



Inter-Parliamentary Union

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Niger

RN115 - Amadou Hama

***Decision adopted by the Committee on the Human Rights of
Parliamentarians at its 155th session (Geneva, 25 January - 2 February 2018)***

The Committee,

Referring to the case of Mr. Amadou Hama, former Speaker of the National Assembly of Niger, to its decision adopted at its 149th session (January 2016) and to the decision of the IPU Governing Council at its 197th session (October 2015),

Referring also to the letters from the Speaker of the National Assembly dated 1 March 2016, 25 January and 28 March 2017, and 17 January 2018, as well as to the information provided by the complainant and the various judicial decisions rendered in the case,

Recalling that Mr. Hama, former Speaker of the National Assembly and the main opponent of the Head of State, has been in exile in France following legal proceedings instituted against him in 2014 and his sentencing, in his absence, in March 2017 to a one-year prison term for child abduction; the complainant alleges that Mr. Hama's parliamentary immunity and rights of defence have been infringed and that the charges against him are unfounded; the complainant believes that Mr. Hama has been a victim of political and judicial harassment since his party sided with the opposition in August 2013,

Considering the following information and allegations on file:

- **Parliamentary immunity**
 - On 27 August 2014, the Bureau of the National Assembly of Niger authorized Mr. Hama's arrest without granting him a prior hearing. The complainant alleged, on the one hand, that Mr. Hama's parliamentary immunity and rights of defence have been infringed, given that the Bureau had failed to give him a hearing, or to verify any of the facts and, on the other hand, that there was no evidence to support the charges brought against him;
 - The parliamentary authorities considered that the case was not political in nature and that the procedure followed by the National Assembly was conducted in accordance with the Constitution and laws of Niger, as they do not require the member of parliament concerned to have a hearing when the request is made when parliament is in recess and handled by the Bureau of the National Assembly; and
 - The Committee noted that there was a legal vacuum with regard to the procedure for authorizing the arrest of a member of parliament by the Bureau when parliament is in recess and that the procedure followed by the National Assembly in the present case to authorize Mr. Hama's arrest had not been conducted with respect for the rights of defence;
 - In March 2015, the Speaker of the National Assembly undertook to address the legal vacuum to ensure better protection for parliamentarians. Nevertheless, the chairperson of the parliamentary group for Mr. Hama's party was himself subjected to the same procedure in July 2015 (see case RN116 concerning Mr. Bakari);

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- In his letter of 17 January 2018, the Speaker of the National Assembly indicated that new Rules of Procedure had been adopted in March 2017 and that the procedure for authorizing the arrest of a member of parliament followed by the Bureau when parliament is in recess was now better regulated, requiring a four-fifths majority of Bureau members.

- **Judicial proceedings**

- Mr. Hama fled Niger on 28 August 2014 following the decision taken by the Bureau and took refuge abroad. A warrant for his arrest was then issued;
- In December 2014, Mr. Hama and his wife were formally charged, along with 30 other people, for “child substitution” (and aiding and abetting child substitution), forgery and use of forged documents and criminal conspiracy, which are punishable by up to 10 years' imprisonment and the revocation of civic and political rights. Mr. Hama's wife and 12 other women are accused of faking their pregnancies and purchasing newborn babies in Nigeria through a subregional baby-trafficking network. They allegedly obtained false birth certificates on their return to Niger. Mr. Hama was accused of complicity for allegedly having known of his wife's conduct and having had false birth certificates issued;
- On 30 January 2015, the lower court declared that it had no jurisdiction in this matter because of preliminary proceedings relating to the establishment of the offences and the criminal court's jurisdiction over the case;
- An observer appointed by the Committee to observe the judicial proceedings in April 2015 concluded in his mission report that, overall, the judicial proceedings seemed to have been conducted according to due process until that date. He noted that there were opposing opinions with regard to the case, and that, even though it would seem reasonable to suspect that scores were being settled, a certain number of objective facts had nevertheless come to light that could be considered as reasonable grounds for prosecution. He recommended that another observer be tasked with following the rest of the proceedings;
- The Court of Appeal quashed the lower court's decision on 13 July 2015 and ordered the court to rule on the merits. The Court of Cassation upheld the decision of the Court of Appeal on 23 March 2016, three days after the results of the second round of the presidential election were announced;
- The trial on the merits took place in first instance before the Court of Appeal on 13 March 2017. Mr. Hama was sentenced in his absence to a one-year prison term for child abduction;
- The IPU was not informed of the trial dates in advance, despite its repeated requests over time. It was thus unable to send an observer to the trial;
- The Court of Cassation has not yet ruled on the appeal lodged by Mr. Hama against his conviction. If it upholds the sentence, it will become final. Mr. Hama's parliamentary mandate will be revoked and he will become ineligible for the next election in 2021.

