

DEMOCRATIC REPUBLIC OF CONGO

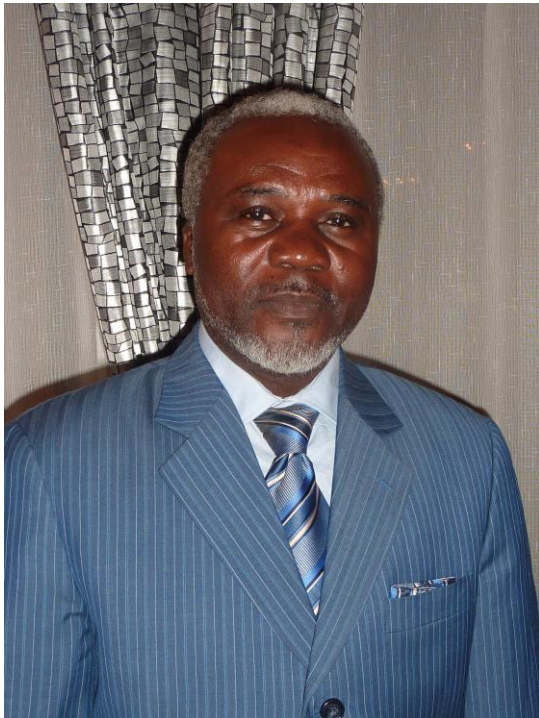
- **COD-72:** Dieudonné Bakungu Mythondeke
- **COD-150:** Jean-Marc Kabund
- **COD-COLL-03:** Two parliamentarians
- **COD-COLL-04:** Three parliamentarians
- **COD-158:** Chérubin Okende Senga
- **COD-COLL-05:** Seventeen parliamentarians



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Democratic Republic of the Congo

Decision adopted by the Committee on the Human Rights of Parliamentarians at its 176th session (Geneva, 3 to 19 February 2025)



Mr. Mythondeke © IPU June 2013

COD-72 – Mr. Dieudonné Bakungu Mythondeke

Alleged human rights violations

- ✓ Threats, acts of intimidation
- ✓ Violation of freedom of movement

A. Summary of the case

Mr. Mythondeke was arrested, together with his family and bodyguards, in disputed circumstances, in February 2012. Charged with rebellion and breaches of state security, he was acquitted of all charges brought against him but was sentenced in first and final instance by the Supreme Court on 25 February 2012 to a 12-month prison term for incitement to hatred. The court proceedings were characterized by irregularities, which were largely upheld in the Supreme Court ruling. Mr. Mythondeke was released on 28 January 2013 after serving his sentence. He also won a civil claims case against the Congolese State in 2015. However, the State has reportedly not paid the amount ordered by the court.

Case COD-72

Democratic Republic of the Congo:
Parliament affiliated to the IPU

Victim: A member of parliament for the majority, having joined the opposition at the time of the alleged offences

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

Submission of complaints: August 2012 and May 2014

Recent IPU decision: February 2022

IPU mission: June 2013

Recent Committee hearing: Hearing with the DRC delegation at the 149th IPU Assembly in Geneva (October 2024)

Recent follow-up:

- Communication from the authorities: Letter from the Speaker of the National Assembly, making no reference to the case (January 2020)
- Communication from the complainant: January 2025
- Communications to the authorities: Letters to the President of the Republic and to the Speaker of the National Assembly (December 2024)
- Communication to the complainant: January 2025

Given the concerns for their safety and the absence of any measures by the Democratic Republic of the Congo (DRC) authorities to ensure their protection and to put an end to the threats, Mr. Mythondeke and his family reportedly took refuge abroad in early 2014.

Mr. Mythondeke wished to relocate to another country for security reasons, but did not obtain any assistance in regard to relocation because, according to United Nations reports, he had provided substantial financial and political support to an armed group before his arrest. The former member of parliament denies those accusations and invokes the presumption of innocence. The Speaker of the National Assembly reported in a letter dated 21 August 2017 that he had asked the executive branch to launch investigations into the reasons why Mr. Mythondeke had gone into exile and to seek proposals on how to facilitate his return. However, since 2017, the parliamentary authorities have not provided any information on the status of the investigations or on Mr. Mythondeke's situation. In December 2020, Mr. Mythondeke returned to the DRC in deplorable travel conditions. The return was said to have been motivated by the failure of the Office of the United Nations High Commissioner for Refugees (UNHCR) in Brazzaville to take any action and the desire to move his case forward with the Congolese authorities.

