah Jane I. Elago

Alleged human rights violations

- ✓ Arbitrary arrest and detention
- ✓ Lack of due process at the investigation stage
- ✓ Violation of freedom of opinion and expression
- ✓ Violation of freedom of assembly and association
- ✓ Violation of freedom of movement
- ✓ Failure to respect parliamentary immunity

A. Summary of the case

Ms. Francisca (“France”) Castro and Ms. Sarah Jane I. Elago became members of the Philippines’ House of Representatives in 2016. After 2022, only Ms. Castro remained a member of the House of Representatives.

The complainants state that in the course of their parliamentary mandates, they have both faced regular harassment due to their opposition to the policies of the then President Duterte. This alleged intimidation includes being subjected to charges that have no legal or factual merit and that run counter to the individuals’ right to a fair trial and to their rights to freedom of expression, assembly and movement.

Case PHL-COLL-02

Philippines: Parliament affiliated to the IPU

Victims: Current opposition members of parliament (two women)

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

Submission of complaint: December 2019

Recent IPU decision: May 2021

IPU mission(s): - - -

Recent Committee hearings(s): - - -

Recent follow-up:

- Communication from the authorities: Letter from the Director General of the Office of International Relations and Protocol and Secretary of the IPU Group of the Philippines (April 2021)
- Communication from the complainants: March 2021
- Communication to the authorities: Letter to the President of the Senate (September 2023)
- Communication to the complainants: October 2023

In this regard, the complainants state that Ms. Castro, who stands accused with other educators and advocates for the Lumad indigenous community in Davao del Norte in the Philippines, was briefly arrested and detained on 28 and 29 November 2018 on a charge of “child abuse” in connection with the evacuation of 14 Lumad children attending the Salugpongan Ta' Tanu Igkanogon Community Learning Center in conflict-ridden Mindanao, where the armed forces, along with the paramilitary group Alamara, are fighting against the communist insurgency. It seems that the authorities are claiming that the learning centre operated as a front for the communist insurgency. The complainants affirm that Ms. Castro and the other accused rescued the 14 minors from harassment by the paramilitary group Alamara and the military. The children’s parents reportedly denied that their children had been kidnapped by the accused and said that they had had to leave because the threats were no longer bearable. The complainants contend that the prosecution recently discharged one of the accused so that they could become a state witness, and that this individual – like the other witnesses for the prosecution – did not have any personal knowledge that would implicate Ms. Castro and the other accused in the commission of any crime. Despite the reported lack of evidence, on 25 September 2023, the court in the case denied the defence counsel’s motion for leave to file a demurrer to evidence. Instead, it directed the defence counsel to present its witnesses starting on 4 October 2023. The next trial dates are scheduled for 15 and 22 November 2023.

Ms. Castro allegedly continues to be subjected to attacks, red-tagging and political harassment. The latest example of Ms. Castro’s public vilification concerns the following remarks made on 11 October 2023 on national television, and subsequently disseminated on social media, by former President Duterte, whose daughter is the incumbent Vice-President of the Philippines: “I didn’t tell them (France Castro and others) face-to-face, I didn’t tell them that ‘you know, we’re enemies, I want to kill you but I want to kill you softly’”. He then reportedly told his daughter, the Vice-President: “But your first target with the intelligence fund, is you, you, France, you communists whom I want to kill. Tell her already”. According to the complainants, the former President issued these threats due to Ms. Castro’s denunciation of the Vice-President’s alleged unauthorized receipt and use in 2022 of 125 million pesos of confidential funds. Upon the insistent opposition of Ms. Castro and others to the new grant of confidential funds, the House of Representatives scrapped the Vice-President’s request. On 24 October 2023, Ms. Castro filed a criminal complaint against former President Duterte for grave threats in relation to the Cybercrime Act or Republic Act 10175. The leadership of the House of Representatives has called former President Duterte out for threatening harm to Ms. Castro. The leaders of all political parties in the House of Representatives issued a statement on 14 October saying that “We, leaders of all political parties in the House of Representatives, take utmost exception to the remarks made by former President Rodrigo R. Duterte”. In her criminal complaint, Ms. Castro also said that President Duterte’s remarks with regard to her were factually baseless and clearly malicious, but that she could not dismiss them as “figurative, joking, or otherwise benign.”

As a then member of parliament, Ms. Elago was directly and indirectly labelled in social media posts by the police and army as a terrorist. Red-tagging in the Philippines is understood to refer to the malicious blacklisting of individuals or organizations critical or not fully supportive of the actions of a sitting government in the country. These individuals and organizations are “tagged” as either communist or terrorist, or both, regardless of their actual political beliefs or affiliations. On 7 December 2020, Ms. Elago filed a complaint to the Office of the Ombudsman with regard to the conduct of six senior army and government officials. The matter is still pending.

As part of the alleged harassment, Ms. Elago was also targeted by an amended complaint, originally submitted on 24 July 2019, to which her name was added as a respondent. It concerns a complaint from a mother against the youth group “the Kabataan Party List” in which she accused the latter of kidnapping and abusing her daughter. On 10 November 2020, the Supreme Court upheld its earlier decision to dismiss the petition submitted by the daughter’s parents. In so doing, the Supreme Court concluded that the daughter was reportedly of legal age and that she had denied having been subjected to coercion and had voluntarily chosen to join the youth group. Shortly before, on 15 October 2020, prosecutors at the Department of Justice dismissed four of the five charges in connection with this situation against Ms. Elago for lack of probable cause.

