

NIGER

- RN/115 - Amadou Hama
- RN/116 - Seidou Bakari



Inter-Parliamentary Union

For democracy. For everyone.

Niger

Decision adopted by consensus by the IPU Governing Council at its 202nd session (Geneva, 28 March 2018)¹



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NER115 - Amadou Hama

Alleged human rights violations

- ✓ Failure to respect parliamentary immunity
- ✓ Lack of due process
- ✓ Violation of freedom of opinion and expression

A. Summary of the case

Mr. Amadou Hama, former Speaker of the National Assembly, leader of the MODEN/FA Lumana-Africa party and head of the opposition, has been exiled in France since 2014 as a result of legal proceedings being brought against him. His parliamentary immunity was lifted in August 2014 by the Bureau of the National Assembly, when parliament was in recess, without Mr. Hama being given a preliminary hearing.

Having returned to Niger in November 2015 to face justice and to campaign as a candidate in the presidential election, Mr. Hama was arrested as he stepped off the plane. Despite having been unable to campaign because of his detention, Mr. Hama came second in the first round of the presidential election, on 21 February 2016. The opposition then withdrew from the electoral process, making allegations of fraud. On 16 March 2016, Mr. Hama was granted a transfer to France, officially for medical reasons. The outgoing President was re-elected in the second round of voting on 20 March.

Case NER115

Niger: Parliament affiliated to the IPU

Victim: A male opposition member of the National Assembly

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

Submission of complaint: October 2014

Recent IPU decision: [February 2018](#)

IPU Mission: - - -

Recent Committee hearings: - - -

Hearings with the complainant and the delegation of Niger during the 138th IPU Assembly (March 2018)

Recent follow-up:

- Communication from the authorities: Letter from the Speaker of the National Assembly (January 2018)
- Communication from the complainant: March 2018
- Communication from the IPU to the Speaker of the National Assembly (February 2018)
- Communication from the IPU to the complainant: March 2018 ■

¹ The delegation of Niger expressed its reservations regarding the decision.

After many procedural complications, Mr. Hama was convicted in absentia and sentenced to one year in prison in March 2017 for the offence of aiding and abetting the concealment of newborns, together with around 30 other people, including his wife. They were accused of having purchased babies in Nigeria from a woman suspected of being the head of a subregional child trafficking ring. Mr. Hama lodged a number of appeals, including one to the Constitutional Court, which handed down its judgment on 21 March 2018, and one to the Court of Cassation, on which the Court has yet to rule.

The children of the couples convicted in March 2017 were taken from them and placed in orphanages, with the exception of Mr. Hama's children, who were taken out of Niger in order to avoid the same fate. The children are currently in hiding in Nigeria with their mother – who has finished serving her sentence in Niger - and are reportedly enrolled in school there. Proceedings are reportedly under way to have the children transferred to an orphanage in Niger.

The complainant alleges that Mr. Hama's parliamentary immunity and defence rights were violated, that the charges brought against him are unfounded and that proceedings were neither impartial, independent nor fair. The complainant affirms that no evidence against Mr. Hama or his wife was provided by the prosecution or judges (unlike in the case of the other couples charged). The complainant submitted exculpatory evidence that he says was not taken into account. The complainant points out that the Nigerian woman presumed to be at the centre of the suspected trafficking ring was never brought before the courts. The complainant considers that Mr. Hama has been the victim of acts of political and legal harassment since his party sided with the opposition in August 2013. He emphasizes that these acts intensified when Mr. Hama refused to resign from his post of Speaker of the National Assembly and in the run-up to the presidential election in February 2016. The complainant points out that Mr. Hama's children, on whose account legal proceedings have been brought in order to have them placed in orphanages in Niger, are the main victims in the case at hand, which is likely to affect them their entire lives, and considers that their best interests should take precedence.

The parliamentary authorities maintain that the case is in no way politically motivated. The procedure to authorize the lifting of parliamentary immunity was conducted in accordance with the Constitution and the Rules of Procedure. New Rules of Procedure were adopted in March 2017 and, according to the Speaker of the National Assembly, the procedure is now better regulated. The charges against Mr. Hama were made following a judicial investigation lasting several months, and Mr. Hama's conviction, and those of the 30 or so others who were jointly prosecuted, were set out in judgments handed down by an independent judiciary in accordance with the Constitution of Niger. The authorities emphasize that none of the other convicted couples lodged an appeal, and that they have now finished serving their sentences. They confirm that the convicted couples' children were removed from them and placed under the authority of the State, for their protection, in consequence of a lawful order of a court.