Since his return to the DRC, the former member of parliament has been desperately seeking compensation from the Congolese State for the violations he suffered, especially since, on 18 March 2021, the High Court in Goma handed down a judgment on the attack on his home in 2012, ordering the DRC to compensate him for the damages incurred by returning all his personal belongings that had been plundered and destroyed by soldiers from the Armed Forces of the Democratic Republic of the Congo (*Forces armées de la république démocratique du Congo*, FARDC) and Congolese national police officers. The court also ordered the DRC to repair his house and pay him financial compensation. The judgment became final on 18 April 2021, as the State reportedly did not appeal the court's decision.

After several referrals to the Minister of Finance in 2023 and 2024, Mr. Mythondeke received a reply on 11 July 2024 confirming that he is owed US\$ 2 million as a result of the DRC's conviction following the attack he suffered in 2012. According to the Ministry of Finance, this debt is recorded in the domestic public debt portfolio, category V: "Court Conviction and Miscellaneous Compensation" for the 2012 financial year. According to the Congolese authorities, the payment of this debt will take place as part of the overall settlement of the domestic public debt, unless otherwise advised by the Directorate-General of the Treasury and Public Accounts.

B. Decision

The Committee on the Human Rights of Parliamentarians

1. *Deplores* the ongoing silence of the parliamentary authorities regarding Mr. Mythondeke's situation and the lack of response to his requests for information about it;
2. *Notes with deep regret* that, despite the court decisions of 2015 and 2021 recognizing the damages incurred by Mr. Mythondeke and ordering the DRC to pay him financial compensation, the Congolese authorities only registered the debt owed to him in the public debt portfolio in 2023; and *states* that the inclusion of this debt owed to Mr. Mythondeke in the domestic public debt portfolio does not exempt the DRC from paying it within a reasonable time frame in order to respect the beneficiary's rights;
3. *Notes* the measures taken by the Congolese authorities to regularize Mr. Mythondeke's situation; nevertheless, *urges* the competent authorities to speed up implementation of the court decisions so that Mr. Mythondeke and his family can close this chapter and return to decent living conditions in the DRC; *invites* the parliamentary authorities to follow the case

and to take all necessary measures to finally resolve this case; and *wishes to* be kept informed of the progress made in this regard;

4. *Remains convinced* that a mission to Kinshasa, security permitting, would help to resolve this case and clarify the facts and concerns expressed to the competent authorities, and to meet with the sources and any other person likely to provide clarification in the other cases involving former Congolese members of parliament; and *hopes* to receive a positive response and support from the National Assembly to this end to enable the mission to proceed in the best possible conditions;
5. *Requests* the Secretary General to convey this decision to the parliamentary authorities, the Minister of Finance of the DRC and the complainant, as well as to any third party likely to be in a position to supply relevant information;
6. *Decides* to continue examining this case.



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*Decision adopted unanimously by the IPU Governing Council at its 214th session
(Geneva, 17 October 2024)*



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

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: October 2023

Recent IPU mission(s): - - -

Recent Committee hearing(s): Hearing with the delegation of the DRC at the 149th IPU Assembly in Geneva (October 2024)

Recent follow-up:

- Communication from the authorities: Letter from the First Deputy Speaker of the Senate (September 2022)
- Communication from the complainant: May 2024
- Communication to the authorities: letter to the Speaker of the National Assembly (September 2024)
- Communication to the complainant: September 2024

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 using the judiciary against President Tshisekedi'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 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.

On 20 December 2023, the Democratic Republic of the Congo held general elections against a background of disruption, malfunctioning, violence and accusations of attempted fraud. A number of voices among the opposition and observers condemned the chaotic legislative elections, the outcome of which would only inflame the political tensions in the country. Mr. Félix Tshisekedi was re-elected President of the Republic and his political party won the majority of seats in the National Assembly.

During the 149th IPU Assembly, the Committee on the Human Rights of Parliamentarians met with the Congolese delegation and discussed Mr. Kabund's case. The delegation underlined that Article 107 of the Congolese Constitution established the principle of absolute immunity for parliamentarians in the context of the exercise of their duties, and that this immunity was absolute under the provisions

of the said article. Nevertheless, according to the delegation, the remarks for which Mr. Kabund was tried and sentenced were not made in the context of the exercise of his parliamentary duties. The delegation stated that in his speech, Mr. Kabund had insulted the honour of the Head of State on the basis of unfounded accusations. As a result, he had been prosecuted, his immunity had been lifted and he had been sentenced in accordance with the Congolese legislation in force.

