

DEMOCRATIC REPUBLIC OF THE CONGO

- **COD-COLL-01** : 29 parliamentarians
- **COD-71** : Eugène Diomi Ndongala
- **COD-72** : Dieudonné Bakungu Mythondeke
- **COD-82** : Adrien Phoba Mbambi
- **COD-85** : Martin Fayulu Madidi
- **COD-86** : Franck Diongo



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Democratic Republic of the Congo

Decision adopted by the Committee on the Human Rights of Parliamentarians at its 161st session (Geneva, 20–30 January 2020)



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| COD49 - Albert Bialufu Ngandu | COD64 - Edouard Kiaku Mbuta Kivuila |
| COD50 - André Ndala Ngandu | COD65 - Odette Mwamba Banza (Ms.) |
| COD51 - Justin Kiluba Longo | COD66 - Georges Kombo Ntonga Booke |
| COD52 - Shadrack Mulunda Numbi Kabange | COD67 - Mabuya Ramazani Masudi Kilele |
| COD53 - Héritier Katandula Kawinisha | COD68 - Célestin Bolili Mola |
| COD54 - Muamus Mwamba Mushikonke | COD69 - Jérôme Kamate |
| COD55 - Jean Oscar Kiziamina Kibila | COD70 - Colette Tshomba (Ms.) |
| COD56 - Bonny-Serge Welu Omanyundu | COD73 - Bobo Baramoto Maculo |
| COD57 - Jean Makambo Simol'imasa | COD74 - Anzuluni Bembe Isilonyonyi |
| COD58 - Alexis Luwundji Okitasumbo | COD75 - Isidore Kabwe Mwehu Longo |
| COD59 - Charles Mbuta Muntu Lwanga | COD76 - Michel Kabeya Biaye |
| COD60 - Albert Ifefo Bombi | COD77 - Jean Jacques Mutuale |
| COD61 - Jacques Dome Mololia | COD78 - Emmanuel Ngoy Mulunda |
| COD62 - René Bofaya Botaka | COD79 - Eliane Kabare Nsimire (Ms.) |
| COD63 - Jean de Dieu Moleka Liambi | |

Alleged human rights violations:

- ✓ Arbitrary invalidation of the election of a parliamentarian
- ✓ Lack of due process at the investigation stage and lack of fair trial proceedings
- ✓ Right of appeal

A. Summary of the case

Following the parliamentary elections of November 2011, the Supreme Court arbitrarily invalidated the election and mandates of 32 members of parliament (including the 29 above), who had held seats in the National Assembly since the announcement of the provisional results in late January 2012. The disqualified members appealed against the decision, but all appeals were rejected by the Court without examination of the merits. The African Commission on Human and Peoples' Rights reached the same conclusions as the IPU in 2016 in the case of Mr. Bialufu Ngandu (COD-49). It ordered the DRC to pay the salaries and parliamentary allowances due for the whole duration of the parliamentary mandate, as well as damages and interest in compensation for any injustice suffered.

The Speaker of the National Assembly refused to compensate the members of parliament for any injustice suffered and requested assistance from the executive branch in April 2016. The disqualified members have never received any compensation for the arbitrary revocation of their mandates. In terms of legislation, the recommendations on amending electoral law to improve the mechanisms for resolving electoral disputes and allow the electoral dispute procedure to be wound up before the elections are validated by both houses of parliament were not taken into account by the Congolese authorities. The National Assembly indicated that it supported amending the Congolese Constitution to introduce a system of appeal for the benefit of parliamentarians and to modify the procedure for validation of elected officials. However, those reforms have not been carried out.

After being postponed several times, the presidential and parliamentary elections were held on 30 December 2018. Following the elections, a dispute made up of around 1,167 cases was lodged with the Constitutional Court. Some observers highlighted the lack of transparency in the Court's judicial procedure.

On 22 January 2020, the Speaker of the National Assembly announced that her predecessor had approached the Government to implement the decisions that the IPU Governing Council had adopted on this matter. The Speaker made clear that she intended to remind the new Prime Minister of these documents so as to move towards definitively resolving the matter. The parliamentary authorities also announced that they were open to adopting the reforms needed to improve electoral dispute resolution.

