



129th ASSEMBLY OF THE INTER-PARLIAMENTARY UNION AND RELATED MEETINGS

Geneva, 7 – 9.10.2013

Governing Council
Item 11(b)

CL/193/11(b)-R.2
Geneva, 9 October 2013

COMMITTEE ON THE HUMAN RIGHTS OF PARLIAMENTARIANS **REPORT ON COMMITTEE MISSION TO THE DEMOCRATIC REPUBLIC OF THE CONGO** (10-14 JUNE 2013)

CASE No. DRC/32 - PIERRE JACQUES CHALUPA

CASE No. DRC/71 - EUGÈNE DIOMI NDONGALA

CASE No. DRC/72 - BAKUNGU MYTHONDEKE

CASE No. DRC/80 - ROGER LUMBALA TSHITENGE

CASE No. DRC/49 - DRC/79 - 29 INVALIDATED MPs

CASE No. DRC/49 - ALBERT BIALUFU NGANDU

CASE No. DRC/50 - ANDRÉ NDALA NGANDU

CASE No. DRC/51 - JUSTIN KILUBA LONGO

CASE No. DRC/52 - SHADRACK MULUNDA NUMBI KABANGE

CASE No. DRC/53 - HÉRITIER KATANDULA KAWINISHA

CASE No. DRC/54 - MUAMUS MWAMBA MUSHIKONKE

CASE No. DRC/55 - JEAN OSCAR KIZIAMINA KIBILA

CASE No. DRC/56 - BONNY-SERGE WELO OMANYUNDU

CASE No. DRC/57 - JEAN MAKAMBO SIMOL'IMASA

CASE No. DRC/58 - ALEXIS LUWUNDJI OKITASUMBO

CASE No. DRC/59 - CHARLES MBUTA MUNTU LWANGA

CASE No. DRC/60 - ALBERT IFEFO BOMBI

CASE No. DRC/61 - JACQUES DOME MOLOLIA

CASE No. DRC/62 - RENÉ BOFAYA BOTAKA

CASE No. DRC/63 - JEAN DE DIEU MOLEKA LIAMBI

CASE No. DRC/64 - EDOUARD KIAKU MBUTA KIVUILA

CASE No. DRC/65 - ODETTE MWAMBA BANZA (Mme)

CASE No. DRC/66 - GEORGES KOMBO NTONGA BOOKE

CASE No. DRC/67 - MABUYA RAMAZANI MASUDI KILELE

CASE No. DRC/68 - CÉLESTIN BOLILI MOLA

CASE No. DRC/69 - JÉRÔME KAMATE

CASE No. DRC/70 - COLETTE TSHOMBA (Ms.)

CASE No. DRC/73 - BARAMOTO MACULO BOBO

CASE No. DRC/74 - ANZULUNI BEMBE ISILONYONYI

CASE No. DRC/75 - ISIDORE KABWE MWEHU LONGO

CASE No. DRC/76 - MICHEL KABEYA BIAYE

CASE No. DRC/77 - JEAN JACQUES MUTUALE MUTUALE

CASE No. DRC/78 - EMMANUEL NGOY MULUNDA NYANGA

CASE No. DRC/79 - ELIANE KABARE NSIMIRE (Ms.)

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A. ORIGIN AND CONDUCT OF THE MISSION

1. Decision to dispatch a mission

1. The mission to the Democratic Republic of the Congo (DRC) concerned cases that had been submitted to the Committee on the Human Rights of Parliamentarians in the course of 2012. At the time of the mission, 33 separate cases concerning existing or former members of the DRC National Assembly had been referred to the Committee for substantive examination.

2. In July and August 2012, the Committee delegated Mr. Agboyibo, attorney at law and former prime minister of Togo, to travel on mission to Kinshasa to participate in hearings as an observer and obtain additional information on the cases of Mr. Chalupa and the 28 disqualified members of the National Assembly. His mission report was submitted to the Governing Council at the 127th IPU Assembly (October 2012, Quebec City). In the intervening time, new cases were referred to the Committee, and numerous further developments took place. Accordingly the Committee, at its 140th session (January 2013), expressed its conviction that a mission to Kinshasa would make it possible to ascertain the facts and the current status of the judicial proceedings and provide an opportunity for an exchange with the competent authorities on the concerns raised on the various cases. At the 128th IPU Assembly (March 2013, Quito), the DRC delegation gave its approval in principle to the idea of such a mission, and on 21 May 2013 the Speaker of the National Assembly accepted the proposed mission dates.

2. People met

• Parliamentary authorities

- Mr. Aubin Minaku, Speaker of the National Assembly
- Mr. Léon Kengo Wa Dondo, President of the Senate
- Ms. Jaynet Kabila, President of the Committee of Eminent Experts, and Mr. Dieudonné Kambale, rapporteur of the Committee
- Mr. Luhonge Kabinda Ngoie (from the majority PPRD party) and Mr. Sam Bokolombe (from the opposition UNC party), members of the parliamentary special commission on the lifting of Mr. Diomi Ndongala's parliamentary immunity
- The presidents of the main parliamentary opposition groups:
 - o Mr. José Makila, president of the GPLDS group
 - o Mr. Justin Bitakuya, president of the UNC & ALLIES group
 - o Mr. Fabien Mutomb, vice-president of the UDPS & ALLIES group
 - o Mr. Martin Fayulu, member of the UDPS/FAC

• Governmental authorities

- Ms. Maguy Sakina Binti Selemani, Vice-Minister for Human Rights
- Mr. Yvon Kalonda Kele Oma, director of cabinet for the Minister for Justice and Human Rights
- Ms. Marie Claude Nkulu Mbayo, advisor in the cabinet of the Minister for Justice and Human Rights

• Judicial and administration authorities

- Mr. Flory Kabange Numbi, Prosecutor General
- Mr. Jérôme Kitoko Kimpele, first president of the Supreme Court of Justice
- Colonel Thaddée Kabisa and Ms. Madeleine Deko-Djonge, respectively the director and deputy director of the Kinshasa Penitentiary and Correctional Centre (CPRK)/Makala prison.