B. Decision

The Governing Council of the Inter-Parliamentary Union

1. *Is appalled* that the former President of the Philippines directly threatened on air the life of a member of parliament; *considers* that, over and above the grave consequences for Ms. Castro herself, this matter also has a serious impact on the functioning of the Filipino Parliament as a whole, as it may deter its members from speaking out on important matters and put their lives at significant risk; *is pleased* that the leaders of political parties in parliament have denounced the remarks made by former President Duterte; *trusts* that the House of Representatives, in the exercise of its oversight function, is also decisively raising this matter with the Executive, and that it is doing its utmost to ensure that Ms. Castro receives the protection her situation requires; and *wishes* to receive concrete information on these points;
2. *Demands* that, in light of the serious concerns arising from this situation, the treatment of Ms. Castro's complaint will proceed speedily; and *wishes* to be kept informed in this regard;
3. *Trusts* also that the criminal case against Ms. Castro and the rest of the accused will swiftly move towards its completion; *requests* to be kept informed of any trial dates beyond November 2023; and *wishes* to receive official information on the facts adduced to sustain the charges against Ms. Castro, as it fails to understand at the present time how she could stand accused of the crime of child abuse;
4. *Remains concerned* that Ms. Elago's complaint regarding her alleged red-tagging is still pending with the Ombudsman with no sign of it being actively examined; *calls on* the Ombudsman to take the necessary action to examine the complaint along with any steps its findings may warrant; and *wishes* to be kept informed in this regard;
5. *Trusts* that the determination of the pending charge against Ms. Elago will soon be concluded and that such determination will take full account of the conclusions reached by the Supreme Court on the petition pertaining to the same facts; and *wishes* to be kept informed in this regard;
6. *Requests* the Secretary General to convey this decision to the relevant authorities, the complainants and any third party likely to be in a position to supply relevant information;
7. *Requests* the Committee to continue examining this case and to report back to it in due course.

Senegal

*Decision adopted unanimously by the IPU Governing Council at its 212th session
(Luanda, 27 October 2023)*



Ousmane Sonko speaks during a political rally in Thies on 20 February 2019.
MICHELE CATTANI / AFP

SEN-08 – Ousmane Sonko

Alleged human rights violations

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

A. Summary of the case

Mr. Ousmane Sonko is president of *PASTEF-Les Patriotes*, a Senegalese opposition party dissolved on 31 July 2023. He was a member of the National Assembly in the previous legislature (2017–2022) and has his sights set on high office. Mr. Sonko came third in the 2019 presidential elections and has officially announced that he will run in the 2024 presidential elections. According to the complainant, the present case is part of ongoing efforts by the ruling party to remove any possibility of change in political leadership.

On 8 February 2021, Mr. Sonko was summoned by the *Section de recherche de la Gendarmerie nationale* (National Gendarmerie's Research Section) after a complaint of rape was filed against him, an offence he categorically denied. On the same day, the Public Prosecutor requested the opening of a judicial investigation and the investigating judge requested the lifting of Mr. Sonko's parliamentary immunity. The National Assembly plenary voted in favour of lifting his immunity on 26 February 2021.

Case SEN-08

Senegal: Parliament affiliated to the IPU

Victim: Opposition member of parliament

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

Submission of complaint: March 2021

Recent IPU decision: March 2023

Recent IPU mission(s): - - -

Recent Committee hearings:

- Hearing with the Senegalese delegation at the 147th IPU Assembly in Luanda (October 2023)
- Remote hearing with Mr. Guy Marius Sagna, member of the Senegalese National Assembly, member of PASTEF-Les Patriotes, at the 147th IPU Assembly in Luanda (October 2023)

Recent follow-up:

- Communication from the authorities: Letter from the Speaker of the National Assembly (October 2022)
- Communication from the complainant: September 2023
- Communication to the authorities: Letter to the Speaker of the National Assembly (September 2023)
- Communication to the complainant: October 2023

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Luanda, 27 October 2023

On 3 March 2021, Mr. Sonko was summoned to court and went accompanied by a crowd of activists. According to the complainant, the procession was stopped half way by security forces, who arrested Mr. Sonko. The complainant alleges several irregularities concerning Mr. Sonko's detention, the criminal proceedings and the procedure for lifting parliamentary immunity. On the day he was summoned by the judge, Mr. Sonko allegedly mobilized members and supporters of his party and refused to follow the route designated by the law enforcement authorities, thus creating serious public disorder problems. All this took place against a background of a ban on gatherings and demonstrations, following the health emergency declared because of COVID-19. These acts of public disorder were reportedly the reason for his arrest and detention for insurgency and practices and acts likely to disrupt public security, which are offences provided for and punished in the Senegalese Criminal Code.

Mr. Sonko was released under judicial supervision on 8 March 2021. The Public Prosecutor dropped the initial charges brought against him for public disorder. On 3 November 2022, Mr. Sonko was heard by the senior judge in charge of the case concerning the rape allegations. According to the complainant, Mr. Sonko refused to submit to a DNA test requested by the Court as, according to him, the case brought against him was "a plot". On 1 June 2023, when handing down its decision on this case, the Criminal Section reclassified the charge of rape to that of corruption of a minor, and sentenced Mr. Sonko *in absentia* to a two-year non-suspended prison sentence and a fine of 20,000,000 CFA francs in damages.

Given that the list of candidates for the proportional vote submitted by his coalition, on which he was included, had been declared inadmissible, Mr. Sonko could not participate in the legislative elections of July 2022 as a candidate.

On 16 February 2023, Mr. Sonko was forcibly taken out of his car by police officers and taken to his home in an armoured van after having appeared before the court. He had just responded to a summons to appear following a complaint by the Minister of Tourism, Mr. Mame Mbaye Niang, who had accused Mr. Sonko of libel in relation to the criticism of the Minister's handling of public funds. In this case, Mr. Sonko was sentenced on 8 May 2023 at second instance to a suspended six-month prison sentence and a fine of 200 million CFA francs. An appeal has been lodged against the Appeal Court's sentence.