B. Decision

The Committee on the Human Rights of Parliamentarians:

1. *Thanks* the parliamentary authorities for their correspondence; and *takes note* of the efforts made to reach a definitive solution in this matter;
2. *Recalls* that the Supreme Court rulings of 25 April 2012 disqualifying 32 members of parliament are marred by serious procedural irregularities and contravene the right to a defence; that a fresh examination of the merits of the cases was not permitted during the appeals in which the 30 disqualified members applied to have substantive errors corrected; *reiterates* that the harm which the members suffered amounts to a denial of justice because there was no way to appeal the Supreme Court judgments regarding the electoral disputes;
3. *Firmly recalls* that the arbitrary invalidation of election results harms the entire electoral process because it contravenes the rights of those who are entitled to exercise their parliamentary mandate as well as the rights of electors to take part in free and fair elections, who are then denied the opportunity to choose their representatives;

Case COD-COLL-01

Democratic Republic of the Congo:
Parliament affiliated to the IPU

Victim(s): 29 members of parliament (who brought their cases before the Committee out of a group of 32 affected) – 26 men and 3 women; 7 members of opposition political parties, one independent and 21 members of the presidential majority

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

Submission of complaint(s): May to September 2012

Latest IPU decision(s): [March 2016](#)

Latest IPU mission(s): [June 2013](#)

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

Recent follow-up:

- Communication from the authorities: Letter from the Speaker of the National Assembly (January 2020)
- Communication from the complainant: December 2019
- Communication addressed to the Speaker of the National Assembly (November 2019)
- Communication addressed to the complainant: December 2019

4. *Deeply regrets* that the Congolese authorities have failed to learn lessons from the numerous court cases involving the electoral disputes of 2006 and 2011, or from the concerns expressed in that regard; and that, despite the decisions adopted by the Governing Council in the 2007 case of 18 parliamentarians whom the Supreme Court disqualified in similar circumstances, this situation occurred again following parliamentary elections in November 2011, and that disputes of a similar nature arose after the parliamentary elections of 2018;
5. *Notes*, however, that, in light of the background to the electoral disputes that have been examined over the years, only a political solution could resolve this matter, and that the National Assembly and Congolese government authorities could achieve this outcome through inclusive dialogue and legislative reform; *also notes* that, although the matter includes human rights issues, it is more concerned with electoral disputes, which largely fall outside the Committee's mandate; *decides* therefore to close the case in accordance with section 25(a) of Annex I of its Procedure for the examination and treatment of complaints;
6. *Renews its invitation* to the authorities to undertake appropriate legislative and constitutional reform to bring an end to these recurrent violations with a view to improving electoral dispute resolution mechanisms and remedying the shortcomings of electoral law, particularly the two-month period provided for under section 74 of the Elections Act, which is judged to be too short to allow the competent authorities to rule on the large number of electoral disputes that are referred to them; and *reaffirms* the availability of the IPU to provide technical assistance to the Parliament of the DRC in that regard;
7. *Requests* the Secretary General to convey this decision to the parliamentary authorities and the complainants.



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Decision adopted unanimously by the IPU Governing Council at its 204th session (Doha, 10 April 2019)



Frank Diongo visits Eugène Diomi Ndongala at Kinshasa Hospital, 20 March 2019 © Photo courtesy of Diomi Ndongala's family.

COD-71 - Eugène Diomi Ndongala

Alleged human rights violations:

- ✓ Lack of due process at the investigation stage
- ✓ Lack of fair trial proceedings
- ✓ Right of appeal
- ✓ Violation of freedom of opinion and expression
- ✓ Violation of freedom of movement

A. Summary of the case

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

Mr. Ndongala was excluded from the presidential pardon granted to political prisoners in March 2019 following the elections held in December 2018. The Minister of Justice granted him parole on 20 March 2019 on the grounds that he had served over a quarter of his sentence and that "that he had made amends during his incarceration". Mr. Ndongala was

Case COD-71

Democratic Republic of the Congo:
Parliament affiliated to the IPU

Victim(s): Male opposition member of parliament

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

Submission of complaint(s): July and December 2012

Recent IPU decision: [October 2018](#)

IPU mission: [June 2013](#)

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

Recent follow-up:

- Communication from the authorities: Letter from the Speaker of the National Assembly (October 2017)
- Communication from the complainant: March 2019
- Communications addressed to the Head of State, the acting Speaker of the National Assembly and the Deputy President of the Senate (March 2019)
- Communication addressed to the complainant: March 2019

released. However, his parole may be revoked at any time if he breaches the restrictive conditions attached to it. These conditions prohibit him from making statements and engaging in political activities "of such a nature as to disrupt public order and the smooth functioning of State institutions", from "causing scandal by his conduct", from travelling outside the country and from moving freely until April 2023. Mr. Ndongala is required to appear every Monday before the Prosecutor General at the Court of Cassation.