Regarding the request for a Committee mission to the Democratic Republic of the Congo, the delegation stated that the mission would be welcome and that the National Assembly was available to facilitate the organization of the mission in the near future.

B. Decision

The Governing Council of the Inter-Parliamentary Union

1. *Thanks* the Congolese delegation for the information provided at the 149th IPU Assembly, in particular its willingness to facilitate and welcome a Committee mission to the Democratic Republic of the Congo in the near future;
2. *Remains 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; and *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. *Recalls* that the Democratic Republic of the Congo is a party to the International Covenant on Civil and Political Rights, which recognizes the right to security of person and the right to freedom of opinion, expression and assembly; consequently *stresses* that Mr. Kabund's sentence is not in line with the international commitments of the Democratic Republic of the Congo in the area of freedom of expression; *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. *Deplores* 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 such a mechanism, 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. *Is pleased* at the National Assembly's willingness to facilitate and welcome a mission of the Committee on the Human Rights of Parliamentarians to the DRC under the best possible conditions; and *hopes* that this mission will take place in the near future and that it will include meetings with 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 in detention and relevant third parties, in order to promote a satisfactory settlement of this case;
6. *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;
7. *Requests* the Committee to continue examining the case and to report back to it in due course.



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*Decision adopted unanimously by the IPU Governing Council at its 211th session
(Manama, 15 March 2023)*



Crispin Ngbundu Malengo



Martin Kabuya Mulamba-Kabitanga

COD-152 – Martin Kabuya Mulamba-Kabitanga

COD-153 – Crispin Ngbundu Malengo

Alleged human rights violations

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

A. Summary of the case

Mr. Martin Kabuya Mulamba-Kabitanga and Mr. Crispin Ngbundu Malengo were elected in the legislative elections held in December 2018. Upon accepting positions as provincial governors, deemed incompatible with their parliamentary mandates, they were reportedly suspended in April 2019 and replaced by their alternates.

In June and December 2020, Mr. Malengo and Mr. Kabuya were stripped of their governorship. Believing that the motions of impeachment against them were unfounded, the two governors filed a complaint with the Constitutional Court. In January and March 2021, the Constitutional Court dismissed Mr. Kabuya and Mr. Malengo who, having officially lost their governorships, initiated a procedure to be reinstated in their parliamentary functions. To this end, on 13 July 2021, legal counsel for the former members of parliament lodged a submission with the Constitutional Court requesting it to interpret the meaning and scope of paragraphs 1, 2 and 3 of Article 110 of the Constitution of 18 February 2006, amended by Law No. 11/002 of 20 January 2011, which list situations requiring the suspension of a parliamentary mandate, the acceptance of a political function that is incompatible with the exercise of a parliamentary mandate being one such situation.

Case COD-COLL-03

Democratic Republic of the Congo:
Parliament affiliated to the IPU

Victims: Two majority members of parliament

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

Submission of the complaint: October 2022

Recent IPU decision(s): - - -

Recent IPU mission(s): - - -

Recent Committee hearing(s): - - -

Recent follow-up:

- Communication(s) from the authorities: - - -
- Communication from the complainant: February 2023
- Communication to the authorities: Letter to the Speaker of the National Assembly (February 2023)
- Communication to the complainant: February 2023

On 1 March 2022, the Constitutional Court issued its ruling No. 1606 in which it clarified its position on the suspension of mandates saying that the latter “applies to any acceptance of an incompatible political office, whether elective or nominative, as envisaged under the Constitution amended on 20 January 2011. In this case, therefore, the parliamentarian whose mandate had been suspended can be reinstated immediately and rightfully in parliament, provided that during this same legislature, as provided in paragraph 6 of the interpreted article, the said parliamentarian or alternate has not deliberately left the political party on behalf of which they had obtained their mandate”. Thus, in its ruling No. 1606 of 1 March 2022, the Constitutional Court definitively ruled on the right of the two members of parliament to resume their parliamentary mandates stating that “the members of parliament whose mandates have been suspended must take up their place in parliament”. The complainants pointed out that, according to Article 168(1) of the Constitution, “The judgments of the Constitutional Court are not subject to appeal and are immediately enforceable. They are binding on the public authorities, on all administrative and judicial, civil and military authorities and on private individuals”. Reportedly, however, the parliamentary authorities have not enforced the Constitutional Court’s ruling No. 1606.