- **Fair trial guarantees and conflicting positions of the parties**

- According to the parliamentary authorities, the arrest and prosecution of the Speaker of the National Assembly were not political in nature. They come in the wake of a judicial investigation lasting several months, which established that the purchase of newborn babies in Nigeria had become a widespread practice in Niger, particularly among affluent couples experiencing difficulties in having children, and that this practice was part of a subregional human trafficking network. The parliamentary authorities have repeatedly reaffirmed their willingness to provide all necessary clarifications on this case in view of the confusion between the political and legal aspects of the case. They recalled that, in politics, it was common for unresolved common law cases to catch up with politicians failing to demonstrate exemplary behaviour in the past, and that it was up to the courts to rule on the offences committed, irrespective of any political considerations;
- The complainant alleges that Mr. Hama's wife gave birth to twins in Nigeria after a normal pregnancy in 2012 and that there is no evidence to support the charges brought against them. Mr. Hama refused to have himself or his wife subjected to a DNA test, even

arranged by an independent expert with IPU facilitation, arguing that the burden of proof rested with the prosecution and that the presumption of innocence should be maintained;

- The arguments of the Court of Appeal and the Court of Cassation in their respective decisions of 13 July 2015 and 23 March 2016 seem to centre mainly on a presumption of guilt of the defendants. The Court of Appeal appears to have reversed the burden of proof provided for in the Civil Code. Its decision twice disregarded the principle of the presumption of innocence, on the basis that it could be proved that the accused women had faked the births of the children concerned. As this had yet to be established by a court, a ruling on the merits had not yet been handed down. In its decision, the Court of Cassation also considered that the offences of which the defendants were accused had been established, even though the trial on the merits had yet to take place – which appears to be a clear violation of the presumption of innocence and the right to a fair trial, all the more so as the court had rejected the grounds of appeal relating precisely to the violation of the presumption of innocence and the rights of defence by the Court of Appeal;
 - The case file was referred to the ECOWAS Court of Justice, which rendered a decision on 1 July 2016. It found that Mr. Hama had not produced decisive evidence that human rights had been violated in his criminal case. It observed that Mr. Hama had not been prevented from intervening in the proceedings, that his lawyers had been free to file the appropriate appeals, and that the judicial decisions had been reached after adversarial proceedings. It considered that the right of access to justice had been respected and that it could not comment further without evaluating the legality of the judicial proceedings or the decisions rendered by national courts, which, based on its prior case law lay beyond its purview. The court also stated that it lacked jurisdiction to examine Mr. Hama's argument that his prosecution was politically motivated and designed to eliminate him as a political opponent;
 - The complainant alleged that the trial on the merits that took place in February–March 2017 had been marked by blatant irregularities and that, moreover, since the case had been decided by the Court of Appeal and not by the lower court, Mr. Hama could not appeal against the ruling on the merits, which constituted a violation of international fair trial standards;
 - In his letter of 28 March 2017, the Speaker of the National Assembly reported that, during the trial, the defence lawyers had raised several procedural objections, including the unconstitutionality of a law, and that they were calling for the suspension of the trial. Nevertheless, the court had decided to attach all the objections to the merits, which had not gone down well with the defence lawyers, who, according to the Speaker, had decided to withdraw from the trial;
 - The sentencing decision of 13 March 2017 contains little detail on the evidence on which the court relied in concluding that Mr. Hama's wife was guilty (and by extension Mr. Hama, for complicity). The court refers mainly to evidence concerning the other defendants in the case;
 - In January 2018, the complainant reported that the ongoing judicial proceedings were being conducted solely adducing inculpatory evidence and that the courts had successively refused to adduce exculpatory evidence that Mr. Hama's lawyers had tried to introduce. The complainant provided the following evidence to the IPU: confirmations dated July and October 2017 from the Nigerian authorities (Interpol/Nigeria and the National Agency for the Prohibition of Trafficking in Persons (NAPTIP)) that Mr. Hama has not been implicated in ongoing investigations and proceedings in Nigeria against the woman accused of being at the heart of the baby-trafficking network. The complainant also submitted correspondence from the President of the Bar Association, according to which Mr. Hama's lawyers were not given free access to the whole court file during the proceedings in order to prepare their defence.
- **Political aspects of the case**
 - The charges against Mr. Hama were made shortly after his party joined the opposition. Leading up to the presidential elections, he was perceived as the President's main adversary and was criticized for not resigning as Speaker after leaving the majority. According to the complainant, several leaders and many members and activists of the