B. Decision

The Governing Council of the Inter-Parliamentary Union

1. *Notes with satisfaction* that Mr. Ndongala has finally been released;
2. *Deplores*, nonetheless, that he has not been accorded the presidential pardon granted to other political prisoners and that his release is conditional; *underlines* that most of the restrictive conditions attached to his release have nothing to do with the crime for which he was convicted; and *considers* that these conditions are part of the ongoing campaign of political and legal harassment to which he has been subjected since 2012; *recalls* that the Supreme Court's decision did not deprive Mr. Ndongala of his civil and political rights, that the United Nations Human Rights Committee condemned the DRC for violating its obligations under the International Covenant on Civil and Political Rights and called for Mr. Ndongala's immediate release and the annulment of his conviction;
3. *Considers* that the conditions attached to his release yet again undermine Mr. Ndongala's fundamental rights while again confirming the political nature of the case; *calls* therefore on the relevant Congolese authorities to end these conditions;
4. *Encourages* the new parliamentary authorities elected in the last legislative elections to promote the protection of the fundamental rights of all members of the National Assembly irrespective of their political will to ensure that similar violations do not occur again in the future; *also reiterates* its long-standing recommendation that a level of appeal be introduced in judicial proceedings for parliamentarians to guarantee a fair trial in accordance with the relevant international standards; and *calls again on* the Congolese authorities to revise the Constitution in this regard;
5. *Requests* the Secretary General to convey this decision to the parliamentary authorities, the Minister of Justice, the complainants and to 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.



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Democratic Republic of the Congo

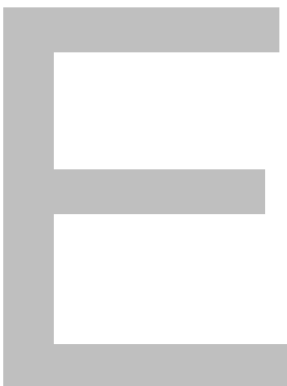
- DRC/32 - Pierre Jacques Chalupa
- DRC/49 - Albert Bialufu Ngandu
- DRC/50 - André Ndala Ngandu
- DRC/51 - Justin Kiluba Longo
- DRC/52 - Shadrack Mulunda Numbi Kabange
- DRC/53 - Héritier Katandula Kawinisha
- DRC/54 - Muamus Mwamba Mushikonke
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- DRC/71 - Eugène Diomi Ndongala
- DRC/72 - Dieudonné Bakungu Mythondeke
- DRC/82 - Adrien Phoba Mbambi
- DRC/85 - Martin Fayulu Madidi

***Decision adopted unanimously by the IPU Governing Council
at its 198th session (Lusaka, 23 March 2016)***

The Governing Council of the Inter-Parliamentary Union,

Referring to the cases of former members of parliament Mr. Pierre Jacques Chalupa, Mr. Eugène Diomi Ndongala, Mr. Dieudonné Bakungu Mythondeke and 29 other parliamentarians who were removed from office, to the decisions it adopted at its 193rd and 194th sessions (October 2013 and March 2014), and to the decisions adopted by the Committee at its 143rd and 149th sessions (January 2015 and January 2016),



Having before it the cases of Mr. Adrien Phoba Mbambi and Mr. Martin Fayulu Madidi, members of the current opposition, which were considered by the Committee on the Human Rights of Parliamentarians pursuant to the Procedure for the examination and treatment of complaints (Annex 1 of the revised rules and practices),

Taking into account a letter from the Speaker of the National Assembly of 9 March 2016 and information provided by the complainants,

Referring to the hearing with the delegation of the Democratic Republic of the Congo (the DRC) during the 134th IPU Assembly (Lusaka, March 2016),

Recalling the conclusions and recommendations of the Committee on the Human Rights of Parliamentarians' report on the mission to the DRC in June 2013 (CL/193/11b)-R.2), as well as the additions made to the case files of the 34 members and former members of parliament listed above,

Recalling that the former members of parliament concerned were expelled from the National Assembly, and that some were even threatened, detained, prosecuted and sentenced to periods of imprisonment after having expressed political opinions that differed from those of the presidential majority and those of the Head of State himself, with the exception of Mr. Phoba and Mr. Fayulu, who are currently still serving their terms of office,