According to the documents submitted by the complainants, in a letter dated 14 March 2022 addressed to Mr. Kabuya, the Speaker of the National Assembly acknowledges the Constitutional Court’s ruling. However, although the parliamentary authorities had taken note of the Constitutional Court’s ruling on the right to resume their parliamentary mandates, the two former members of parliament were reportedly unable to sit in the National Assembly and did not receive their allowances.

Following the legislative elections in the Democratic Republic of the Congo in July 2022, Mr. Kabuya and Mr. Ngbundu are no longer members of parliament.

B Decision

The Governing Council of the Inter-Parliamentary Union

1. *Notes* that the complaint concerning the situation of Mr. Martin Kabuya Mulamba-Kabitanga and Mr. Crispin Ngbundu Malengo 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 two incumbent members of parliament at the time of the alleged facts; (iii) concerns excessive delays, violation of freedom of opinion and expression, violation of freedom of assembly and association, and other acts obstructing the exercise of the parliamentary mandate, allegations which fall under the Committee’s mandate;
2. *Regrets* the lack of response from the parliamentary authorities concerning the cases of Mr. Kabuya and Mr. Ngbundu; and *invites* the authorities to provide their observations in these cases;
3. *Takes note* of Constitutional Court Ruling N° 1606 of 1 March 2022, which ruled in favour of the reinstatement of former members of parliament in their parliamentary functions insofar as the political function they held had indeed ended while their parliamentary mandate was still valid; and *notes with concern* that the said ruling has not been executed despite the fact that the parliamentary authorities were allegedly notified thereof by the complainants and despite the immediate enforceability of Constitutional Court’s rulings;
4. *Wishes* to receive information on the reasons that have prevented the parliamentary authorities from implementing the Constitutional Court’s ruling by terminating the suspension of the two former members of parliament and paying them their exit allowances; and *calls on* the parliamentary authorities to ensure that Mr. Kabuya and Mr. Ngbundu obtain redress for the damage suffered;
5. *Notes* that Mr. Kabuya’s and Mr. Ngbundu’s situation are not isolated cases insofar as cases of invalidation for various reasons have already been submitted to the Committee in the past and continue to be examined by it; *also notes* that their cases are part of a hostile political context that is hostile *vis-à-vis* opposition voices; and *encourages* the Congolese authorities in this

election year, when tensions may lead to further violations against certain members of the National Assembly, to take all necessary measures to guarantee the fundamental rights of all its members, former and current, irrespective of their political affiliation, in order to ensure that the invalidation of the parliamentary mandate is not used to dismiss members of parliament for their political ideas;

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



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*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-154 – Henri Mova Sakanyi

COD-155 – 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,

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

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 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.



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*Decision adopted unanimously by the IPU Governing Council at its 214th session
(Geneva, 17 October 2024)*



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 Moïse Katumbi – was found murdered, according to the complainants, shot in the head, inside his vehicle which had been 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.

Mr. Chérubin Okende's death occurred within a particularly difficult context for political opponents in the Democratic Republic of the Congo (DRC), where the democratic space is shrinking and violations are committed against those speaking out against the incumbent regime. His disappearance has raised many questions relating to safety in the DRC, particularly the safety of political opponents.

Shortly after Mr. Okende's death, the contents of a confidential report attributed to the National Intelligence Agency (ANR) were published by Radio France International (RFI) and Jeune Afrique media on 31 August 2023. According to the report, military intelligence was responsible for Mr. Okende's death. The journalist who accessed this report was imprisoned in September 2023 and then convicted of disseminating false information. He was released in March 2024 after serving his

Case COD-158

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: July 2023

Recent IPU decision: February 2024

Committee mission(s): - - -

Recent Committee hearings: Hearing with the DRC delegation at the 149th IPU Assembly in Geneva (October 2024)

Recent follow-up:

- Communication(s) from the authorities:
- - -
- Communication from the complainant:
March 2024
- Communication to the authorities: letter to the Speaker of the National Assembly (September 2024)
- Communication to the complainant:
September 2024

six-month prison sentence. The Congolese authorities have stated that the report was wrongly attributed to the ANR and that its contents were totally false.