• Current and former parliamentarians involved, and their attorneys

- Mr. Chalupa (in custody); his wife and children; Prince Longo Epenge, secretary-general of his political party; and his attorneys (Jean-Marie Kabengela, Hubert Efole and Kamoura Mulumba, attorneys-at-law)
- Mr. Diomi Ndongala (in custody); his wife, Ms. Patrizia Ndongala; and Yala Tutu, one of his attorneys

- Mr. Mythondeke and his attorney, Prince Nkongolo Ngongo
- The disqualified members of the National Assembly and some of their attorneys, including Mr. Kabengela
- Representatives of the international community
 - Mr. Abdallah Wafy, Deputy Special Representative of the Secretary-General (Rule of Law), United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO)
 - Mr. Abdoul Aziz Thioye, deputy director and Ms. Sarah de Hemptinne and Mr. Mamadou Saliou Diallo, human rights officers, United Nations Joint Human Rights Office, MONUSCO
 - Ms. Claudia Otorala and Mr. Marius Krécoum, Electoral Division, MONUSCO
 - Mr. Bruno Hanses and Ms. Laura Soares De Ceita-Jouin, European Union Delegation to the DRC
 - Mr. Nicolas Lefebvre, attaché of the embassy of Belgium in the DRC
 - Mr. Rick Slettenhaar, second secretary of the embassy of the Netherlands in the DRC
 - Ms. Magdalena Rincòn, political section, embassy of Spain in the DRC
 - Mr. Philippe Lafosse, attaché for cooperation in the governance sector, embassy of France in the DRC

3. Conduct of the mission

3.1 Mission organization

3. The mission delegation was disappointed by the poor preparation and planning of the mission by the parliamentary authorities. It did not receive confirmation of the mission programme prior to its arrival in Kinshasa, and upon arrival discovered that the requested official meetings had not been organized, with the exception of a meeting with the Speaker of the National Assembly. Nonetheless, and despite the lack of organization, the delegation ultimately succeeded in holding meetings with most of the authorities with which it wished to hold discussions in the course of the mission.

4. The mission delegation regrets that it was unable to meet with the Head of State, although it had made a request months in advance, going through the parliamentary authorities.

3.2 Discussions held

5. The mission delegation thanks the Speaker of the National Assembly for making himself available for two separate meetings, one at the beginning and the other at the end of the mission, providing an opportunity for a debriefing on the conduct of the mission. The delegation also sincerely thanks the President of the Senate for making himself available for an open, in-depth exchange. It also thanks the chair of the National Assembly's Committee of Eminent Experts. The Committee is an internal body of the National Assembly set up in 2012 to provide expert advice and assistance in disciplinary matters to the Bureau of the National Assembly on request, and to provide advice and mediation in the event of disputes (cf. Article 3 of the Committee's rules and procedures).

6. The delegation is grateful to the Justice Minister for arranging a meeting with the Vice-Minister for Human Rights and with the director of her cabinet in her absence. The delegation was informed during its meeting with the director of the cabinet that the Justice Minister had addressed a letter dated 18 May 2013 to the Committee via the National Assembly providing the requested information. A copy of the letter was provided to the delegation. The delegation expressed its profound disappointment that the parliamentary authorities had not forwarded the letter to the Committee prior to the mission.

7. During the mission the delegation was also able to meet with a large number of members of the National Assembly and politicians representing a broad political spectrum. Extremely useful meetings were also held with the Deputy Special Representative of the Secretary-General (Rule of Law), MONUSCO, the United Nations Joint Human Rights Office, and the MONUSCO electoral division, and with a number of advisors of embassies and of the European Union who have been following the cases in question.

8. Throughout their stay in Kinshasa, the delegation had numerous occasions to observe that the mission of the IPU and of the Committee on the Human Rights of Parliamentarians are poorly understood, as is the legal status of its resolutions. The delegation made a point of explaining that the IPU is not a supranational organization but rather an interparliamentary one, that is to say, an organization of parliaments who have voluntarily chosen to work together in a number of areas. The delegation explained that, as the IPU had set up its Committee on the Human Rights of Parliamentarians to deal with violations of the fundamental rights of parliamentarians, the Member Parliaments accordingly had an obligation to work towards the satisfactory resolution of the cases being examined by it, in accordance with its decisions and the resolutions of the Governing Council. At the same time, the delegation pointed out that the Member Parliaments of the IPU have not invested the decisions of the Committee with binding force, and therefore those decisions are not mandatory for any State as such, but merely have the strength of a recommendation. Nonetheless, Member Parliaments are bound by the moral authority of those decisions, through the mechanisms of parliamentary diplomacy and because they are members of the IPU and have undertaken to work for parliamentary democracy and development (Article 1(2)(c) of the IPU Statutes). The delegation emphasized that the IPU and the Committee on the Human Rights of Parliamentarians prefer to conduct their work by means of dialogue between the parties concerned, rather than by condemnation and constraint. It reminded the people it met that the Committee's role is largely one of helping the parties to resolve their differences by means of constructive dialogue. At the same time, there was nothing to preclude a case that was being examined by the Committee from being brought before regional or sub-regional international authorities whose competence extended to binding decisions.

3.3 Detainee visits

9. The delegation welcomed the opportunity to meet with Mr. Chalupa and Mr. Ndongala in the Kinshasa Penitentiary and Correctional Centre (CPRK), the central prison of Kinshasa known commonly as the Makala prison. The delegation was able to talk freely with the two detainees for over an hour. At the time of the visit they appeared to be healthy overall, although Mr. Chalupa's need for prostate surgery appeared to be gaining in urgency. Mr. Ndongala appeared to be depressed by the fact that he remained in prison rather than being placed under house arrest. The delegation was not able to inspect the conditions under which the two men were being held, as the meeting took place in the courtyard of the prison.

10. The two detainees made allegations of privations, humiliating treatment and abuse that they both suffered in April 2013 during the first few weeks that Mr. Ndongala was in custody. Both of them said that during this time they were kept confined to their cells twenty-four hours a day, their personal effects were confiscated, and the prison staff threw their food on the ground and subjected them to humiliating treatment, including body searches. They also indicated that conditions improved after a few weeks, after their attorneys had approached the prison director. In protest against this situation and the continued detention of her husband, Ms. Ndongala began a hunger strike on 20 May, which she ended on 8 June on the advice of doctors.

11. In the course of the visit, the delegation also spoke briefly with the prison director and his deputy, both of whom had been appointed 24 hours previously. Although they did not have a comprehensive picture of the prison, the two officers recognized that it would be a challenge to improve the conditions of detention in the prison, in view of the scarce resources at their disposal.

3.4 Request to re-open the cases of the members disqualified in 2007 (G18)

12. These are the cases numbered DRC/30 to DRC/45, concerning 13 members of the National Assembly who were arbitrarily disqualified by the Supreme Court in 2007. The Governing Council had closed the cases at its 186th session (March-April 2010) and considered them resolved, on the basis of the commitment undertaken by the authorities to provide the disqualified members with financial compensation. At that time, the Speaker of the National Assembly, in a letter dated 27 August 2009, had requested that the Budget Minister pay compensation to Mr. Diongo and Mr. Chalupa; the Speaker and the Senate President had asked the Prime Minister to do the same for the other 11 disqualified members. Considering the payment issue to be resolved, the Governing Council decided to close the cases.

13. However, the 11 members subsequently contacted the Committee and informed it that the compensation was never paid out, despite repeated claims by the members. They requested that the cases be re-opened.