On 16 March 2023, Mr. Sonko's car was reportedly intercepted again. According to the complainant, the police filled the car with tear gas before breaking the window and forcibly removing him through it, then driving him home in one of their armoured vans, with no warrant. Mr. Sonko was reportedly wounded by shards of the broken window glass. He had also been doused with an unknown liquid at the same time.

According to the complainant, the police stationed themselves outside Mr. Sonko's home between 29 May and 24 July 2023, preventing anyone from entering and also hindering Mr. Sonko's free movement. Subsequently, Mr. Sonko was questioned at his home on 28 July 2023, charged with a number of offences including "promoting insurrection", "conspiracy against the authority of the State" and "breaches of State security" and remanded in custody. Mr. Sonko remains in detention.

According to information published in the local and international press, Mr. Sonko received an official notification dated 3 August 2023 that he had been struck off the electoral list (*radiation*).

At the hearing held during the 147th IPU Assembly, Mr. Guy Marius Sagna, member of the Senegalese National Assembly and member of the dissolved party *PASTEF-Les Patriotes*, said that on 12 October 2023, Ziguinchor Court had overturned the decision to strike Mr. Sonko off the electoral list (*radiation*) and had ordered his reinstatement on the list. He also stated that Mr. Sonko had resumed his hunger strike, that he had been hospitalized and that his state of health was very worrying.

At the hearing held during the 146th IPU Assembly (March 2023), the Senegalese delegation stated that this case was not at all of a political nature, that Mr. Sonko's rights had been respected throughout the proceedings and that justice should follow its course. The delegation was heard again by the Committee on the Human Rights of Parliamentarians in October 2023 at the 147th IPU

Assembly. On this occasion, the delegation reaffirmed that Senegalese justice was independent and impartial, that Mr. Sonko's rights had been scrupulously respected and that all necessary measures had been taken, with the help of the Senegalese Prison Administration Directorate and the medical services of the main Dakar hospital, to provide him with medical care. With regard to the decision of the Ziguinchor Court mentioned above, the delegation told the Committee that as the State of Senegal had decided to seek the remedy of appeal available to it, this decision was not final, and that since the judge had not yet handed down a final ruling, Mr. Sonko could not be reinstated on the electoral list. The delegation considered that, if the appeal led to the first-instance decision being upheld, Mr. Sonko would have enough time to be reinstated on the list since the deadline for collecting sponsors was the end of November 2023.

B. Decision

The Governing Council of the Inter-Parliamentary Union

1. *Sincerely thanks* the Senegalese delegation for the information it provided and for having met with the members of the Committee on the Human Rights of Parliamentarians during the 147th IPU Assembly to discuss in a constructive and frank manner the case being examined and the concerns therein;
2. *Notes with interest* the statements by the Senegalese delegation according to which the prison authorities had transferred Mr. Sonko to the special wing of the main Dakar hospital to monitor changes in his condition and provide him with proper medical care; nevertheless *declares itself to be very concerned* by Mr. Sonko's state of health, and particularly by information received according to which Mr. Sonko entered into a deep coma on 23 October 2023; *urges* the national authorities to continue to take the necessary steps to protect Mr. Sonko's life; and *invites* the National Assembly to give the necessary follow-up in this regard, within the scope of its powers;
3. *Recalls* that Mr. Sonko has his sights set on the State's highest office, that he came third in the presidential election in 2019 and that he announced that he would run in the 2024 presidential elections; *recalls also* that Mr. Sonko's case is not an isolated case as in the past other opposition candidates were definitively excluded from the presidential race after being convicted by the courts and that currently, in view of the circumstances, Mr. Sonko could also find himself deprived of his civil rights following a possible conviction against him; and *further recalls* that Mr. Sonko was already prevented from taking part in the legislative elections in July 2022 as a candidate;
4. *Reaffirms* that, according to both the letter and spirit of the IPU [Universal Declaration on Democracy](#), the key to the functioning of democracy is the holding of free elections at regular intervals enabling the people's will to be expressed on the basis of universal, equal and secret suffrage so that all voters can choose their representatives in conditions of equality, openness and transparency; consequently, *reiterates its concern* at the complainant's allegations that Mr. Sonko is the subject of a politically motivated prosecution intended to invalidate his candidacy in the forthcoming presidential elections, allegations which seem to be borne out by the new recent facts, undisputed by the Senegalese authorities, such as Mr. Sonko's detention, his multiple convictions, and the fact that his representatives are unable to procure the forms for collecting the citizen sponsorships required for validating his candidacy; *urges*, in this respect, once again, the competent authorities to take all necessary measures to ensure that the conditions for the holding of such elections are met so that all candidates, including the opposition candidates and their supporters, can exercise their fundamental right to take part in the conduct of public affairs on an equal footing with the ruling party and its supporters; and *calls on* the parliamentary authorities to provide information on any measures taken to this end;
5. *Notes* that Mr. Sonko is currently prevented from carrying out the necessary steps to validate his candidacy as a direct result of action by the State, the latter having decided to seek the remedy of appeal against a court decision ordering Mr. Sonko's reinstatement on the electoral list; *notes also* that a final decision in this case handed down after the cut-off dates for carrying out all the steps and formalities required to validate candidatures for the next presidential elections, regardless of the actual decision itself, would constitute a material obstacle to the exercise of Mr. Sonko's political rights; *expresses the wish* that the proceedings under way concerning Mr. Sonko,

including that relating to the possibility of his reinstatement on the electoral lists, lead to final court decisions without delay, given that the time remaining to finalize his reinstatement is very short, in conditions of independence and impartiality and in full compliance with the relevant national and international standards; and *requests* the parliamentary authorities to provide information on any relevant new development in the proceedings;

6. *Requests* the Committee on the Human Rights of Parliamentarians to send a delegation to Senegal as soon as possible and before the forthcoming presidential elections are held, in order to meet with all legislative, executive and judicial authorities as well as prison authorities and all other institutions or civil society organizations or any individual able to provide relevant information on this case; *instructs* the delegation to visit Mr. Sonko in detention; *hopes* that the competent national authorities will cooperate fully and that the mission will be able to settle this case rapidly in a satisfactory manner, in compliance with the applicable national and international human rights standards; and *thanks* the Senegalese delegation to the 147th IPU Assembly for its assurances that it will cooperate in this regard;
7. *Requests* the Secretary General to convey this decision to the relevant authorities, the complainant and any third party likely to be in a position to supply relevant information;
8. *Requests* the Committee to continue examining this case and to report back to it in due course.