At a hearing before the Committee on the Human Rights of Parliamentarians at the 147th IPU Assembly in October 2023, the Congolese delegation 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 delegation 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 (MONUSCO), who agreed to collaborate with the Congolese authorities in this case. The delegation said that the report drawn up at the end of this judicial investigation would be published very shortly and that the National Assembly would send it to the Committee as soon as it was available. Despite the assurances from the Congolese authorities at their hearing, the investigation report has not been made available to the Committee.

On 7 November 2023, Mr. Okende's family lodged a complaint in Belgium against Colonel-Major Christian Ndaywell, head of the Congolese military intelligence, whom they suspect of involvement in the death of the member of parliament. The complaint was lodged as a civil action with a Brussels investigating judge on charges of war crimes. As a Belgian national, Mr. Ndaywell is subject to Belgian justice, which can prosecute him under its universal jurisdiction in criminal matters. The case was referred to the Brussels Public Prosecutor's Office, which notified the federal Public Prosecutor's Office on 14 December 2023. The federal Public Prosecutor's Office is currently considering whether the case can be handled at the federal level.

On 22 January 2024, Mr. Okende's family sent a letter to the DRC's Prosecutor General requesting a report within 72 hours on the progress of the case and the findings of the autopsy performed on the member of parliament's remains. Six months after his death, the autopsy report had still not been made available to the complainants or the lawyers.

On 29 February 2024, the Public Prosecutor announced that the cause of Mr. Okende's death was suicide, according to the analyses carried out and following the discovery of his personal diary in which he had written that he was "at the end of his tether". The complainants question this information, given that the suicide theory put forward by the authorities does not correspond to the images of Mr. Okende's body that had been widely circulated on social networks and other media. Mr. Okende's family strongly criticized the authorities' conclusion. In September 2024, the family's lawyer announced that the family had again filed a complaint with the Public Prosecutor asking for the investigation to be reopened. However, it appears that they have not had any response by the Congolese judiciary to their complaint.

During the 149th IPU Assembly in Geneva, the Committee met with the Congolese delegation to discuss Mr. Okende's case. The delegation stated that in accordance with the Criminal Procedure in the Democratic Republic of the Congo, investigations were secret, but that defendants were given access to investigation and autopsy reports with the prior authorization of the Public Prosecutor's Office. According to the delegation, Mr. Okende's family and lawyers were given access to the two reports in their entirety, as they had brought proceedings in Belgian courts against Colonel Major Christian Ndaywell. The delegation added that the Public Prosecutor's Office had cooperated diligently with Mr. Okende's family, despite the family having refused to cooperate with the Congolese authorities. For greater transparency in this case, the Public Prosecutor's Office allegedly also informed the Bureau of the National Assembly that it had invited the Catholic Church – which had expressed doubts about the investigation report – to discuss the case. This discussion reportedly lasted for more than four hours, in order to clarify a number of elements in the investigation report.

With regard to the Committee's request to obtain the legal investigation report, the delegation stated that the parliamentary authorities could contact the Public Prosecutor's Office and ask for the said reports to be shared with the Committee, stressing that the best way to access these reports was to conduct a mission in the DRC, which the parliamentary authorities were prepared to facilitate and support.

Concerning the evidence according to which Mr. Okende had supposedly committed suicide, the delegation explained that analyses and samples relating to the deceased's car and body had been carried out and that this evidence had been backed up by the conclusions of international experts who had been invited to work with the Congolese Public Prosecutor's Office in the course of the investigation. According to the delegation, Belgium, South Africa and MONUSCO had sent teams who had carried out completely independent investigations. The teams from South Africa and MONUSCO reportedly concluded that it was indeed a case of suicide, while the Belgian team allegedly expressed doubts that it was a case of murder, but without concluding that Mr. Okende had killed himself.

The delegation stressed that there was a considerable discrepancy between the result of the investigation and the way the press had presented the case. Contrary to what was reported by the press, Mr. Okende's body was not "riddled with bullets". The Public Prosecutor's Office had reportedly found a single bullet, which had apparently gone through the member of parliament's head. Some of the information examined by the Public Prosecutor's Office, including statements by the member of parliament's bodyguard and his wife, contained elements that were contradictory and unverifiable.