Recalling that the DRC currently has the highest number of cases before the Committee, with 34 members and former members of parliament subjected to serious violations of their fundamental rights; that a total of 50 cases relating to the DRC have been examined by the Committee since the country's 2006 legislative elections (36 since the last parliamentary elections of 2011, and 14 during the previous legislative term); that none of those cases have been fully resolved and the grounds for complaint, which have grown in number over the last few years, have displayed similar and recurring traits; that three cases were closed after it was found that the fundamental rights of the members of parliament concerned, namely Mr. Muhindo Nzangi (DRC/81), Mr. Jean Bertrand Ewanga (DRC/83) and Mr. Roger Lumbala (DRC/80), had been violated by the DRC authorities and that it had become impossible to find satisfactory solutions to their cases,

Considering that no progress has been made towards a satisfactory resolution of the cases currently under examination,

Considering that Mr. Phoba was subjected to an attack in February 2014, and that the perpetrators have not yet been brought to justice, even though a complaint against them was lodged with the judicial authorities immediately after the attack,

Considering that, according to the complainant, Mr. Fayulu, member of the opposition and leader of the political party *Engagement for Citizenship and Development* (ECIDE), was arbitrarily arrested in violation of his parliamentary immunity on 14 February 2016 by officers of the military intelligence services; that those officers allegedly ill-treated, threatened and insulted Mr. Fayulu; that the officers allegedly confiscated his vehicle and personal effects, including documents relating to the activities of his political party, considerable sums of money and his mobile telephone – the entire contents of which were also downloaded by the officers; that Mr. Fayulu lodged a complaint after that incident; that the Prosecutor General is reported to have opened prosecution proceedings against Mr. Fayulu and then reportedly submitted an application to the National Assembly requesting that Mr. Fayulu's parliamentary immunity be lifted; that, according to the complainant, Mr. Fayulu was not informed of the charges laid against him, nor was he informed that a request for his parliamentary immunity to be lifted had been made, nor of the reasons for that request; that the complainant alleges that the aim of arresting Mr. Fayulu was to prevent the staging of a day of opposition protests scheduled for 16 February ("Dead City Day") and formed part of an element of a wider campaign of repression of the opposition in the context of numerous attempts to impede Mr. Fayulu's political activities and weaken the opposition,

Considering that the cases under examination bear witness to the existence of general problems within the National Assembly, but also in the executive and the judiciary, all of which relate to the protection of the fundamental rights of parliamentarians in the DRC, irrespective of their political

affiliations, given the number of members and former members of parliament concerned, and the severity of the common concerns in the various cases, which relate to:

- **Violation of freedom of opinion and expression:** the parliamentarians and former parliamentarians concerned all voiced opinions criticizing the Head of State, government policy and the presidential majority before suffering violations of their rights;
- **Instrumentalizing of justice and absence of due process:** the independence of the judiciary and observance of international fair trial standards have been very much called into question in all the cases examined, given the conditions in which the trials took place and the lack of any legal remedy for the parliamentarians sentenced (and, in the case of Mr. Phoba, given the continuing impunity of those who attacked him);
- **Arbitrary revocation of the parliamentary mandate and violation of parliamentary immunity:** in several of the cases examined, the mandate of the deputies concerned was revoked on questionable grounds while they were in office. Those members of parliament were not informed or given the chance to argue their side of the case in advance. The prosecution used the *flagrante delicto* procedure to short-circuit the process of lifting parliamentary immunity. The parliamentary authorities never requested to see the evidence that proved that *flagrante delicto* applied, and neither discussed nor called into question the fact that provisions of the Constitution had been circumvented in this way in violation of the rights of the parliamentarians concerned. In addition, the provisions of the Code of Criminal Procedure regarding *flagrante delicto* cases and observance of the rights of defence have not been fully respected in the subsequent judicial process,

Also considering that serious concerns remain in the cases of Mr. Chalupa and Mr. Ndongala regarding their state of health and their inability to receive appropriate care because of the actions of the Congolese authorities; that the arbitrary stripping of Mr. Chalupa's Congolese nationality also raises a particularly serious problem for the former member of parliament and businessman, who has indisputable ties to the DRC and who was made stateless as a result of being found guilty of forgery and counterfeiting after a trial characterized by serious irregularities and which offered no legal remedy,