3.5 New case

14. In the course of the mission, a new case was submitted to the delegation for examination by the Committee. This case concerns a conflict within the parliamentary opposition group UDPS/FAC, between those within the group who wanted to change its name to *UDPS et alliés* ("UDPS and allies") and those who were opposed to the change. The latter considered that the change went beyond a simple change in the group's name and amounted to the formation of a new parliamentary group by the Speaker of the National Assembly in the middle of a legislative period, in violation of the standing orders.

15. The Assembly's political, administrative and legal committee ("Commission politique, administrative et juridique" or PAJ Committee) has reportedly been asked to examine the dispute. It found, in its 16 May 2013 report, that the original UDPS/FAC group had not properly interpreted the standing orders of the National Assembly, in that it had failed to submit its internal regulations at the time the group was constituted. The Commission noted that both factions had indicated their willingness to continue their partnership as a single parliamentary group. It found that a parliamentary group was entitled to change its name, but the procedure used in the present case was deficient and flawed. After hearing and cross-examining the two factions, the PAJ Committee therefore recommended that the complete UDPS/FAC group draw up and adopt its internal regulations before making any changes to its name or to the appointments to the group's bureau.

16. According to the dissenters within the UDPS/FAC group, this recommendation was not respected. In a communiqué dated 2 June 2013, the group reported that, at the previous day's plenary session, convened to discuss the PAJ Committee's report, the Speaker of the National Assembly had "distanced himself from the commission" by "dispensing with the report from this technical body [...]" and, "substituting himself for the plenary, the supreme organ of the National Assembly" had "personally directed and decided in favour of the creation of a new parliamentary group to be called *UDPS et alliés* (...) with the sole objective of obtaining a seventh position within the CENI bureau." The UDPS/FAC dissenters considered that the new parliamentary group *UDPS et alliés* was not eligible as a member of the Congo political opposition, as it had been created by the Speaker of the National Assembly, who is also the head of the majority coalition, in violation of the standing orders and the PAJ Committee's report.

B. SUMMARY OF CASES AND CONCERNS OF THE COMMITTEE

1. Case DRC/32 - Mr. Pierre Jacques Chalupa

17. Mr. Chalupa is a former Assembly opposition member who was arrested on 2 February 2012 and in October 2012 sentenced on appeal to three years in prison for use of falsified documents. He had been accused of having failed to obtain DRC nationality officially and of having used a false attestation to obtain passports and DRC voter cards to stand for election to parliament. Mr. Chalupa is in detention despite medical reports that indicate that he urgently requires surgery which cannot be performed in prison. In January 2013 Mr. Chalupa's attorneys applied for release on parole, as he had already served more than one quarter of his sentence and had shown good behaviour during that time.

18. The Committee repeatedly expressed its concern and incomprehension regarding the sudden doubts about Mr. Chalupa's DRC nationality, given that it had never previously been contested. The Committee expressed its concern about the fairness of the proceedings and its fear that Mr. Chalupa was being persecuted for political motives, the intention being to shut him out of the political life of the country because he had gone over to the opposition during the November 2011 elections.

2. Case DRC/71 - Mr. Eugène Diomi Ndongala

19. Mr. Eugène Diomi Ndongala was a member of the opposition in the National Assembly and in office at the time of the mission. He is the president of the opposition Christian Democrat Party and one of the principal supporters of Mr. Etienne Tshisekedi, the leader of the main opposition party, the Union for Democracy and Social Progress (UDPS). Mr. Ndongala went missing during the period 27 June to 11 October 2012. The delegation's sources report that Mr. Ndongala was arbitrarily detained and held incommunicado by the intelligence services during this time. According to the authorities, Mr. Ndongala escaped in the course of an attempt by the police to arrest him for raping two underage girls. The authorities have done nothing to establish in a fair and independent manner the circumstances under which Mr. Ndongala disappeared, despite numerous complaints filed in the courts.

20. On a request from the Prosecutor General, the National Assembly voted on 8 January 2013 to lift Mr. Ndongala's immunity. On 8 April 2013 Mr. Ndongala was arrested in circumstances disputed by the sources, who cite the absence of an arrest warrant, the resort to violence and the night-time police raid. On 11 April the Minister of the Interior reportedly announced on television that Mr. Ndongala was also accused of conspiracy to assassinate the head of State and the Prime Minister, and of organizing an uprising, two capital crimes. According to the same reports, Mr. Ndongala was also being held at Makala prison, in defiance of several orders from the Supreme Court to place him under house arrest, from 15 April 2013 on. The Secretary General of the IPU forwarded a letter dated 15 May 2013 to the authorities, requesting confirmation and explanations of these events. No response had been received by the start of the mission.

21. The Committee and the Governing Council expressed their deep concern at the serious nature of the accusations, and reiterated their incomprehension in view of the unresolved fundamental contradictions between the version of events as reported by the authorities and the sources, as well as the absence of any form of judicial or parliamentary inquiry, despite the complaints that the family has brought before the courts. They deplored the failure to submit the allegations to an independent inquiry. Finally, they emphasized their concern as to the fairness of the parliamentary and judicial procedures.

3. Case DRC/72 - Mr. Bakungu Mythondeke

22. Mr. Mythondeke was a member of the majority PPRD party during the previous legislature who joined the opposition during the legislative elections of November 2011, during which he lost the election. According to a source, Mr. Mythondeke was arrested on 2 February 2012, following an exchange of gunfire between the police officers assigned to protect his person and a group of some two hundred military and police personnel who tried to enter his home around four in the morning without a search warrant. Mr. Mythondeke was immediately taken to Kinshasa and brought before the Supreme Court, which, acting as the court of first and last instance, on 25 February 2012 sentenced him to 12 months in prison. The Court changed the charge of threat to internal security to one of incitement to tribal hatred and acquitted him of all the other charges, considering that they had not been substantiated. Mr. Mythondeke was released at the end of January 2013, having served his sentence.

23. The source alleged the following violations of Mr. Mythondeke fundamental rights: (1) the flagrante delicto procedure used was flawed, and Mr. Mythondeke's parliamentary immunity had not been respected, as he had been arrested and his residence searched without the authorization of the National Assembly; (2) the arrest of Mr. Mythondeke and the search of his residence were unlawful because they had taken place at night, without a court order and using a disproportionately large military and police force; (3) the arbitrary confiscation and destruction of Mr. Mythondeke's goods, as the officers responsible for the search looted his residence; (4) the abuse inflicted on Mr. Mythondeke and his family during their arrest; (5) the violation of Mr. Mythondeke's rights to defence, as his attorneys had been unable to make their case, given that the Supreme Court had changed the charge during its deliberations.