Sri Lanka

*Decision adopted unanimously by the IPU Governing Council at its 212th session
(Luanda, 27 October 2023)*



Mr. Joseph Pararajasingham, Canada 2004© Tamil National Alliance website

LKA-49 - Joseph Pararajasingham
LKA-53 – Nadarajah Raviraj
LKA-61 - Thiyagarajah Maheswaran
LKA-63 - D.M. Dassanayake

Alleged human rights violations

- ✓ Murder
- ✓ Impunity

A. Summary of the case

The four above-mentioned parliamentarians were assassinated between December 2005 and January 2008 during the Sri Lankan civil war, which pitted the Sri Lankan Government against the Liberation Tigers of Tamil Eelam (LTTE) insurgent group.

The information for each of the four cases is as follows:

• Mr. Joseph Pararajasingham's case

Mr. Pararajasingham, a member of parliament belonging to the Tamil National Alliance (TNA), was shot dead on 24 December 2005 while attending the midnight Christmas Eve Mass in St. Mary's Cathedral in Batticaloa. The cathedral was located in a high-security zone and was reportedly surrounded by military at the time of the murder. The complainants therefore feared that Mr. Pararajasingham's murderers enjoyed the complicity of the security forces.

**Case LKA-49 | Case LKA-53
Case LKA-61 | Case LKA-63**

Sri Lanka: Parliament affiliated to the IPU

Victim: Four opposition members of parliament

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

Submission of complaints: December 2005; November 2006; December 2005; January 2008; April 2011, respectively

Recent IPU decision: February 2021

Recent IPU mission: July 2013

Recent Committee hearing: Hearing with the Deputy Speaker and other members of the Sri Lankan delegation to the 133rd IPU Assembly (October 2015)

Recent follow up:

- Communication from the authorities: Letter from the Chief of Protocol of Parliament, forwarding a report from the Attorney General's Department (January 2023)
- Communication from the complainants: January 2018
- Communication to the authorities: Letter to the Speaker of Parliament (September 2023)
- Communication to the complainants: September 2023

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In October 2015, four suspects, including Mr. Sivanesanthurai Chandrakanthan (alias Pillayan), the former Chief Minister of the Eastern Provincial Council and leader of the *Tamil Makkal Viduthalaip Pulikal* (TMVP), a political party that originated from a paramilitary group known as the “Karuna group”, were arrested. Four others, all members of the TMVP, were also said to have been involved in the murder.

On 13 January 2021, the five suspects – four of whom had been detained originally, and the fifth who had allegedly been detained later – were acquitted and released. The acquittal came after the Attorney General’s Office informed the court that it would not proceed with the prosecution.

On 16 September 2015, the Office of the United Nations High Commissioner for Human Rights (OHCHR) released a report (A/HRC/30/CRP.2) on its comprehensive investigation into alleged serious violations and abuses of human rights and related crimes committed by both parties (that is, the Government and related institutions, on the one hand, and the LTTE on the other) in Sri Lanka between 2002 and 2011. The report mentions, with regard to the murder of Mr. Pararajasingham, that “there are reasonable grounds to believe that the Karuna group killed Joseph Pararajasingham, and that it was aided and abetted by security and army personnel”. The OHCHR report concluded more generally that, with regard to the crimes committed during the violent conflict “the sheer number of allegations, their gravity and recurrence and the similarities in their *modus operandi*, as well as the consistent pattern of conduct this shows, all point to systematic crimes which cannot be treated as ordinary crimes” and that “Sri Lanka’s criminal justice system is not currently equipped to conduct an independent and credible investigation into allegations of this breadth and magnitude, or to hold accountable those responsible for such violations” .

- **Mr. Nadarajah Raviraj’s case**

Mr. Nadarajah Raviraj, a TNA member of parliament, was assassinated on 10 November 2006 while travelling to Colombo. Seven persons were arrested, four in March 2015, namely two lieutenant commanders of the Sri Lankan Navy, one navy officer and one police officer. Four of the seven suspects, namely those arrested in 2006 and one of the lieutenant commanders arrested in March 2015, were released on bail. The investigation has also pointed to the involvement in the crime of Mr. Sivakanthan Vivekanandan (alias Charan), a TMVP member, who was said to be abroad.

The accused were served with indictments on 21 July 2016 and remanded in custody until the trial was concluded by the High Court which, on 24 December 2016, decided to discharge all suspects. An appeal was filed by the Attorney General against the judgment. The aggrieved party has filed a leave to appeal application and a review application challenging the acquittal. All three matters were scheduled for argument before the Court of Appeal on 21 February 2023.

The aforementioned report from the OHCHR (A/HRC/30/CRP.2) states that Mr. Raviraj was widely known for his moderate views and critical statements of both the LTTE and the Government, particularly in the weeks leading up to his murder. Along with other parliamentarians, he had set up the Civilian Monitoring Committee, which alleged the Government was responsible for abductions, enforced disappearances and unlawful killings. The report also points to the fact that, the day before he was killed, Mr. Raviraj and other TNA parliamentarians took part in a demonstration in front of the United Nations’ offices in Colombo to protest against the killing of Tamil civilians by the military in the east and the increasing number of abductions and extrajudicial killings.