Considering that no legislative or constitutional reforms that had previously been recommended have since been implemented in order to bring Congolese law in line with relevant international standards, particularly with regard to: (i) strengthening the independence of the judiciary and respect for fair trial standards, particularly on the issue of introducing a two-stage judicial procedure with regard to parliamentarians, in order that their right to defence be fully guaranteed where prosecutions arise, as is the case with all Congolese citizens; (ii) amendments to legislation relating to attacks on national security and crimes relating to the Head of State, in conformity with international standards on freedom of expression; (iii) the overhaul of the procedure for settling electoral disputes designed to strengthen transparency and equality, including by clarifying the rules for the provision of evidence; (iv) amendments to the procedure for the validation of the parliamentary mandate to ensure that the final validation of newly elected parliamentarians is only declared at the conclusion of the final results of any electoral dispute, once all avenues of appeal have been exhausted, or at the very least to ensure that a mechanism be found to avoid situations in which, at each election, disqualifications systematically occur some months after newly elected members have taken up their seats,

Considering that, during the hearing that took place at the 134th IPU Assembly (Lusaka, March 2016), the delegation referred to correspondence that had previously been sent by the Speaker of the National Assembly, and reaffirmed its commitment to finding solutions to the cases submitted to the Committee, and highlighted once again that those cases did not fall within their competence at the present time because of the principle of the separation of powers. In relation to the recent arrest of Mr. Fayulu, the delegation noted that the Speaker of the National Assembly had issued a statement calling for his immediate release and confirming that, to date, no request for the lifting of Mr. Fayulu's parliamentary immunity had been sent from the Prosecutor General. The delegation also noted that the question of compensation for disqualified members had been passed to the Government, which had not yet responded,

Considering that the situation of the 34 members and former members of parliament in question forms part of a worrying political context in which the political space has continued to shrink, while at the same time, fears have been expressed in relation to the Constitution and whether the

presidential and legislative elections scheduled for November 2016 will be held; that in a report of December 2015, the United Nations Joint Human Rights Office in the DRC documented that restrictions on freedom of opinion and expression were on the rise with regard to opposition politicians, the media and civil society. The United Nations High Commissioner for Human Rights has called on the authorities to ensure that all its citizens, irrespective of their political opinions, are able to participate fully in open, democratic debate, and that civil society campaigners, media professionals and opposition politicians are able to conduct their work without fear, in order that the next elections are conducted credibly and peacefully,

Bearing in mind that the DRC is party to the International Covenant on Civil and Political Rights and, by virtue of articles 2, 9, 10, 14, 19, 25 and 26 in particular, has committed to the requirement to respect and guarantee the fundamental rights of its citizens, including members of parliament, notably the rights to liberty and security of the person, to freedom of expression, the right to vote and to be elected in elections that ensure the free expression of the will of the electorate, the right to participate freely in the management of public affairs, the right to equality before the law, and the prohibition of all forms of discrimination and equitable and effective protection against all forms of discrimination, particularly with regard to political opinions; that the African Charter on Human and Peoples' Rights, to which the DRC is also a signatory, includes similar provisions,

Also bearing in mind that the preamble of the Constitution of the DRC reaffirms that the Congolese people support and are attached to international human rights standards, and that title II of the Constitution guarantees human rights and fundamental freedoms for Congolese citizens,

1. *Reiterates its profound concern* with regard to the situation of many members and former members of parliament, who have been subjected to serious violations of their fundamental rights, and to the concerning developments of the political situation in the DRC in relation to the upcoming elections;
2. *Urges* the authorities, once again, to take urgent measures to end those violations and resolve the situation of all the parliamentarians concerned using all possible means;
3. *Expresses the hope* that satisfactory solutions can be found quickly in the cases under consideration; and *believes* that a follow-up visit by the Committee to Kinshasa could help speed up the process; *hopes* that the delegation can meet with all the relevant authorities, with the complainants – including Mr. Ndongala in prison – and with any other persons it might deem useful to meet with for the successful fulfilment of its mission; *requests* the Secretary General to make contact with the authorities for that purpose;
4. *Reaffirms* that the cases are of a particularly political nature and that the authorities, and the parliamentary authorities above all, are both duty-bound and obliged to guarantee respect for and the protection of the fundamental rights of all parliamentarians, irrespective of their political affiliation; *recalls* that depriving a member of parliament of his mandate, his freedom and/or security because of a political opinion that he or she expressed constitutes a contravention of the provisions of article 19 of the International Covenant on Civil and Political Rights, to which the DRC is a signatory;
5. *Remains deeply preoccupied* by Mr. Chalupa's medical condition; and *renews its call to the authorities*, for humanitarian reasons, to issue as a matter of urgency travel documents that would allow him to travel abroad to receive medical care and then return to the DRC; *also considers* that the authorities should recognize as swiftly as possible that he has a right to Congolese nationality;
6. *Deeply regrets* Mr. Ndongala's continued detention; and *yet again urges* the DRC authorities to release him, in accordance with the recommendations made by the Head of State at the end of the national consultation exercise held in October 2013; and *reiterates* its concern over Mr. Ndongala's health; *highlights* the contradictory information provided by the complainants and the authorities with regard to the denial of medical care in detention; and *renews its call to the authorities* to ensure that measures are taken as quickly as possible to enable him to receive proper medical care;