Lastly, the delegation said it had no knowledge of the request by Okende's family to the prosecutor asking for the investigation to be reopened.

B. Decision

The Governing Council of the Inter-Parliamentary Union

1. *Thanks* the Congolese delegation for the information provided at the 149th IPU Assembly, in particular its willingness to facilitate and welcome a Committee mission in the near future;
2. *Deplores*, once more, the death of opposition member of parliament Mr. Chérubin Okende, while taking into account the information shared by the Congolese delegation, in particular the international cooperation of the Congolese Public Prosecutor's Office with the Belgian, South African and MONUSCO authorities to establish the member of parliament's cause of death;
3. *Stresses*, nevertheless, that Mr. Okende's family rejected the prosecutor's conclusions that the member of parliament committed suicide, and had brought proceedings in Belgian courts against Colonel Major Christian Ndaywell for his presumed role in Mr. Okende's death; and *urges* the Congolese authorities to that end to show greater transparency by sending a copy of the legal investigation report, with all the relevant elements, as well as the conclusions of the international teams, to the National Assembly and to the Committee as soon as possible in order to establish the truth in this case;
4. *Considers* that, given the allegations concerning his death and the doubts that remain about the prosecutor's conclusions concerning the cause of his death, the National Assembly, as the guardian of human rights, could have taken concrete steps to preserve the integrity of parliament by joining Mr. Okende's family in bringing a civil action in order to gain access to the legal investigation report in its entirety;
5. *Is pleased* at the National Assembly's willingness to facilitate and welcome a mission of the Committee on the Human Rights of Parliamentarians to the DRC under the best possible conditions in order to meet the Congolese authorities, in particular the Speaker of the National Assembly, the Prosecutor General and the Minister of Justice, and gain access to the reports of the legal investigation, the autopsy and the reports of the international teams who assisted the Congolese Public Prosecutor's Office; *considers* it essential that the delegation also meets with Mr. Okende's family and lawyers and relevant third parties; and *hopes* that the National Assembly will facilitate all these meetings during the Committee's mission;
6. *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;
7. *Requests* the Committee to continue examining the case and to report back to it in due course.



Inter-Parliamentary Union
For democracy. For everyone.

Democratic Republic of the Congo

*Decision adopted unanimously by the IPU Governing Council at its 214th session
(Geneva, 17 October 2024)*



An official from the Independent National Electoral Commission (CENI) registers voters at a polling station at the Institut Ndahura in Goma on 21 December 2023. ALEXIS HUGUET / AFP

COD-159 - Claude Nyamugabo Bazibuhe
COD-160 - Aruna Ndarabu Amurani
COD-161 - Frederic Fikiri Asani
COD-162 - Jean-Marie Kabengela Ilunga
COD-163 - Michel Omba Taluhata
COD-164 - Didier Nasibu Ibrahim
COD-165 - Pascal Manshimba
COD-166 - Jocelyne Mupeka Kindundu (Ms.)
COD-167 - Samy Badibanga Ntita
COD-168 - Nazem Nazembe
COD-169 - Matthieu Kitanga Luanga
COD-170 - José Ngbanyo Mbunga Detato
COD-171 - Yannick Lumbu Ngoy
COD-172 - Prosper Mastaki Kuliva
COD-173 - Gilbert Tutu Tedeza Kango
COD-174 - Freddy Tshibangu Kabula
COD-175 - Magguy Kiala Bolenga Boley (Ms.)
COD-176 - Robert Koloba Denge

Alleged human rights violations

- ✓ Lack of fair trial proceedings
- ✓ Right of appeal
- ✓ Arbitrary invalidation of the election of a parliamentarian
- ✓ Other acts obstructing the exercise of the parliamentary mandate

Case COD-COLL-05

Democratic Republic of the Congo:
Parliament affiliated to the IPU

Victims: 18 members of parliament, 16 from the majority, one from the opposition and one independent (16 men and 2 women)

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

Submission of the complaint: May, June, July and August 2024

Recent IPU decision(s): - - -

Recent IPU mission(s): - - -

Recent Committee hearing: Hearing with the DRC delegation to the 149th IPU Assembly in Geneva (October 2024)

Recent follow-up:

- Communication(s) from the authorities: - - -
- Communication from the complainant: October 2024
- Communication to the authorities: October 2024
- Communication to the complainant: October 2024

A. Summary of the case

On 20 December 2023, the Democratic Republic of the Congo (DRC) held general elections against a background of disruption, malfunctioning, violence and accusations of attempted fraud. A number of voices among the opposition and observers condemned the chaotic legislative elections, the outcome of which would only inflame the political tensions in the country.