- **Mr. Thiyagarajah Maheswaran’s case**

Mr. Maheswaran was shot on 1 January 2008. He was killed after stating in a television interview that when parliament resumed sitting on 8 January 2008 he would describe in detail the terror campaign that the Government was pursuing in Jaffna, particularly how abductions and killings were managed. His security detail had been significantly reduced shortly before his assassination and shortly after his vote against the budget in parliament. On 27 February 2008, the authorities arrested a suspect who had been identified as the gunman on the basis of a DNA analysis. The investigators concluded that the assailant was an LTTE activist. The suspect confessed to the crime and was indicted. On 27 August 2012, he was found guilty and sentenced to death. On 10 March 2022, the Court of Appeal

dismissed his appeal and upheld the verdict and death sentence. He subsequently filed an application to seek leave to appeal to the Supreme Court, which had been due to be heard on 18 May 2023.

- **Mr. D.M. Dassanayake's case**

Mr. D.M. Dassanayake, Minister of Nation Building and a member of the Parliament of Sri Lanka, was killed on 8 January 2008, along with a bodyguard, in a roadside Claymore mine attack while on his way to parliament. The subsequent arrest of a key LTTE suspect operating in Colombo led to the arrest of other suspects, whose revelations resulted in the recovery of the remote-control device used to detonate the explosive that killed Mr. Dassanayake. Three suspects were indicted. One confessed and was found guilty in 2011 and trial proceedings continued against the other two until one of them died in 2015. The remaining suspect was acquitted on 5 July 2021. The Attorney General did not file an appeal.

- **General observations**

Following presidential elections in Sri Lanka in November 2019, which brought to power Mr. Gotabaya Rajapaksa, the Sri Lankan Government withdrew in February 2020 from the United Nations Human Rights Council's cooperation framework set out in resolution A/HRC/RES/30/1. Mr. Rajapaksa stepped down as President in July 2022 following massive demonstrations against economic and political mismanagement in Sri Lanka.

In its latest report of September 2023 on the situation of human rights in Sri Lanka, the OHCHR stated that: "Lack of accountability at all levels remains the fundamental main human rights problem. Whether it refers to war crime atrocities, post-war emblematic cases, torture and deaths in police custody, excesses in crowd control, corruption and the abuse of power, Sri Lanka suffers from an extraordinary accountability deficit that unless addressed will drag the country further behind. The High Commissioner urges the Government and Sri Lankan political parties to strive for and deliver on long overdue democratic renewal, deeper institutional reforms and tangible progress on accountability, reconciliation and human rights. This would be particularly appropriate in a year that marks both the 75th anniversary of Sri Lanka's independence and the 75th anniversary of the Universal Declaration on Human Rights".

B. Decision

The Governing Council of the Inter-Parliamentary Union

1. *Regrets* that the parliamentary authorities have not responded to the IPU's requests for updated information in these cases or to the request for a hearing with the Committee on the Human Rights of Parliamentarians at this IPU Assembly; *recalls* that the Committee's procedure is based on the idea of regular and constructive dialogue with the relevant authorities as a prerequisite for making concrete progress in addressing the issues that arise in any given case; and *urges*, therefore, the parliamentary authorities, as used to be the case, to renew their engagement with the Committee;
2. *Remains deeply concerned* that, after all these years, the pursuit of justice has only made serious headway with regard to two of the four assassinations; *considers* that in the case of Mr. Pararajasingham and Mr. Raviraj it should also be possible, in light of the information that has been collected over the years, to hold the culprits to account; *underscores*, however, that this will only be possible if the authorities show the necessary political will and take the necessary steps to ensure that finding and punishing those responsible for serious past crimes becomes a priority; and *is eager* to receive the latest information on what steps are pending or planned to pursue accountability, including with regard to the Attorney General's appeal to the Court of Appeals in Mr. Raviraj's case;
3. *Remains pleased* that the authorities have been able to identify and hold to account Mr. Maheswaran's assassin; *is deeply concerned*, nevertheless, at the severity of the penalty imposed on Mr. Valentino; *points out* that there is a growing global trend and consensus in favour of abolishing the death penalty; *urges*, therefore, the authorities to reconsider

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implementing the sentence; *remains keen to ascertain* whether the verdict against Mr. Valentino established the motive for the murder, in particular in light of earlier concerns that the crime may be related to Mr. Maheswaran's criticism at the time of the Government;

4. *Notes* the most recently communicated developments in the legal proceedings regarding the assassination of Mr. Dassanayake; and *wishes* to know whether this means that with the conviction of one person the pursuit of justice in his case has now become final;
5. *Requests* the Secretary General to convey this decision and the request for information to the relevant authorities, including the Attorney General, the complainants 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.

Zimbabwe

**Decision adopted unanimously by the IPU Governing Council at its 212th session
(Luanda, 27 October 2023)**



Job Sikhala © Freddy Michael Masarirevu

ZWE-46 – Job Sikhala

Alleged human rights violations

- ✓ Arbitrary arrest and detention
- ✓ Inhumane conditions of detention
- ✓ Lack of due process in proceedings against parliamentarians
- ✓ Lack of due process at the investigation stage
- ✓ Lack of fair trial proceedings
- ✓ Excessive delays
- ✓ Violation of freedom of expression and opinion
- ✓ Violation of freedom of assembly and association
- ✓ Violation of freedom of movement
- ✓ Other violations: right to take part in the conduct of public affairs

A. Summary of the case

Mr. Job Sikhala is a seasoned opposition parliamentarian who was arrested numerous times during his political career, even though he was never found guilty of committing a single offence prior to the present case. In a previous case before the IPU Committee on the Human Rights of Parliamentarians, the Committee concluded that the authorities had committed multiple violations against Mr. Sikhala and other opposition members of parliament, including arbitrary arrest and detention, torture and denial of the right to a fair trial.