24. The Committee said that it was disturbed by the discrepancies between the nature and seriousness of the charges brought against Mr. Mythondeke by the prosecution and the charge finally ruled on by the Court. The Committee also took note that the procedure applying to parliamentarians charged with criminal offences under the Congolese Constitution does not provide for an avenue of appeal, and urged the authorities to consider changing the procedure applicable to parliamentarians so as to render it fully compatible with international fair-trial standards. The Committee asked for additional information on the facts of the matter and the procedure followed, and for a copy of the reasoned decision; these had not been received by the date of the mission.

4. Case DRC/80 - Mr. Roger Lumbala

25. Mr. Lumbala was an opposition member who was re-elected in 2011. According to the source, Mr. Lumbala was arbitrarily arrested in Burundi on 1 September 2012 by the intelligence services of that country at the request of the intelligence services of the DRC, and in violation of his parliamentary immunity. The report indicates that, thanks to diplomatic intervention, Mr. Lumbala was able to leave Burundi and apply for political refugee status outside his country. The Prosecutor General thereupon requested that Mr. Lumbala's parliamentary immunity be lifted on 10 September 2013 in order to launch the prosecution. The Speaker of the National Assembly said that Mr. Lumbala had joined the rebel movement M23. The National Assembly in mid-October 2012 initiated the procedure to lift his immunity, but on 8 January 2013 decided to revoke his parliamentary mandate on the grounds of repeated unexplained and unauthorized absences. The report indicates that fair-trial guarantees were not respected either during the judicial preliminary investigation or during the parliamentary procedure that resulted in Mr. Lumbala's being stripped of his status as a member of the National Assembly, and claims that his rights to a defence, and the presumption of innocence, were not respected. The report considers that the procedures initiated against Mr. Lumbala are motivated by purely political considerations. The Committee has not yet taken a decision as to whether to accept the case, given that it had not received any information other than that transmitted by the sources, and in particular did not have adequate responses from the authorities, at the time of the mission.

5. Case DRC/49-79 - 29 disqualified members of the National Assembly

26. Following the legislative elections of 28 November 2011, the Independent National Electoral Commission (CENI) announced the provisional lists of elected candidates between the end of January and the beginning of February 2012. The political parties and the unelected candidates subsequently filed numerous applications contesting the results before the Supreme Court, sitting provisionally as the Constitutional Court, which has jurisdiction over electoral disputes. On 25 April 2012, the Supreme Court handed down its decisions on the applications, invalidating the elections of 32 Assembly members. Of those 32 members, 30 contested the Court decision. Among them, 29 brought their cases before the Committee, claiming that the decisions were arbitrary for the following main reasons: (1) the decisions were not reasoned or insufficiently reasoned; (2) the rights of defence had been violated, with even some Assembly members whose election had not been contested and who were not involved in the electoral dispute finding themselves disqualified; (3) there had been no preliminary investigation of the cases, or an inadequate investigation at best, and the vote recount operations in particular were flawed and had been conducted by the Supreme Court judges *in camera*, without notifying the parties concerned or drawing up reports on the counts, with the result, according to the sources, that the Court had issued arbitrary results and the rights of defence had been violated; (4) the rules of evidence had been flouted; (5) Article 75 of the electoral law had been violated (complete or partial annulment of certain announced results without any replacement elections being organized, and the consequent appointment of Assembly members by the Supreme Court on a unilateral basis). The sources have also pointed to the flawed and rushed procedure used by the National Assembly in the plenary on 4 May 2012 to disqualify the Assembly members concerned, following the decisions of the Supreme Court, and to accept the new members appointed by the Court to replace them, despite the fact that appeals were pending before the Supreme Court. The Supreme Court examined these appeals in August 2012 and dismissed them all in late August and early September 2012.

27. At the 127th Assembly (Quebec, October 2012), the Governing Council was deeply concerned to observe that the Supreme Court decisions of 25 April 2012 were marred by serious procedural flaws and violations of the rights of defence, and that, despite the applications for rectification of clerical errors filed by 30 of the disqualified members, it had not been possible to re-examine the cases on the merits; in practice therefore there was no appeal available in Congolese law with respect to Supreme Court decisions on electoral disputes, which was tantamount to a denial of justice. The Governing Council urged the competent authorities to take all the necessary measures to remedy the situation, and invited them to amend the electoral law so as to prevent any recurrence of such a situation in the future.

C. INFORMATION OBTAINED

1. General information

1.1 The context: crisis in the east, reconciliation and national dialogue

28. The delegation is aware that the east of the DRC was in the grip of a crisis at the time of the mission, and that the situation in that part of the country dominated the attention of all those with whom the delegation met. The signature of the Peace, Security and Cooperation Framework for the Democratic Republic of the Congo and the region on 24 February 2013, the adoption by the Council of Ministers in mid-May 2012 of a measure creating a national oversight mechanism pursuant to the Framework, and continued peace talks in Kampala between representatives of the DRC government and those of the *Mouvement du 23 mars* (M23) are promising developments in terms of restoring security in the eastern part of the country. Nonetheless, the security situation remains extremely fraught, and the humanitarian plight of the people affected by the fighting is a cause for deep concern. The Framework includes a commitment by the DRC government to further the agenda of national reconciliation, tolerance and democratization.

29. In his June 2013 report on MONUSCO¹, the United Nations Secretary-General recognized "the progress made towards the organization of a national dialogue that would build consensus among a wide range of Congolese actors on how best to advance critical reforms and policies", and added: "These initial undertakings, once brought to fruition, together with other reforms mentioned in the Peace, Security and Cooperation Framework, would not only contribute to strengthening the population's confidence in the country's institutions and addressing some of the root causes of the conflict, but would also help lay solid foundations for the development of the country." However, he also expressed his concern regarding the "increasingly difficult political environment that has developed in the Democratic Republic of the Congo" and said that "Key institutions such as the Parliament and political coalitions appear to be increasingly fragmented. Political posturing and in-fighting are undermining cohesion and consensus-building, even within the presidential majority coalition. This clearly complicates the building of the necessary constituencies to support important and often sensitive reform agendas, especially the efforts by the Government to consolidate State authority."²

30. In his June 2013 report the Secretary-General also reports on the consultations the Speaker of the National Assembly, in his capacity as Executive Secretary of the presidential majority coalition, had held with a wide range of Congolese stakeholders on the holding of a national dialogue as proposed by President Kabila. In parallel to the President's initiative, opposition parties and civil society organizations held consultations on the organization of a national forum on the crisis in the Democratic Republic of the Congo, reaching out to the presidential majority to try to build a broad consensus on the terms of reference for a national dialogue.³ Discussions were still under way on the question during the mission, as consensus on the framework for the consultations and the appropriate mediator remained elusive.