On 13 January 2024, the Independent National Electoral Commission (CENI) published the provisional results of the legislative elections. Prior to the publication of these results, the CENI had issued a decision invalidating 82 candidacies for electoral fraud and other unlawful acts. Following the announcement of the provisional results and in view of the numerous incidents that occurred during the elections, more than 1,000 appeals were lodged with the Constitutional Court to rule on the electoral dispute.

It is against this background that this collective complaint is being filed, which includes the case of 15 members of parliament who are among a group of members who were not declared elected by the CENI on 13 January 2024. Following appeals lodged with the Constitutional Court, the latter validated their election in its ruling of 12 March 2024. The National Assembly was notified of their final election, and the 15 members of parliament were able to take their seats in the Assembly to exercise their parliamentary mandate. However, on 22 April 2024, the same Constitutional Court that had ruled on the final election of these members of parliament handed down a new ruling following so-called "rectification of material error" proceedings, which took place on 15 April 2024 and during which the complainants were neither informed of the appeals lodged, nor invited to a hearing. In this ruling of 22 April 2024, the Court invalidated the mandate of the 15 members of parliament in favour of other individuals, some of whom had not even been candidates in the legislative elections. The Court overturned its decision, which is supposedly not subject to appeal under Article 168 of the Constitution and Article 74(2) of the Electoral Law amended on 29 June 2022. In the operative part of this new ruling, the Court fails to explain how it reached a conclusion that was opposite to the one it had reached in March 2024.

Moreover, according to the complainants, the ruling of 22 April 2024 was handed down outside the two-month statutory period allowed for the Court to rule on electoral disputes. According to Article 74 of Law No. 22/029 of 29 June 2022, "the time limit for examining disputes arising from legislative, provincial, urban, communal and local elections is two months from the date of referral to the competent courts". Article 74 quinquies of the same law stipulates that "a material error has no effect on the decision, except in the case of a proven inaccuracy in the figures mentioned in the contested ruling or a transcription error". The law of 29 June 2022 was adopted by the National Assembly in order to remedy the electoral disputes that arose during the 2019 legislative elections. However, despite the proactive measures taken by the Congolese legislature, the Constitutional Court appears to have transgressed this law.

In addition to the Constitutional Court's ruling of 22 April 2024, which was deemed unfair by the complainants, the latter have also raised irregularities in the functioning of the said court. Among the nine members of the Constitutional Court appointed on 7 July 2014 for a non-renewable nine-year term and sworn in on 4 April 2015, two of them, judges Corneille Wasenda and Jean Pierre Mavungu, reportedly continued to sit even though their term of office ended on 4 April 2024, while judge Norbert Nkulu is said to be unavailable and no longer sitting. According to Article 6 of Organic Law No. 13/026 of 15 October 2013 on the organization and functioning of the Constitutional Court, "the term of office of the members of the Court is nine years. It is not renewable." Similarly, Article 158(3) of the Constitution states that "the non-renewable term of office of the members of the Constitutional Court is nine years". Thus, according to the complainants, the procedure followed, which led to the adoption of the aforementioned ruling in April 2024, was also contrary to the law, given that the terms of office of two of its judges had expired.

This complaint also concerns the situation of Ms. Magguy Kiala Bolenga Boley, whose candidacy was reportedly rejected by the CENI in favour of a male candidate belonging to the majority in her single-seat constituency, even though she had obtained more votes than him. Ms. Boley is said to have lodged two appeals with the Constitutional Court, and although the transcript of the voting results attest to her victory, the Court declared her applications admissible but unfounded. Mr. Pascal Manshimba and Mr. Robert Koloba are another case in point. They were declared elected by the CENI, but their election

was invalidated by the Constitutional Court in favour of another candidate from the majority. In its ruling of 12 March 2024, the Court accused Mr. Manshimba of electoral fraud, an allegation that he has consistently denied. As for Mr. Koloba, he was invalidated following a petition to contest that was allegedly not brought to his attention. His election was invalidated by the same court ruling of 12 March 2024, in favour of another candidate whose list had obtained more votes.