According to the complainant, Mr. Sikhala was arrested on 14 June 2022 in connection with a speech he had made on 13 June at the funeral of Ms. Moreblessing Ali, a murdered opposition activist. The complainant stresses that Mr. Sikhala made the speech in his professional capacity as the grieving family's lawyer. According to the complainant, Mr. Sikhala's arrest and detention followed the posting of parts of the speech on social media, for which he was charged with the offence of incitement to commit public violence. While in prison, Mr. Sikhala was presented with the additional charge of defeating or obstructing the course of justice.

The complainant further alleges that, immediately after the speech, senior politicians and government spokespersons, including the Permanent Secretary of Information, Mr. Ndabaningi Mangwana, made

Case ZWE-46

Zimbabwe: Parliament affiliated to the IPU

Victim: Opposition member of parliament

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

Submission of complaints: August and September 2022

Recent IPU decision: October 2022

Recent IPU mission: September 2009

Recent Committee hearing: Hearing with the Speaker of the National Assembly at the 147th IPU Assembly (October 2023)

Recent follow-up:

- Communication from the authorities: Letter from the Speaker of the National Assembly (October 2023)
- Communication from the complainant: October 2023
- Communication to the authorities: Letter to the Speaker of the National Assembly (August 2023)
- Communication to the complainant: September 2023

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prejudicial statements presuming Mr. Sikhala's guilt and demanding his immediate arrest. According to the complainant, this in itself violated Mr. Sikhala's right to be presumed innocent until proven guilty.

More than one year after his arrest, Mr. Sikhala remains in the Chikurubi maximum security prison, as his numerous petitions for bail were systematically rejected. The complainant claims that Mr. Sikhala was treated as a convicted criminal, despite the fact that until May 2023 he was a sitting member of parliament with no prior convictions. The complainant stresses that there was no legal basis to keep Mr. Sikhala in pretrial detention and insists that the courts were violating his right to bail as enshrined in the relevant sections of the Constitution and the Code of Criminal Procedure. The complainant also alleges that Mr. Sikhala faces inhumane prison conditions: he has reportedly been shackled with leg irons for prolonged periods of time, forced to sleep on the bare floor and has repeatedly been denied medical care. During the presentation of the report by the President of the Committee on the Human Rights of Parliamentarians to the Governing Council at the 145th IPU Assembly in Kigali in October 2022, the Speaker of the National Assembly took the floor to challenge the allegation that Mr. Sikhala had been denied medical care during his incarceration, and asserted that Mr. Sikhala continued to enjoy his privileges as a member of parliament, including financial and medical benefits. The complainant challenges that assertion and has shared reports that, as of October 2023, Mr. Sikhala's health has dangerously deteriorated and that he is deprived of the medical care he urgently needs in prison.

Mr. Rahim Kahn, a distinguished attorney and judge in Botswana with over 40 years of legal experience, was appointed by the IPU to attend and follow the trial of Mr. Sikhala. In his report, the trial observer concluded that the State had failed to bring substantive evidence that proved that Mr. Sikhala was aware that an investigation was taking place and that his words had the effect of interfering with, or obstructing, justice. The trial observer stressed the following:

"It is my considered opinion that, with the litany of unproven facts and the lack of evidence, it will be most prejudicial to convict the accused of this particular crime. These inconsistencies are so glaring that no right-thinking court could on the basis of these facts find the accused guilty".

On 3 May 2023, the Harare magistrates court found Mr. Sikhala guilty and sentenced him to a six-month suspended sentence and a US\$ 600 fine on the charge of defeating or obstructing the course of justice. The trial observer highlighted that the court had reached its conclusions in contradiction to applicable legal principles, based on the "say so" of three police officers who were heard as witnesses. In addition, the trial observer reached the conclusion that by consistently denying bail to Mr. Sikhala, the court had deviated from principles defined by law and set out in precedents in Zimbabwe and other common-law countries. The trial observer expects that an appeal against this verdict by Mr. Sikhala would be successful, as it "would be a violation of his constitutional rights to be convicted on the basis of such evidence". As for the original charge of incitement to commit public violence, the criminal proceedings are ongoing, with no indication of when a verdict might be handed down.

According to the complainant, as at 6 October 2023, Mr. Sikhala was still in prison and has lost his seat in parliament, as his long-standing incarceration had denied him the possibility to actively campaign for the August 2023 elections. In addition, the complainant reports that newly adopted legislation could further curtail the political rights of Mr. Sikhala and those of other political opponents who criticize the Government.

B. Decision

The Governing Council of the Inter-Parliamentary Union

1. *Thanks* the Speaker of the National Assembly of Zimbabwe for the information, including legal documents, provided at a hearing with the IPU Committee on the Human Rights of Parliamentarians during the 147th IPU Assembly in Luanda, and for his renewed assurance that the Committee is welcome to visit Zimbabwe and meet with all relevant parties; *takes note* of the Speaker's ongoing commitment to making arrangements with the Ministry of Justice to facilitate the organization of the mission in Zimbabwe as soon as practicable; and *looks forward* to receiving information on the specifics of the mission;