B. Decision

The Governing Council of the Inter-Parliamentary Union

1. *Thanks* the delegation of Niger and the complainant for the information shared in the hearings with the Committee on the Human Rights of Parliamentarians held during the 138th IPU Assembly;
2. *Commends* the National Assembly for appointing an inclusive delegation to the 138th IPU Assembly; *welcomes* the fact that the Committee on the Human Rights of Parliamentarians was able to hear the different views on the case held by the various parties making up the delegation; *notes* the view of the National Assembly that it cannot take up the case owing to the principle of the separation of powers and the independence of the judiciary; *encourages* it nevertheless to continue dialogue and to transmit the concerns that persist in this case to the competent authorities and to actively undertake to facilitate a solution in accordance with the Constitution of Niger;
3. *Deplores* the fact that no progress has been made to enable the case to be settled in a satisfactory manner; *expresses concern* about the current situation of Mr. Hama and his family, particularly that of the two children involved; *recalls* that under the Convention on the Rights of the Child, ratified by Niger, and in particular article 9 thereof, States Parties are obliged to ensure that a child shall not be separated from his or her parents against their will, except where such separation is necessary for the best interests of the child, for example in cases of abuse or

neglect; *stresses* that, regardless of the children's biological parentage, which is a key aspect of the present case, Mr. Hama and his wife consider themselves to be the children's parents, and appear to have always behaved as such; *considers* therefore that the decision to place the children in an orphanage, and the ongoing proceedings in their regard, do not take into account the children's best interests; *calls upon* the Niger authorities to comply with their obligations regarding the rights of the child; *hopes* that all the competent authorities, including the judiciary, will take into account this fundamental aspect of the case;

4. *Deeply regrets* that it has not been kept informed by the parties of the dates of Mr. Hama's trial and that it has therefore not been able to send an independent observer, despite its requests to that end; *stresses* the major differences of opinion between the parties, and the many procedural complications that continue to exist in this complex case;
5. *Notes* that this case continues to be a sensitive one at the current time, and that it has an undeniable political dimension, in view of the following factors: the history of relations between Mr. Hama and the Head of State; the fact that Mr. Hama is the head of the opposition; the fact that he aspires to be President of the Republic; the manner and circumstances in which his parliamentary immunity was lifted by the Bureau of the National Assembly during parliamentary recess, without this being subsequently confirmed in plenary, despite a problematic and controversial procedural legal vacuum; the many grey areas in the "baby trafficking" case, including the continuing lack of clarity concerning evidence of Mr. Hama's and his wife's guilt, in terms of the relevant judgments handed down and the complainant's allegations; and lastly, the clear connection between the key stages in Mr. Hama's prosecution and the political calendar, in particular the latest presidential election;
6. *Expresses the wish* for a delegation from the Committee on the Human Rights of Parliamentarians to visit Niger, possibly extending the visit to include Nigeria, in order to carry out additional checks, talking directly with all actors involved, in particular with those in the judiciary and the executive, and to encourage the parties to re-establish political dialogue and find a satisfactory solution to this case; *hopes* to receive a positive reply from the National Assembly to this end, and assistance from the Assembly to enable the mission to proceed smoothly;
7. *Recalls* the Committee's previous conclusions, according to which Mr. Hama's defence rights were not respected during the parliamentary procedure for lifting his immunity, since he was not given a preliminary hearing; *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;
8. *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 also to take all necessary steps to organize the mission by the Committee on the Human Rights of Parliamentarians;
9. *Requests* the Committee to continue examining this case and to report back to it in due course.



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NER116 - Seidou Bakari

Alleged human rights violations

- ✓ Arbitrary detention
- ✓ Lack of due process and excessive delays in proceedings
- ✓ Failure to respect parliamentary immunity
- ✓ Violation of freedom of opinion and expression

A. Summary of the case

On 28 July 2015, the Bureau of the National Assembly authorized the arrest of parliamentarian Seidou Bakari, chairperson of the MODEN/FA Lumana-Africa parliamentary group, without giving him a preliminary hearing. He was not re-elected and was arrested when his parliamentary mandate came to an end on 16 May 2017, since which date he has been held in pre-trial detention.

Mr. Bakari is accused of having embezzled public funds in 2005, when he was coordinator of a food emergency committee (CCA) that answered to the Office of the Prime Minister. At the time, the prime minister was Mr. Amadou Hama (NER115), currently the head of the opposition. According to the complainant, Mr. Bakari's parliamentary immunity was not respected and he was not given a hearing by the Bureau before his immunity was lifted, despite the fact that no criminal charges had yet been brought against him.

The complainant believes that Mr. Bakari's continued detention, and the lack of progress of the legal proceedings, are deliberate acts which constitute violations of Mr. Bakari's fundamental right to be given a fair hearing without undue delay. Mr. Bakari's applications for bail were allegedly refused, in

Case NER116

Niger: Parliament affiliated to the IPU

Victim: A male opposition member of the National Assembly

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

Submission of complaint: September 2015

Recent IPU decision: [February 2018](#)

IPU Mission: - - -

Recent Committee hearings: - - -

Recent follow-up:

- Communication from the authorities: Letter from the Speaker of the National Assembly (January 2018)
- Communication from the complainant: March 2018
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- Communication from the IPU to the complainant: February 2018 ■

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violation of the Code of Criminal Procedure. The complainant also alleges that the rights of the defence were violated, and that the investigating judge ignored exculpatory evidence provided by Mr. Bakari's lawyer. According to the complainant, a hearing took place on 23 March 2018 following a request by Mr. Bakari's lawyer for the investigating judge to be taken off the case. The ruling is expected on 13 April.