At the 149th IPU Assembly, the Committee was able to exchange views with the Congolese parliamentary authorities and the complainants involved in this case. The delegation pointed out that, in the context of electoral disputes, Constitutional Court rulings could be overturned in the event of material errors, and that this was the case of the second court ruling adopted in April 2024. Due to the other cases in the DRC on the agenda and examined by the Committee during this session, including the cases of Mr. Chérubin Okende and Mr. Jean-Marc Kabund, the Committee was unable to discuss this complaint further with the Congolese delegation. Nevertheless, the Committee has been inviting the National Assembly to provide information in writing on this complaint since its receipt by the Committee in May 2024, but the parliamentary authorities have failed to send a reply in this regard.

The delegation reiterated the openness of the parliamentary authorities to facilitating and hosting a mission by the Committee on the Human Rights of Parliamentarians in connection with several cases examined by it.

As for its meeting with the complainants, the Committee noted that the former had exhausted all possible remedies in the DRC. The complainants also stated that when the Constitutional Court had validated their mandate in March 2024, they had been sworn in before the National Assembly, which had also declared them elected, and they had begun to effectively exercise their parliamentary mandate. Furthermore, when the Court invalidated them in April 2024, the National Assembly immediately implemented this ruling by stopping their emoluments, but without adopting a decision ending to their parliamentary mandate. The members of parliament therefore consider that their mandate is still valid, since no decision has been taken by the National Assembly to remove them from office.

B. Decision

The Governing Council of the Inter-Parliamentary Union

1. *Notes* that the complaint was declared admissible by the Committee on the Human Rights of Parliamentarians on the grounds that: (i) it was submitted in due form by qualified complainants under section I.1.(a) and (c) of the Procedure for the examination and treatment of complaints (Annex I of the revised Rules and Practices of the Committee on the Human Rights of Parliamentarians); (ii) it concerns, on the one hand, 16 members of parliament not declared elected by the CENI, 15 of whom were validated by the Constitutional Court and, on the other hand, two members of parliament declared elected by the CENI but whose election was invalidated by the Constitutional Court in March 2024; and (iii) that it concerns allegations of lack of fair trial proceedings, right of appeal, arbitrary invalidation of the election of a parliamentarian, and other acts obstructing the exercise of the parliamentary mandate, which are allegations that fall within the Committee's mandate;
2. *Thanks* the Congolese delegation for the information provided at the 149th IPU Assembly;
3. *Deeply regrets* the repetitive nature of complaints of this kind before the Committee concerning electoral disputes, a recurring problem in the DRC and one that has been highlighted to the Congolese authorities for a number of years; and *recalls* in this regard that similar challenges marred the 2006, 2011 and 2018 elections and that several members of parliament were invalidated in the same circumstances following rulings by the Constitutional Court rectifying material error;
4. *Stresses* that Constitutional Court rulings rectifying material errors cannot call into question *res judicata*; and fails to understand how the second Constitutional Court ruling adopted on 22 April 2024, which appears to have been adopted outside the legal time limit of two months under Article 74 of Law No. 22/029 of 29 June 2022, was able to amend the list of members of parliament initially validated by the same court a few weeks earlier; and *wishes* to receive

further clarification from the competent authorities on this point in particular, as well as on the composition and functioning of the Constitutional Court;

5. *Deplores* that the initiative taken by the Congolese legislature in adopting the law of 29 June 2022 and amending Article 74 quinquies thereof, which stipulates that the rulings of the Constitutional Court are not subject to appeal, has not been respected; *calls on* the authorities to ensure consistency and transparency in the application of the laws adopted and to carry out appropriate legislative and constitutional reforms to put an end to the recurrence of such violations and improve the mechanisms for settling electoral disputes; and *reaffirms* the IPU's willingness to provide technical assistance to the Parliament of the DRC to this end;
6. *Welcomes* the willingness of the National Assembly to facilitate and host a mission of the Committee on the Human Rights of Parliamentarians to the DRC under the best possible conditions; and *hopes* that this mission will take place in the near future and that it will include meetings with the relevant Congolese authorities, in particular the President of the National Assembly, the Public Prosecutor and the President of the Constitutional Court, as well as the invalidated members of parliament and third parties concerned, in order to promote a satisfactory settlement of this case;
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.