party were also victims of political and judicial harassment during the same period, orchestrated by the majority on the instructions of the Head of State, particularly in the run-up to the presidential and legislative elections;

- After taking refuge in France for more than a year, Mr. Hama returned to Niger in November 2015 to face justice and to campaign as a candidate in the presidential elections of February 2016. He was arrested upon leaving the plane and kept in detention throughout the campaign period. Mr. Hama was unable to campaign in person, but he nevertheless came in second in the first round of voting in the presidential elections. The opposition coalition supported him and denounced irregularities. It decided to boycott the second round of voting. On 20 March 2016, the outgoing president, Mr. Issoufou, was re-elected with 92 per cent of the vote. Moreover, Mr. Hama was re-elected to parliament in the legislative elections;
- On 16 March 2016, shortly after the opposition announced its boycott of the second round of voting, Mr. Hama was transferred to France for medical reasons. Following President Issoufou's victory, the Court of Cassation immediately granted Mr. Hama's provisional release, on 29 March 2016, just days after the President had issued a statement in which he reached out to the opposition, calling for an easing of political tensions in Niger. The opposition, which was boycotting the National Assembly to protest against the election results, agreed to resume its parliamentary work. Since the end of 2016, it has again been expressing its dissatisfaction with the current regime's leadership of the country, according to the complainant, who believes this was why the case was suddenly reactivated and brought to trial in early 2017, leading to the sentencing of Mr. Hama,

Also considering that Radio France Internationale (RFI) reported on 28 January 2018 that Nigeria had asked Niger to carry out DNA tests on Mr. Hama's second wife after two children had been found on his land. According to the article, a search had been launched for the children following the lower-court conviction, with the intention of placing them in an orphanage, and Mr. Hama's wife had allegedly left Niger,

Bearing in mind the applicable constitutional, legislative and regulatory framework, as well as the fact that Niger is a party to both the International Covenant on Civil and Political Rights and the African Charter on Human and Peoples' Rights,

1. *Thanks* the Speaker of the National Assembly for his cooperation;
2. *Takes note* of the progress made in the judicial proceedings; and *deeply regrets* that it has not been kept informed by the parties of the dates of the trial on the merits and that it has therefore not been able to send an independent observer;
3. *Notes* the complainant's persistent allegations of non-compliance with international fair trial standards in the judicial handling of the case; and *requests* the authorities to send its observations in this regard, in particular concerning the alleged violations of the presumption of innocence, the refusal to consider certain exculpatory evidence, and the Court of Appeal's jurisdiction at first and last instance, as well as unconfirmed information relayed by RFI;
4. *Takes note* of the highly political aspect of the case, given the way in which the key stages in the prosecution of Mr. Hama coincide with the political calendar, in particular the latest presidential elections; *expresses the hope* that a solution can now be found in the changed political context; *invites* the complainant and the parliamentary authorities to take part in a hearing during the 138th IPU Assembly (Geneva 24–28 March 2018) to discuss the case; and *recalls* that the IPU is willing to facilitate a dialogue with a view to resolving the case;
5. *Notes with interest* that the Rules of Procedure of the National Assembly have been amended to better regulate the lifting of parliamentary immunity by the Bureau when parliament is in recess; *requests* the Speaker of the National Assembly to provide a copy of the amended provisions;

6. *Requests* the Secretary General to convey this decision to the parliamentary authorities, the complainant and any third party likely to be able to provide relevant information; and *requests him in particular* to contact the Nigerian authorities in order to have them carry out the necessary checks, in view of their involvement in the case;
7. *Decides* to continue examining the case.