

## NIGER

- NER-116: Seidou Bakari
- NER-115: Amadou Hama



Inter-Parliamentary Union  
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# Niger

**Decision adopted by the Committee on the Human Rights of Parliamentarians at its 163<sup>rd</sup> session (virtual session, 1 to 13 February 2021)**



© Seidou Bakari

NER-116 – Seidou Bakari

## Alleged human rights violations

- ✓ Arbitrary arrest and detention
- ✓ Lack of due process at the investigation stage
- ✓ Excessive delays
- ✓ 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 member of parliament Seidou Bakari, chairperson of the parliamentary group of the MODEN/FA Lumana-Africa party, without first affording him a hearing. When he failed to be re-elected, he was arrested at the end of his parliamentary mandate, on 16 May 2016, and has been held in pretrial detention without trial since that date. Following serious health problems, he is currently in hospital, as his condition requires specialized medical care that is not available in prison.

Mr. Seidou Bakari is accused of embezzling public funds in 2005, while he was coordinating a food crisis unit under the aegis of the Office of the Prime Minister, who at that time was Mr. Amadou Hama, one of the main opponents of the Head of State, and whose case is also under examination by the Committee on the Human Rights of Parliamentarians.

According to the complainant, Mr. Bakari's parliamentary immunity was not respected, in that he was not given a hearing by the Bureau and no criminal charges had been laid against him before his

## Case NER-116

**Niger:** Parliament affiliated to the IPU

**Victim:** A former opposition member of the National Assembly

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

**Submission of complaint:** September 2015

**Recent IPU decision:** March 2018

**IPU Mission(s):** - - -

**Recent Committee hearing:** Hearing with the delegation of Niger at the 140<sup>th</sup> IPU Assembly (Doha, April 2019)

### Recent follow up:

- Communication from the authorities: Letter from the Deputy Speaker of the National Assembly (April 2019)
- Communication from the complainant: January 2021
- Communications addressed to the authorities: Letter to the Minister of Justice (May 2019) and letter to the Speaker of the National Assembly (December 2020)
- Communication addressed to the complainant: January 2021

immunity was lifted. The complainant considers that his continuing detention and the lack of progress in the judicial proceedings are deliberate and represent violations of Mr. Bakari's fundamental right to fair trial proceedings conducted without excessive delays. His requests for interim release were reportedly rejected in violation of the Code of Criminal Procedure. The complainant also alleges violation of his rights to defence and failure by the investigating judge to take account of the exculpatory evidence provided by Mr. Bakari's lawyer.

The complainant asserts that the charges brought against Mr. Bakari are unfounded and that he 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 member of parliament and chairperson of his parliamentary group, he supported Mr. Hama – then Speaker of the National Assembly – when the latter was subjected to criminal proceedings and had announced that his party would be siding with the opposition in the next presidential elections.

According to the parliamentary authorities, the case is not political in nature and procedures have been followed. No information has been provided recently by the authorities on Mr. Bakari's continued detention, nor on the status of the judicial proceedings. In a letter sent in April 2019, the Deputy Speaker of the National Assembly stated that the case was pending before the courts of Niger and that, under the principle of the separation of powers, the National Assembly was unable to intervene in any way.

## **B. Decision**

The Committee on the Human Rights of Parliamentarians

1. *Reiterates its deep concern* at the prolonged length of Mr. Bakari's pretrial detention, which does not appear to be in keeping with articles 131 to 133 of the Niger Code of Criminal Procedure, and at the length of the preliminary investigation; *urges* the competent authorities, therefore, to release Mr Bakari immediately, also taking into account his deteriorating health, and to expedite the processing of the case;
2. *Recalls* its previous conclusions concerning the undeniable political dimension of the case, as well as its concerns about the parliamentary procedure followed in authorizing the lifting of Mr. Bakari's immunity; *notes with great interest*, however, that the Rules of Procedure of the National Assembly were subsequently amended to better regulate the lifting of parliamentary immunity by the Bureau when parliament is in recess; *thanks* the parliamentary authorities for providing a copy of the new Rules to the Committee;
3. *Urges* the Niger authorities to do their utmost to ensure the impartial and independent processing of the case as soon as possible and in strict compliance with national, regional and international standards in terms of a fair trial and the fight against corruption; *requests* the authorities to keep it informed of the decisions to be taken by the Niger courts and of any new developments concerning the proceedings and, if applicable, of the trial dates; *reaffirms its wish* to appoint a trial observer to follow the trial; and *looks forward* to receiving a positive response from the national authorities to this end and to obtaining their collaboration in ensuring the smooth conduct of the trial observation;
4. *Notes* the position of the National Assembly with respect to being unable to intervene in the case owing to the principle of the separation of powers and the independence of the judiciary; and *encourages* it nevertheless to continue dialogue with the Committee and transmit the concerns that remain in this case to the competent authorities; *recalls* in this regard that the Committee, in accordance with its Rules and Practices, does everything possible to promote dialogue with the authorities of the country concerned, and primarily with its parliament, with a view to reaching a satisfactory settlement of the cases before it;
5. *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 or to contribute to the satisfactory resolution of the case;
6. *Decides* to continue examining the case.



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# Niger

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



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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 138<sup>th</sup> 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 ■

<sup>1</sup> 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 138<sup>th</sup> IPU Assembly;
2. *Commends* the National Assembly for appointing an inclusive delegation to the 138<sup>th</sup> 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.