¹ Report of the Secretary-General to the Security Council on the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo, 28 June 2013, S/2013/388, paras 78 and 79

² Ibid, para. 80

³ Ibid, para. 75.

1.2 Electoral reform and establishment of the Constitutional Court

31. The delegation was informed that President Kabila had enacted the law establishing the CENI on 19 April 2013. Following broad and intensive discussions led by the Speaker of the National Assembly, on 12 June the President signed the decree appointing the new CENI members, drawn from the parliamentary majority and opposition as well as civil society. The international community expressed the hope that the establishment of the new CENI would make it possible to relaunch the electoral process and organize provincial and local elections in order to complete the current electoral cycle.

32. The representatives of the electoral division of MONUSCO with whom the delegation met provided a picture of the difficulties of the current electoral and political context, which they attributed to all of the following: (1) political disputes dating back to the 2011 elections, between some parts of the opposition and the majority formed after the elections; (2) calls from national and international partners to enhance the credibility of the election process, which were not always heeded; (3) the expressed desire of some partners to make the fulfilment of their commitments in the electoral process conditional on the prior implementation of reforms; (4) the failure to hold provincial and local elections in 2012, contrary to the agreed election schedule; (5) the halt in the implementation of legislative reforms intended to improve the elections framework. The electoral division emphasized that some progress had nonetheless been achieved, including the preparation of draft legislation to reform the electoral law, which the Council of Ministers examined in May 2013.

33. The electoral division representatives drew the delegation's attention to the fact that the United Nations Security Council, in its resolution 2053 (June 2012), had encouraged the national authorities to establish the Constitutional Court in order to comply with the Constitution and improve the process for resolving electoral disputes. According to information obtained by the delegation, a draft law establishing such a court was adopted by both chambers of the parliament in March 2012 and forwarded to the Supreme Court for its opinion on whether it was in conformance with the Constitution, which was confirmed on 19 March 2013. However, when the text was sent to the President of the Republic for enactment, he returned it to the National Assembly with a request for a second reading. On 11 April the Senate apparently proposed that the President sign the law in its current form, and that new draft legislation be tabled subsequently with a view to making the amendments; this would make it possible to respect the legislative procedure laid down in the Constitution. Notwithstanding this, it appears that the text remains with the National Assembly at the present time.

1.3 Political freedoms and tension between the majority and the political opposition

34. In his report of 27 February 2013 the United Nations Secretary-General emphasized "concerns about limited political space and the perceived emerging trend towards the concentration of authority in the executive branch."⁴ He noted that "[n]ational opposition actors and other observers have protested that the Government has taken systematic steps to consolidate its power, restrict political space and intimidate and target opponents, whether from political parties or civil society" and reiterated the commitment of the United Nations to further the democratization process and the expansion of political space for all political parties and civil society. Finally, he issued a reminder that the presidential and legislative elections of November 2011 had been marred by irregularities, with the results contested by a number of national actors, and emphasized the importance for the Government to continue to honour its commitment to take active steps to advance the democratization process in this critical period.⁵

35. In the course of the mission the delegation witnessed the tension between the majority and the opposition, and the concerns of opposition representatives with whom it met regarding the increasingly restricted political space that the current regime accorded them. The delegation was informed that in the course of the March 2013 session, the opposition had accused the Bureau of the

⁴ Special Report of the Secretary-General to the Security Council on the Democratic Republic of the Congo and the Great Lakes region, 27 February 2013, S/2013/119, para. 9.

⁵ Ibid, paras 34 and 35.

National Assembly, and in particular the President, of "having a partisan attitude" and working to block the opposition's parliamentary initiatives, oversight of the work of the government, and the procedure for designating the spokesperson of the opposition.⁶ Nonetheless, following consultation between the parliamentary opposition groups of both chambers, the Speaker of the National Assembly and the Senate President at the end of May 2013 a plan was adopted for the designation of a spokesperson of the opposition in three stages, from September to November 2013.

36. The delegation furthermore observed that the political opposition itself was divided, and some opposition representatives considered that these divisions were being used by the majority to shut out genuine political opponents from the National Assembly.

2. The case of Mr. Pierre Jacques Chalupa

37. The delegation met with Mr. Chalupa in detention and obtained his version of events. The delegation also met with members of his family, who described their difficulties since the arrest of Mr. Chalupa.

38. The delegation heard from Mr. Chalupa that the dispute that led to his arrest had to do with the fact that during the 2011 election campaign his advertising company, which managed billboard advertising in the city of Kinshasa, allowed posters for Mr. Tshisekedi to be displayed on billboards in the vicinity of the presidential residence, in place of posters for President Kabila. The sources with whom the delegation spoke consistently expressed the opinion that Mr. Chalupa's conviction was driven by political motives and was not lawful.

39. In his 18 May 2013 letter to the Secretary-General of the IPU, which the delegation received in the course of the mission, the Justice Minister provided detailed answers to the questions raised by the Committee on several aspects of the case. Regarding Mr. Chalupa's DRC nationality, the Minister said that the issue before the prosecutor and the judge was not that of nationality but rather forgery and use of falsified documents. She said an application for DRC nationality "by a foreigner" did not result in automatic granting of the same, but rather required "detailed study by the competent services of the State" and "only if the findings of these services are favourable for the application can the applicant be granted DRC nationality, through a directive of the President of the Republic." The Minister suggested that, "He was no longer able to travel outside the DRC because he lacked a passport from his country of origin, Portugal, so he wanted to obtain a passport from another country, the DRC, although he already had a procedure pending for acquiring citizenship by way of "petite nationalité", a limited form of citizenship. That was the origin of all the subsequent criminal acts and machinations." In light of the information on Mr. Chalupa's file, the Minister concluded that he had not acquired DRC nationality correctly as prescribed by the law.

40. The delegation decided to focus its meetings on the present possibilities for resolving the case, given the definitive nature of the Supreme Court's decision on appeal, under DRC law. Discussions were therefore aimed primarily at exploring the possibilities for releasing Mr. Chalupa so that he could have the necessary surgery performed as soon as possible. The attorneys confirmed that they had filed a request for release on parole with the Justice Minister at the end of January 2013, and provided the delegation with a copy of the request, with a receipt from the Justice Ministry. The delegation spoke with the Vice-Minister for Human Rights and the Minister's cabinet director, as well as one of her advisors. The cabinet director indicated that it was up to the prison director to evaluate whether the request met the conditions for granting parole before forwarding the request to the Prosecutor General for recommendation. The final decision would then be taken by the Justice Minister. On the subject of Mr. Chalupa's request, the cabinet director said that he was not aware that such a request had been filed as far back as January, and that he had not received anything from the prison director. The delegation gave the cabinet director a

⁶ Article 19 of law N° 07/008 of 4 December 2007, regarding the status of the opposition, stipulates as follows: "The spokesperson of the opposition, who need not be an elected member of the National Assembly, shall in general be designated by acclamation, or, failing that, be elected by a majority in two rounds of voting, during the month following the inauguration of the government, by the members of the National Assembly and Senators who are members of the political opposition, declared in accordance with Article 3 of the present Law. To this end the Assembly members and Senators of the opposition shall hold a meeting, with the assistance of the Bureaux of the National Assembly and the Senate, on a written request from any parliamentary or political group of the political opposition, as the case may be."

copy of Mr. Chalupa's request and invited the Ministry to expedite treatment of the request, given that it had been submitted six months previously.