7. *Also expects* that, before the end of the next ordinary parliamentary session, the National Assembly should undertake to transfer the financial entitlements due to the 29 members of parliament whose mandates were declared invalid, as well as providing them with a symbolic amount of compensation; *fails to understand* why the National Assembly referred the case to the Government, since responsibility for the payment of parliamentary allowances falls under its jurisdiction; *wishes* to have clarification in this regard; and *reiterates its wish* to be kept informed of any progress made;
8. *Renews its invitation* to the authorities to undertake appropriate legislative and constitutional reforms to bring an end to these recurrent violations of the parliamentarians' fundamental rights; and *reaffirms* the availability of the IPU to provide technical assistance to the Parliament of the DRC in that regard;
9. *Requests* the Secretary General to convey this decision to the competent authorities, the complainants and any third party likely to be in a position to supply relevant information;
10. *Requests* the Committee to continue examining this case and to report back to it in due course.



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Democratic Republic of the Congo

DRC/85 - Martin Fayulu

Decision adopted unanimously by the IPU Governing Council at its 199th session (Geneva, 27 October 2016)

The Governing Council of the Inter-Parliamentary Union,

Referring to the case of Mr. Martin Fayulu, a member of the National Assembly of the Democratic Republic of the Congo (DRC), and to the decision it adopted at its 198th session (March 2016),

Referring to the letters from the Speaker of the National Assembly of 21 April and 3, 13 and 19 October 2016, and information provided by the complainant,

Considering that Mr. Fayulu, an opposition member of parliament and leader of the political party *Engagement for Citizenship and Development* (ECIDé), was arrested by intelligence service officers on 14 February 2016 and that the following has been placed on the file regarding the incident:

- According to the complainant, Mr. Fayulu was assaulted, arrested and arbitrarily detained by the aforementioned officers before being released the same evening; his vehicle and personal belongings were confiscated and never returned back to him; Mr. Fayulu filed a complaint against his arbitrary arrest and violation of his rights and parliamentary immunity, but there has been no progress in the legal proceedings to date;
- According to the complainant, this incident was intended to prevent a day of national protest scheduled for 16 February 2016 ("Dead City Day"), which was being jointly organized by opposition parties;
- According to the complainant, the Public Prosecutor had initiated proceedings against Mr. Fayulu (file reference: RMP V/039/PGR/SMM) and requested the National Assembly to lift his parliamentary immunity; Mr. Fayulu had not been informed of the charges laid against him, or of the lifting of his immunity;
- The Speaker of the National Assembly stated that he had intervened immediately to secure Mr. Fayulu's release, referring the matter to the Public Prosecutor to ensure compliance with the Constitution and his parliamentary immunity, and publicly expressing his position in a tweet; he believed that, as the case had been referred to the courts, the National Assembly was no longer responsible for the matter; he recommended that Mr. Fayulu should hire the services of a lawyer and use the procedure provided for in Congolese law (*procédure de prise à partie*), instead of relying on the Bureau of the National Assembly's intervention; he has not confirmed whether legal proceedings were initiated against Mr. Fayulu, or a request submitted for the lifting of his parliamentary immunity;

Considering that, on 19 September 2016, Mr. Fayulu sustained a serious head injury during a protest organized by the opposition in Kinshasa, and that the following allegations and information have been placed on file concerning the incident:

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- The complainant alleges that a police officer deliberately targeted Mr. Fayulu, firing a rubber bullet at him at point-blank range; he stated that six young people surrounding the member of parliament at the protest were themselves hit by live bullets; he criticizes the National Assembly for not denouncing the incident and failing to provide assistance to Mr. Fayulu; the complainant further expresses concern following the announcement by the Public Prosecutor of charges being brought against the organizers of the protest and several members of the opposition following the demonstrations, and of a foreign travel ban being imposed on them; the complainant stated that it was not known whether these measures had been taken against Mr. Fayulu;
- The Speaker of the National Assembly underscored that the 19 September 2016 protest had had "no direct impact" on the authority of Mr. Fayulu as an elected representative, and reiterated that the National Assembly had condemned the acts of violence committed during the public protests of 19 and 20 September 2016; he reported that criminal investigations were under way and that the National Assembly could not interfere in the conduct of the case; he expressed the hope that the investigations would proceed quickly and that the identified perpetrators of these acts of violence would be brought to justice; he reaffirmed his commitment to the protection of human rights and the rights of parliamentarians "provided they also prove themselves to be exemplary models in respecting the rights of others and the laws of the Republic";
- The Speaker of the National Assembly emphasized that he had instructed the 2nd Deputy Speaker to enquire about Mr. Fayulu's situation following the protest and to take appropriate measures; he affirmed the Bureau's willingness to provide Mr. Fayulu with support, while recalling that the process to provide medical care was subject to fulfilling certain normal administrative formalities; he pointed out that it was Mr. Fayulu's responsibility to inform the Bureau of the circumstances and place of his hospitalization, so that the assistance mechanism could be activated, as the Bureau did not have the authority to do so on its own,

Considering that the complainant alleges that the two incidents that took place in 2016 involving Mr. Fayulu came after a number of previous tactics had been used to impede his political activities and to weaken the opposition; that these tactics were orchestrated against him because of his role in coordinating an opposition platform, his stance in favour of the Head of State stepping down at the end of his term of office, and the announcement of his intention to run in the presidential elections,

Considering that these successive incidents occurred at a time of political tension and mounting repression of the opposition because of the elections initially scheduled for the end of 2016, which had been postponed despite objections from the opposition,

Considering that the preliminary investigation report published on 20 October 2016 by the United Nations Joint Human Rights Office in the DRC on the acts of violence committed during the protests in Kinshasa from 19 to 21 September 2016 concluded that more than 422 people had been victims of human rights violations by State agents (with at least 48 killed, 75 injured and nearly 300 persons illegally arrested and detained by State agents); that the report states that security forces are responsible for most of the violations committed during the protests and that they used excessive force to prevent the protesters from peacefully exercising their freedom of assembly and protest; the report confirms that the Government announced that charges were being brought against the "organizers of the protest, those involved in the acts of violence and the masterminds" and that a travel ban was being imposed; that the report recommends, in particular, that the Congolese authorities promptly carry out independent, thorough, credible, transparent and impartial investigations into the violations committed by State agents and to bring the alleged perpetrators to justice, regardless of their ranks and positions, and to guarantee the protection of the fundamental rights of the political opponents; that the report further confirms that the protesters are also to blame for several acts of violence, including the death of four police officers and the destruction and looting of numerous public buildings, and also recommends investigations and the imposition of sanctions against those responsible for the violence,

1. *Thanks* the Speaker of the National Assembly for the information provided and his cooperation;

2. *Expresses its concern* about the violence to which Mr. Fayulu was subjected during the 19 September 2016 protest and the inaction of the Congolese courts with respect to the incidents of February 2016, even more so given the worsening political situation in the DRC;
3. *Urges* the relevant authorities to bring the perpetrators to justice as soon as possible following independent, credible, transparent and impartial investigations, and to return the belongings illegally confiscated back to Mr. Fayulu as a matter of urgency;
4. *Recalls* that impunity constitutes a threat both to parliamentarians and to those they represent and therefore assaults against parliamentarians, if they remain unpunished, not only violate the fundamental rights of those concerned, but affect the ability of parliament to fulfill its institutional mission; *stresses* that parliament has an obligation to ensure that no effort is spared in holding the perpetrators accountable; and *urges* the National Assembly to take all appropriate steps as soon as possible and to keep the Committee informed in that regard;
5. *Also wishes to know* whether Mr. Fayulu: (i) is currently subject to legal proceedings, a request to lift his parliamentary immunity and/or a travel ban; (ii) filed a formal complaint following the 19 September 2016 protest; (iii) submitted a formal request for medical assistance to the National Assembly, in accordance with the normal procedure; and (iv) used the *procédure de prise à partie* with respect to the incidents of February 2016;
6. *Requests* the Secretary General to convey this decision to the competent authorities, the Minister of Justice 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.