2. *Thanks* Mr. Rahim Kahn for carrying out two trial observation missions and for his comprehensive report;
3. *Is deeply concerned* over the several deficiencies that the trial observer identified in the handling of the legal proceedings brought against Mr. Sikhala, in particular the acceptance of inconsistent and unreliable evidence against Mr. Sikhala and the repeated denial of bail in contradiction with established principles of law in Zimbabwe and other common law legal systems; *believes* that the report gives serious weight to the accusation made by the complainant that the case made against Mr. Sikhala came merely in response to the exercise of his right to free speech; *is led to believe*, therefore, that he should never have been detained and prosecuted in the first place; *hopes* that higher level courts will carefully and critically assess what credible evidence, if any, exists in support of the charges and will adopt a fair verdict; and *is eager* to be kept informed of developments in this regard;
4. *Is dismayed* that Mr. Sikhala has been held in Chikurubi maximum security prison on remand since his arrest on 14 June 2022 and that all his applications for bail have been denied; *fails to see* how his detention in a maximum security prison could possibly be justified; *is shocked by* reports that Mr. Sikhala's health has gravely deteriorated and that he is being held in inhumane conditions; *fails to understand* the legal basis for his prolonged incarceration; *is particularly concerned* by the arbitrary treatment he has received, bearing in mind the findings of the Committee on the Human Rights of Parliamentarians, in an earlier case, that he had been subjected to arbitrary arrest, detention and torture; and *calls on* the authorities to provisionally release him and urgently provide him with the medical care that he requires;
5. *Stresses* that, notwithstanding considerations of the separation of powers, the parliament of Zimbabwe can look into such allegations by virtue of its oversight function, as reflected in Article 119 of the Constitution of Zimbabwe; and *looks forward* to hearing from the parliamentary authorities on this point;
6. *Deplores* the fact that its call to release Mr. Sikhala and to allow him to return to his parliamentary duties without undue obstacles in its previous decision has been ignored by the authorities and that he has been unable to stand in the 2023 elections as a result; and *concludes* that the actions of the authorities have made it impossible for Mr. Sikhala to practically exercise the right to take part in the conduct of public affairs;
7. *Sincerely believes* that a mission by the IPU Committee on the Human Rights of Parliamentarians, which would include meetings with all the relevant authorities, a meeting with the members of parliament whose cases are before the Committee, along with meetings with relevant third parties, would offer a useful opportunity to discuss the issues that have emerged in the case at hand and to examine possible solutions; *sincerely hopes*, therefore, that the Zimbabwe authorities will be able to receive this mission as soon as practicable; and *requests* the Secretary General to continue to engage with the parliamentary authorities of Zimbabwe with a view to the dispatch of the mission ahead of the upcoming session of the Committee;
8. *Requests* the Secretary General to convey this decision to the parliamentary authorities and other relevant national authorities, the complainant and any interested third party likely to be in a position to supply relevant information to assist the Committee in its work;
9. *Requests* the Committee to continue examining this case and to report back to it in due course.

Zimbabwe

*Decision adopted unanimously by the IPU Governing Council at its 212th session
(Luanda, 27 October 2023)*



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ZWE-47 – Pashor Raphael Sibanda
ZWE-48 – Ereck Gono
ZWE-49 – Nicola Jane Watson
ZWE-50 – Desmond Makaza
ZWE-51 – Obert Manduna
ZWE-52 – Sitabile Mlilo
ZWE-53 – Jasmine Toffa
ZWE-54 – Janeth Dube
ZWE-55 – Evidence Zana
ZWE-56 – Morgan Ncube
ZWE-57 – Velisiwa Nkomo
ZWE-58 – Prince Dubeko Sibanda

ZWE-59 – Bright Moyo Vanya
ZWE-60 – Febion Munyaradzi Kufahatizwi
ZWE-61 – Helen Zivira
ZWE-62 – Gideon Shoko
ZWE-63 – Siphwe Ncube
ZWE-64 – Felix Magalela
ZWE-65 – Tendai Sibanda
ZWE-66 – Joel Gabuza Gabuza
ZWE-67 – Anastasia Moyo
ZWE-68 – Mativenga Godfrey Madzikana
ZWE-69 – David Chimhini

Alleged human rights violations

- ✓ Torture, ill-treatment and other acts of violence
- ✓ Undue invalidation, suspension, revocation or other acts obstructing the exercise of the parliamentary mandate

A. Summary of the case

General elections were held in Zimbabwe on 23 August 2023, which led to the inauguration of the 10th parliamentary term on 3 October 2023. According to the complainant, the Citizen's Coalition for Change (CCC), the opposition party led by Mr. Nelson Chamisa, the main challenger to the incumbent President Mnangagwa of the ruling Zimbabwe African National Union party (ZANU PF), acquired a sizeable number of seats in both chambers of parliament, thus ending the two-thirds majority that the ZANU PF party enjoyed in the ninth parliamentary term. According to the complainant, in a letter dated 11 September 2023, Mr. Nelson Chamisa wrote to the Speaker of the National Assembly that, as President of the CCC, his office was to be solely responsible for any correspondence between the authorities and the CCC.

Case ZWE-COLL-02

Zimbabwe: Parliament affiliated to the IPU

Victim: 23 opposition members of parliament

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

Submission of complaint: October 2023

Recent IPU decision(s): - - -

Recent IPU mission(s): - - -

Recent Committee hearing: Hearing with the Speaker of the National Assembly at the 147th IPU Assembly (October 2023)

Recent follow-up:

- Communication from the authorities:
- - -
- Communication from the complainants:
October 2023
- Communication to the authorities: - - -
- Communication to the complainants:
October 2023

At a hearing held with the IPU Committee on the Human Rights of Parliamentarians during the 147th IPU Assembly, the Speaker of the National Assembly stated that Section 129(1)(k) of the Constitution of Zimbabwe stipulated that the seat of a member of the National Assembly becomes vacant “if the Member has ceased to belong to the political party of which he or she was a member when elected to Parliament and the political party concerned, by written notice to the Speaker ... has declared that the Member has ceased to belong to it”.