The complainant asserts that the charges brought against Mr. Bakari are unfounded, and that no funds were embezzled by the food emergency committee (CCA). He states that Mr. Bakari was tasked simply with implementing decisions taken collectively by the CCA, and had no power to take individual decisions or order expenditure. He pointed out that all the CCA's decisions were recorded in writing. He recalled that Niger's international partners had been satisfied with the way the funds and the food crisis were being managed, at the time, and had officially thanked Mr. Bakari for his work (letter transmitted by the complainant). According to the complainant, several international audits had been carried out over the years of the CCA's operation, in order to certify its accounts.

The complainant asserts that Mr. Bakari is the victim of political and judicial harassment purely because he is a member of the opposition and a close collaborator of Mr. Amadou Hama. As a deputy, and as chairperson of his parliamentary group, he supported Mr. Hama – then Speaker of the National Assembly – when the latter was subjected to criminal proceedings after announcing that his party would be siding with the opposition at the next presidential elections.

The parliamentary authorities affirmed that they followed the procedure for lifting parliamentary immunity. New Rules of Procedure were adopted in March 2017 and, according to the Speaker of the National Assembly, the procedure is now better regulated. No information was provided by the authorities on the other allegations, neither on the alleged acts being prosecuted nor the reasons why charges were brought against Mr. Bakari 12 years after the acts in question. The Speaker of the National Assembly said he had been unable to obtain any answers owing to the principle of the separation of powers and the confidentiality of preliminary investigations, but that the investigating judge would soon be handing down a ruling on the case.

B. Decision

The Governing Council of the Inter-Parliamentary Union

1. *Thanks* the delegation of Niger and the complainant for the information shared during the hearings with the Committee on the Human Rights of Parliamentarians during the 138th IPU Assembly;
2. *Commends* the National Assembly for appointing an inclusive delegation to the 138th IPU Assembly; *welcomes* the fact that the Committee on the Human Rights of Parliamentarians was able to hear the different views on the case taken by the various parties making up the delegation; *notes* the view of the National Assembly that it cannot take up the case owing to the principle of the separation of powers and the independence of the judiciary; *encourages* it nevertheless to continue dialogue and to transmit the concerns that persist in this case to the competent authorities and to actively undertake to facilitate a solution in accordance with the Constitution of Niger;
3. *Is concerned at* the length of Mr. Bakari's continued pre-trial detention, which does not appear to be in keeping with articles 131 and 133 of the Code of Criminal Procedure, and at the length of the preliminary investigation, in which no progress appears to have been made; consequently, *invites* the competent authorities to release him immediately, and to expedite the processing of the case;
4. *Expresses its concern* also regarding the merits of the charges brought against Mr. Bakari, given the substantial information and documentation provided by the complainant and the lack of response by the authorities on the issue;
5. *Urges* the Niger authorities to do their utmost to guarantee that the case is processed quickly, fairly and independently, in strict compliance with national and international fair trial standards and the fight against corruption; *requests* the authorities to keep it informed of the decisions to be taken by the Appeal Court and the investigating judge and, if appropriate, of the trial dates,

so as to be able to send an observer; *reiterates its request* that the authorities provide their observations and more detailed information on the case regarding the allegations made by the complainant;

6. *Notes* that this case has an undeniable political aspect to it, and that the proceedings brought against Mr. Bakari have evident similarities with those brought against the president of his party, Mr. Amadou Hama (NER115) – whose case is also before the Committee on the Human Rights of Parliamentarians – and that these similarities, as well the fact that the proceedings were initiated to coincide with the latest presidential and parliamentary elections, add weight to the complainant's allegations;
7. *Expresses the wish* for a delegation from the Committee on the Human Rights of Parliamentarians to visit Niger, in order to carry out additional checks, and talk directly with all actors involved, in particular with those in the judiciary and the executive, and to encourage the parties to re-establish political dialogue and find a satisfactory solution to this case; *hopes* to receive a positive reply from the National Assembly in this regard, and assistance from the Assembly to enable the mission to proceed smoothly;
8. *Recalls* the Committee's previous conclusions, according to which Mr. Bakari's defence rights were not respected during the parliamentary procedure for lifting his immunity, as he was not given a preliminary hearing; *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;
9. *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; *also requests* him to take all necessary steps to organize a mission to Niger by the Committee on the Human Rights of Parliamentarians;
10. *Requests* the Committee to continue examining this case and to report back to it in due course.