41. The Prosecutor General explained that release on parole was not a right, nor an automatic entitlement once a quarter of the sentence had been served. He said that it was necessary to verify whether the individual's behaviour had changed, whether there were signs that he or she had been reformed and "corrected" while serving the sentence. In the same spirit, the prison director said that parole "is the result of the penitentiary establishment's observations verifying whether the prison's objective of reform has been achieved." Having only just been appointed to the position, he said that he was not fully informed about the substance of his predecessor's reports on his observations of Mr. Chalupa, nor whether he had filed a request for release on parole with the Justice Ministry. However, according to Mr. Chalupa's attorneys, the previous prison director had already made three reports to the Ministry with a view to obtaining Mr. Chalupa's release on parole since he had served one quarter of his sentence. The new director promised to study the matter so as to determine the current status of the procedure, and confirmed that, to the best of his knowledge, Mr. Chalupa had not caused any problems during the time he had served.

42. The Speaker of the National Assembly promised the delegation that he would take action on behalf of Mr. Chalupa on humanitarian grounds. On the question of establishing Mr. Chalupa's DRC nationality, the Speaker said that nationality questions were a complicated matter, and full examination should be deferred until after Mr. Chalupa's release. The President of the Senate noted that, as his election to the parliament showed, Mr. Chalupa had always considered himself, and always considered by others, as a citizen of the DRC. He said that if the DRC now refused to recognize him as a citizen, leaving Mr. Chalupa as a stateless person, he could apply to the UNHCR for assistance, or file an application for Greek or Portuguese nationality, in view of his connections to those countries. Mr. Chalupa would then be free to continue residing in the Congo and to continue his business activities despite his lack of DRC nationality. The President of the Senate considered that Mr. Chalupa had in any event already suffered considerable humiliation, and with his release on parole it might be considered that he had served sufficient time in prison.

43. The National Assembly members in opposition with whom the delegation met said that, as far as they knew, Mr. Chalupa had been born and always lived in the Congo, to parents who operated a business at Uvira. As far as they were concerned, the fact that he was being prosecuted showed that he was being persecuted for reasons that had nothing to do with his nationality. They said that the opposition had advocated on his behalf a number of times, but its pleas had met with numerous difficulties raised by the authorities.

44. The representatives of the international community, whether MONUSCO, the European Union or embassy representatives, shared their concerns about the case of Mr. Chalupa, and informed the delegation that several diplomatic representations had been undertaken in attempts to help him. The European Union was represented by observers at the trial, and issued two declarations expressing its concerns regarding respect for fair-trial standards and the continued detention of Mr. Chalupa. The delegation was also informed that a letter in the name of all of the European Union ambassadors had been sent to the Head of State, asking for a presidential pardon for Mr. Chalupa. The letter remains unanswered to this day, although the Head of State apparently confirmed that he is aware of it.

3. The case of Mr. Eugène Diomi Ndongala

3.1 Allegations relating to the illegal detention of Mr. Ndongala from June to October 2012

45. Mr. Ndongala informed the delegation that at the end of June 2012 he was abducted from his car and taken to an undisclosed location, probably one of the goals of the intelligence services in the "Cité de l'OUA" neighbourhood. His car was never found. He informed the delegation that he had been tortured while in custody, and talking about this period visibly made him upset. He said that his state of health had progressively deteriorated during the time he was held. Then, one day he was released at the side of a road. He returned to his home ill and greatly weakened, and was put under intensive medical care. After a brief respite, his health got worse once again, and he underwent emergency hospitalization in mid-October 2012. He filed a

complaint, which the courts did not follow up; indeed, according to his attorney, a magistrate has still not been assigned to investigate the case.

46. The Speaker of the National Assembly maintained an entirely different version of events: he said that Mr. Ndongala escaped to avoid being arrested, as the police had discovered him in flagrante committing a rape. The Speaker of the National Assembly considered that the police had failed to act in a professional manner during the attempt to arrest Mr. Ndongala, showing up at night and starting the search around ten p.m. He said that the Prosecutor General had called to inform him, and had then ordered the police to put off the search until the next morning. Mr. Ndongala fled during the night, according to the Speaker of the National Assembly, and the officers posted as sentries had been admonished for letting him do so. Mr. Ndongala then disappeared for several months while "remaining very active", in the words of the Speaker, who claimed that "he left his hiding place in order to meet with Hollande", alluding to the visit of the French Head of State to Kinshasa for the francophone summit, by way of implying that the opposition politician had feigned his own persecution.

47. The delegation exchanged information with the United Nations Joint Human Rights Office, who confirmed the complete contradiction between the authorities' version of events and that obtained from other sources. The Office personnel stated that so far they had been unable to corroborate either of the two versions.

3.2 Allegations relating to the lifting of Mr. Ndongala's parliamentary immunity

48. Concerning the lifting of Mr. Ndongala's parliamentary immunity, the Speaker of the National Assembly referred to his previous correspondence with the Committee and to the letters he had sent to Mr. Ndongala and his attorneys, inviting them to come and explain their version of events. He said that following several such invitations, a plenary meeting had been convened, but Mr. Ndongala failed to appear; the reason being, not that he was in hospital, but rather that it would have been contrary to his policy of boycotting the institutions. The Speaker added that the Assembly had waited for a month longer before setting up a special parliamentary commission ("Special Commission" hereunder) and allowing the process to proceed. The Special Commission had heard the parties and presented its report to the plenary on 7 and 8 January 2013. Of the 316 members voting, 216 had voted for parliamentary immunity to be lifted, 83 had voted against and 12 had abstained. During the mission, the delegation received an official copy of the Special Commission's report and several letters from the Speaker of the National Assembly, and talked with two of the Special Commission members.