The complainant contends that the Speaker of the National Assembly recalled 14 members of the National Assembly on the basis of a letter that was allegedly received by a Mr. Sengozo Tshabangu on 4 October 2023, where Mr. Tshabangu claimed to be the “interim Secretary General of the CCC” and requested the Speaker to recall 14 members of the lower house and nine senators on the basis that they were no longer members of the CCC. According to the complainant, Mr. Tshabangu is an imposter with no position in the CCC and who had no authority to request the recall any CCC members. Moreover, none of the individuals concerned in parliament stated that they had left the CCC. In the hearing with the IPU Committee, the Speaker of the National Assembly stated that Mr. Tshabangu’s letter of 3 October 2023 had been received before the letter from Mr. Chimasa dated 11 September 2023. Had this been the other way around, the Speaker’s decision may have been quite different. He also stated that the CCC did not have clear and publicly known internal structures or the names of those holding the most important positions in the party. Should a request to recall members of the National Assembly belonging to ZANU PF be put before him, he said that it was public knowledge who was entitled within the party to make that request.

According to the complainant, the Speaker denied the CCC parliamentarians the right to be heard before proceeding with the revocation of their parliamentary mandate on 10 October 2023. According to information received from the authorities, under Section 129(1)(k) of the Constitution and bearing in mind a legal precedent specifying that the Speaker should not adjudicate internal party disputes, the Speaker of the National Assembly had no choice but to proceed with the recall and to refer the individuals concerned to the courts if they did not agree with the recall decision.

The complainant claims that the Speaker acted unconstitutionally by ignoring the written and oral submission of known members of the CCC, by refusing any discussions on this issue and by accepting the letter from Mr. Tshabangu without ensuring that it was a legitimate communication from the political party concerned. In addition, the complainant alleges that the Speaker ordered the intervention of a unit of riot police that had violently evicted the CCC parliamentarians from the National Assembly after they had refused to leave the House and protested against the recall of their colleagues. According to the complainant, several parliamentarians sustained injuries as a result of police brutality in the House. In addition, the complainant submits that the Speaker suspended all CCC National Assembly members from the House for six sittings and stopped their salaries for two months.

According to the complainant, these allegations have to be seen as part of a pattern of repression, the erosion of the independence of the judiciary and the shrinking civic space that accompanied the disputed 2023 elections, as well as pre-existing violations of the rights of parliamentarians belonging to the opposition. The complainant shared several incidents where opposition parliamentarians had been recalled from other opposition parties under Section 129 of the Constitution in the past but stressed that never before had the recall procedure been initiated by a person who was external to the political party and its leadership. Reportedly, Mr. Tshabangu made declarations according to which only CCC candidates vetted by himself would be allowed to take part in future by-elections.

B. Decision

The Governing Council of the Inter-Parliamentary Union

1. *Notes* that the complaint: (i) was submitted in due form by a qualified complainant under section I.1(a) of the Procedure for the examination and treatment of complaints (Annex I of the revised Rules and Practices of the Committee on the Human Rights of Parliamentarians); (ii) concerns 23 members of parliament, who had been elected before the alleged violations took place; and (iii) concerns allegations of torture, ill-treatment and other acts of violence, as well as the undue invalidation, suspension, revocation or other acts obstructing the exercise of the parliamentary mandate, allegations that fall within the Committee’s mandate; *considers* that the complaint is therefore admissible under the provisions of section IV of the Procedure; and *declares itself* competent to examine the case;

2. *Thanks* the Speaker of the National Assembly of Zimbabwe for the information provided at a hearing with the IPU Committee on the Human Rights of Parliamentarians during the 147th IPU Assembly in Luanda;
3. *Considers* that the procedure allowing political parties in Zimbabwe to recall their members in parliament runs counter to the basic principle of the free representational mandate and to the right to freedom of expression, both of which the IPU has consistently defended; and *sincerely hopes* that the Zimbabwean authorities, in particular parliament, will seriously consider modifying this procedure so as to ensure that members of parliament can carry out their work freely without undue pressure from their political parties;
4. *Is deeply concerned* that 23 opposition parliamentarians lost their seats following the decision of the Speaker of the National Assembly and the President of the Senate to revoke their mandate on the basis of a deeply contested letter from an individual who is allegedly unrelated to the party to which these legislators belong;
5. *Appreciates* the argument put forward by the Speaker of the National Assembly that he acted in line with Section 129(1)(k) of the Constitution of the Republic of Zimbabwe; *fails to see* any reasonable grounds for accepting an official communication from an unknown individual without being satisfied that the said communication is legitimate and without seeking the point of view of the individuals concerned or the president of their party; *is troubled* by the assertion that the official communication from the leader of the party to which the 23 parliamentarians belonged was not taken into account because it was reportedly received after the recall, even though it was dated three weeks before that decision was taken; *is puzzled* by the swiftness with which the decision to revoke the mandate of the newly elected parliamentarians was taken and the fact that no debate on the issue was allowed; and *wishes* to receive additional clarification from the parliamentary authorities of the National Assembly and the Senate on the points above;
6. *Is convinced* that this new case and the ongoing cases from Zimbabwe before the IPU Committee on the Human Rights of Parliamentarians require the organization of a mission by the IPU Committee to Zimbabwe as soon as practicable; *thanks* the Speaker of the National Assembly for his renewed commitment to making arrangements with the Ministry of Justice to facilitate the organization of such a mission ahead of the 173rd session of the IPU Committee, scheduled to take place in January 2023; and *looks forward* to receiving information on the specifics of the mission as soon as possible;
7. *Requests* the Secretary General to convey this decision to the parliamentary authorities and other relevant national authorities, the complainant and any interested third party likely to be in a position to supply relevant information to assist the Committee in its work;
8. *Requests* the Committee to continue examining this case and to report back to it in due course.

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