Inter-Parliamentary Union

For democracy. For everyone.

Democratic Republic of the Congo

Decision adopted unanimously by the IPU Governing Council at its 204th session (Doha, 10 April 2019)



Franck Diongo, President of the MLP, Congolesse opposition party © AFP Photo/Papy Mulongo

COD86 – Franck Diongo

Alleged human rights violations:

- ✓ Torture, ill-treatment and other acts of violence
- ✓ Impunity
- ✓ Lack of due process at the investigation stage and lack of fair trial proceedings
- ✓ Right of appeal

A. Summary of the case

Mr. Diongo, an opposition member of parliament, was arrested together with several activists from his political party at his home on 19 December 2016 by presidential guard soldiers. He was tortured and then summarily tried under an accelerated procedure, despite a worrying medical condition resulting from ill-treatment in detention. On 28 December 2016, he was sentenced, in both the first and the last instance, to five years in prison for arbitrary arrest and illegal detention aggravated by torture. Moreover, the authorities have taken no action to punish any of the perpetrators of the acts of torture committed against the Mr. Diongo.

Mr. Diongo's arrest and conviction took place against a background of protests to postpone the elections in the DRC and against the extension of President Kabila's mandate (which should have ended on 19 December 2016) and the increased repression of the opposition and civil society. His arrest occurred amidst a wave of arrests and acts of violence on 19 and 20 December 2016 unleashed by the Congolesse security

Case COD86

Democratic Republic of the Congo:
Parliament affiliated to the IPU

Victim(s): Male opposition member of parliament

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

Submission of complaint: December 2016

Recent IPU decision: [October 2018](#)

IPU mission: - - -

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

Recent follow-up:

- Communication from the authorities: Letter from the Speaker of the National Assembly (October 2017)
- Communication from the complainant: March 2019
- Communications addressed authorities: Letters to the Head of State, the acting Speaker of the National Assembly and the Deputy President of the Senate (March 2019)
- Communication addressed to the complainant: March 2019

forces to prevent any demonstrations by the opposition taking place. Mr. Diongo was the only politician who dared to continue calling on the people to protest on that symbolic date.

Following Mr. Felix Tshisekedi's victory in the December 2018 presidential elections, he granted presidential pardons to more than 700 political prisoners on 13 March and Mr. Diongo was released as a result.

B. Decision

The Governing Council of the Inter-Parliamentary Union

1. *Notes with satisfaction* that Mr. Diongo was one of the political prisoners granted a presidential pardon and that he has been released;
2. *Recalls* that Mr. Diongo had been arrested and sentenced to prevent him from continuing to express his opposition to the extension of the Head of State's mandate, and so as to put an end to the protests organized by the opposition, that his trial had been marred by serious flaws and that his fundamental rights to freedom of expression, peaceful assembly and a fair trial had neither been observed nor protected by the executive, judicial and legislative authorities of the DRC, and that Mr. Diongo had been prevented from taking part in the elections because of this politically motivated conviction, which was in violation of article 25 of the International Covenant on Civil and Political Rights;
3. *Wishes* to ensure, and to receive official confirmation from the relevant authorities, that Mr. Diongo's conviction cannot constitute grounds for preventing him from standing for election in the future; *requests therefore* the DRC authorities to confirm that, following the announcement of the presidential pardon decree, Mr. Diongo's conviction was annulled and deleted from his criminal record, and to provide it with a copy of the extract from the criminal record attesting to that fact;
4. *Deplores* the fact that no action has been taken by the Congolese authorities to independently and impartially investigate the torture inflicted on Mr. Diongo and other suspects arrested with him, or to punish the soldiers responsible for these acts, despite the complaint filed by Mr. Diongo with the military courts;
5. *Urges therefore* the Congolese authorities to take all necessary steps to ensure that the perpetrators of these acts are brought to justice without delay and relieved of their duties; *encourages* the Congolese authorities to implement a zero-tolerance policy on torture and ill-treatment in detention, in strict compliance with the recent decision to close illegal places of detention; *also calls on* the Congolese authorities to ensure that Mr. Diongo is compensated for the wrongdoings he suffered;
6. *Requests* the Secretary General to convey this decision to the parliamentary authorities, the Minister of Justice, 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.