49. The members of the Special Commission considered that the National Assembly had exhausted its possibilities for discussing what had happened directly with Mr. Ndongala and therefore the procedure provided for in Article 92 of the Assembly's standing orders had been followed. They recognized that Mr. Ndongala had not been heard by the plenary of the National Assembly or by the Special Commission, but held that his rights to defence had nonetheless been respected. By their account, Mr. Ndongala had been invited to appear before the plenary. He had been unable to do so, and he had not sent a representative. Accordingly, it had not been possible to hear his version of events in the plenary meeting. At the time of the Special Commission, several members of the parliamentary opposition, including those serving on the Commission, such as Mr. Sam Bokolombe and Mr. Fidèle Babala, had on their own initiative met with Mr. Ndongala and encouraged him to appear before the Special Commission. Although Mr. Ndongala's health, according to them, had improved by this stage, he did not follow their recommendation. On the other hand, his attorneys did appear, and defended his case before the Special Commission.

50. The members of the Special Commission considered that, despite Mr. Ndongala's absence, they had made an effort to examine the case objectively on the basis of the information provided by the parties. They noted that the Commission had no mandate to examine the substance of the matter, but only to assess the conduct of the prosecutor. Their assessment was that they had been free to question the prosecutor on all relevant questions and obtain answers from him; this was reflected in the Special Commission's report. The report also records the disagreement among the members of the Special Commission on the lifting of Mr. Ndongala's

immunity, as a result of which the conclusions had been adopted by a secret vote, with seven members voting to adopt them and four voting against.

51. After examining the correspondence between the Speaker of the National Assembly and Mr. Ndongala during this period, the delegation noted that Mr. Ndongala had been invited to appear before the National Assembly for the first time on 3 October, while he was still missing.⁷ The second invitation, issued the day before the planned 17 October appearance, fell during the time when Mr. Ndongala was undergoing emergency hospitalization; the Speaker of the National Assembly had been informed.⁸ The final invitation, which summoned Mr. Ndongala to appear before the Special Commission at 48 hours' notice, came while he was convalescing.⁹

3.3 Motives behind Mr. Ndongala's arrest and prosecution for rape of minors

52. The representatives of the Justice Ministry and the judicial authorities with whom the delegation met confirmed that, following the lifting of his immunity, Mr. Ndongala had been arrested in early April 2013 for the purposes of the investigation into the accusations of a rape committed against minors. The delegation was unable to obtain any information from the authorities on the circumstances of his arrest, or to corroborate or refute the allegations that he had been arrested without an arrest warrant, using excessive force and in the night. The 18 May 2013 letter from the Justice Minister mentions that "on 18 January 2013 the Prosecutor General issued a warrant to find and apprehend the Honourable Diomi Ndongala, and to conduct him before the Prosecutor General, pursuant to the arrest warrant of 14 February 2013 issued for the person in question. Since then, and to the present day, the individual remains at large, at a location that only he knows." The letter indicates also that he is being sought for forgery and use of falsified documents, without giving further details. The representatives of the United Nations Joint Human Rights Office also indicated that the custody order mentioned the same charges.

53. During their first meeting with the Committee, the first president of the Supreme Court and the Prosecutor General informed the delegation that the prosecution brief in the case had just been deposited. The first president stated that the dates for the hearings had been fixed, and advised the delegation to see the court registrar. The delegation was unfortunately not able to meet the registrar, and learned that neither the prisoner nor his attorney had been informed or received an official notification of the deposition of the brief. For this reason they had also not been able until that day to see the file and prepare their defence.

54. Concerning the accusations of rape, Mr. Ndongala assured the delegation of his innocence, and reiterated his conviction that the whole affair had been staged for the purpose of shutting him out of the political life of the country. He pointed out that the prosecutor has several times changed the date on which the rapes are alleged to have taken place, as Mr. Ndongala furnished alibis from people who confirmed that he had been with them at the times originally claimed by the prosecutor, and finally changed the charge so that the date referred vaguely to the period from 20 to 26 June without being more specific. As far as he knew, the most serious evidence presented in support of the charges was a series of photographs showing condoms found at the headquarters of his party in the course of the search, which had been conducted in an unlawful manner after the police had expelled his attorney. He also pointed out that the police officers who had entered the premises of his party on 26 June 2012 to arrest him had ransacked the building and then proceeded to occupy it for months, allowing plentiful time for the fabrication of evidence. Mr. Ndongala also confirmed to the delegation that he had been at a hearing with cross-examination of the alleged rape victims, whose respective statements were in total contradiction with each other. He said that the victims themselves were incapable of saying on which date he was supposed to have attacked them, nor had they been able to show any proof either of their identity or of their familial ties to the person presented as their father. In addition, he claimed that the victims had not undergone an immediate medical examination after the alleged rape, and medical certificates had only been produced much later, in the course of the investigations.

⁷ Letter from the Speaker of the National Assembly, dated 29 September 2012.

⁸ Letter from the Speaker of the National Assembly, dated 16 October 2012.

⁹ Letter from the Speaker of the National Assembly, dated 5 December 2012.

3.4 Conditions and duration of custody

55. In the 18 May 2013 letter mentioned above, the Justice Minister states that the Prosecutor General decided to remand Mr. Ndongala in custody on the grounds that he had repeatedly attempted to flee justice.

56. The delegation was able to confirm that since 15 April 2013 there have been three separate orders issued by the Supreme Court for Mr. Ndongala to be placed under house arrest, none of which was followed by the Prosecutor General. The Prosecutor General claimed that he was unable to follow the Court's orders because he did not know where to put Mr. Ndongala under house arrest. He told the delegation that he had asked the Minister of the Interior to provide him with the means necessary to do so in the vicinity of the Tshatshi military camp, and had informed the Speaker of the National Assembly accordingly. According to the explanation provided by the Prosecutor General to the delegation, DRC law does not specify the location of *résidence* for house arrest, and it is up to the Prosecutor General to do so under current judicial practice; house arrest is therefore not necessarily served at the home of the arrested person. He pointed out that only Mr. Ndongala was to be placed under house arrest, not his family, but if he was placed under house arrest at his home, the entire family would in effect find themselves under house arrest. He stated to the delegation, "it was in order to avoid inconvenience to the family, due to the presence of military personnel inside the house and all around it, and to avoid the risk of the prisoner being abducted, that I have put him in a safe place." At the present time, according to the Prosecutor General, that safe place is the prison, in the absence of appropriate means that might make it possible to lodge the prisoner elsewhere.

57. In response to the concern raised by the delegation, regarding the repeated requests that Mr. Ndongala's wife had made over many months for the Court's orders to be implemented at the couple's home, the Prosecutor General stated that if Ms. Ndongala submitted a written request to that effect, he saw no reason not to accede to it. Upon the delegation's suggestion, Ms. Ndongala thereupon submitted such a letter that same day, providing the delegation with a copy. The delegation attempted to contact the Prosecutor General to determine what action was taken, if any, in response to the letter, but without success.

58. In discussions with the delegation, Ms. Ndongala and her attorney strongly condemned the continued detention of Mr. Ndongala, in violation of DRC law and of court decisions. They argued that in DRC law, contrary to what the Prosecutor General asserts, the concept of *résidence* is indeed defined: Article 169 of the Family Code defines it as the usual place of residence of a person. They informed the delegation of the precedent of National Assembly member Mukonkole, who, after having been placed under house arrest by the Prosecutor General, had been able, following a request from the Speaker of the National Assembly, to serve his house arrest in a hotel, because he did not have a usual place of residence in Kinshasa. Likewise, the leader of the opposition, Mr. Tshisekedi, was under house arrest at his residence, showing that there were no obstacles in the law to placing Mr. Ndongala under house arrest at his home. They considered that the Prosecutor General's legal arguments were without any basis, and betrayed the political nature of the case. They stated that it was the first time in the history of the DRC that a National Assembly member was being remanded in custody, and in contravention of a court decision, setting a precedent that would be dangerous for all members of the National Assembly of the DRC.

59. The Speaker of the National Assembly told the delegation that he wished that Mr. Ndongala, as an Assembly member, be placed under house arrest, despite the serious nature of the charges against him. The Senate President considered that any member being remanded in custody should be able to remain under house arrest under DRC law, and said that, if Ms. Ndongala wanted her husband to be placed under house arrest at their home, this would be the least costly solution for the State, and there was no reason not to do it.

3.5 New accusations

60. Concerning the new accusations brought against Mr. Ndongala on 11 April 2013, Ms. Ndongala confirmed to the delegation that the Minister of the Interior had made a statement on television, claiming to have dismantled a conspiracy against the Head of State, with Mr. Ndongala as the co-instigator, along with a lawyer from Mr. Tshisekedi's circle. The Christian Democrat official in charge of communication and two other members of Mr. Ndongala's party had been displayed among the persons arrested and paraded on television as the agents of the conspiracy. Ms. Ndongala said that these persons had been detained in secret for months by the intelligence services. According to Ms. Ndongala and her lawyer, no proof had been provided to back up the accusations, apart from the declarations on television.

61. Neither the Speaker of the National Assembly nor the Prosecutor General had any clear answers for the delegation regarding the new accusations. The Speaker of the National Assembly did refer to actions that constituted an offence against State security, of which Mr. Ndongala had been accused; however, his immunity had not been lifted for those accusations. The Prosecutor General said that no new charges against Mr. Ndongala had been submitted to him, but that he was aware that Mr. Ndongala was implicated in something else beyond the legal case currently pending.

62. Mr. Ndongala and his attorney also informed the delegation that magistrates from the Prosecutor General's office had come to the prison with the intention of questioning him about the fresh accusations. On the advice of his attorney, and given that his parliamentary immunity had been lifted only in respect of the accusations of rape, Mr. Ndongala had refused to answer.

3.6 Allegations of politically motivated judicial harassment

63. Mr. Ndongala told the delegation that he felt that he was the victim of a politically-motivated set-up, because of the prominent views he had expressed as a member of the opposition. He said that he had been repeatedly offered money in exchange for keeping his silence, withdrawing his support from Mr. Tshisekedi, and agreeing to sit in the Assembly. He said that he had always refused, insisting on open discussions about election fraud, the credibility of the elections and the resulting crisis of legitimacy that afflicted the institutions set up following the elections. He said that his political position had been perceived as an act of *lèse majesté* and hostility against the regime of President Kabila. He explained that the boycott of the National Assembly by some members was a political act by supporters of Mr. Tshisekedi who wanted to force the majority to agree to hold discussions and draw conclusions from the election process. In response to questions from the delegation he said that he recognized the National Assembly as an institution, but considered that, as currently composed, it lacked legitimacy, given the election fraud and arbitrary disqualifications that had taken place.

64. Mr. Ndongala, his wife, his attorney, and other people from his circle said that they had been repeatedly approached by intelligence agents, and had been instructed to appear at meetings with authorities such as the general administrator of the intelligence agency ANR and the inspector general of the police, with a view to negotiating a political solution under which Mr. Ndongala would give up his strong political positions. There is no doubt for Ms. Ndongala that her husband is the victim of political and judicial harassment because of the active role he plays in the political opposition of the DRC, and that the justice system has been abused in the process. She pointed out that her husband had, in the course of a lifetime of political opposition, repeatedly been arrested and persecuted for political reasons. She cited his acquittal on appeal in 2011, in an incident involving a military official who had followed his children to their home and had pointed a weapon at Mr. Ndongala. The police had intervened, arresting the official, while Mr. Ndongala and his security guard had been arrested, charged and found guilty of unlawfully discharging a firearm.

65. Several of the people encountered, especially from the opposition and the international community, indicated that the case had long been viewed as "toxic", given the allegations of rape and the persistent rumours regarding Mr. Ndongala's relations with women. These people told the delegation that for the most part they did not know what to make of the contradictions between Mr. Ndongala's version of events and the official version, and that they had followed events without taking a stand. However, given the turn that the matter had taken recently, they

were becoming increasingly convinced that the case was essentially a political one, and that the rape accusations were part of a plot staged for the purpose of neutralizing Mr. Ndongala and weakening the opposition group elected in 2011, especially those who were participating in the boycott of the National Assembly. In addition, several representatives of the international community observed that the judicial proceedings had not respected fair-trial standards, the most flagrant example of which was the refusal to enforce a court decision.

3.7 Other items discussed

66. Non-reimbursement of health care costs by the National Assembly - Concerning the coverage by the National Assembly of the costs of Mr. Ndongala's health care, the Speaker of the National Assembly said that the procedure for all members was the same: first a "bon" had to be issued for the health care required, and then a receipt had to be produced for medical expenditures actually incurred at the National Assembly's polyclinic; only then could the finance department make a reimbursement. The National Assembly Speaker said that as Mr. Ndongala failed to follow the procedure, his health care could not be covered. According to members of the Special Commission, an offer had been made to Mr. Ndongala to send him the National Assembly's doctor to examine him at his home, but Mr. Ndongala had refused the offer.

67. Non-payment of parliamentary salary - Mr. Ndongala told the delegation that the National Assembly had not paid his parliamentary salary since he had been elected, and that he was the only Assembly member in such a situation. His wife said that, despite several exchanges with the Speaker of the National Assembly and the questeur (finance department officer) on these questions, the problem remained unsolved: each time, the reason cited for refusing to make the payments was a different one, and all of them were invalid, in her view. The Speaker of the National Assembly, in the presence of the head of the finance department, explained to the delegation that any member who does not personally collect his or her pay must draw up a notarized power of attorney and provide his banking coordinates; Mr. Ndongala had not done so, according to the Speaker. He explained that it was a matter of a simple administrative procedure, and had nothing to do with political manoeuvring; still, it was indispensable to comply, as payment could not be processed otherwise. Subsequent to this statement by the Speaker of the National Assembly, Ms. Ndongala furnished the delegation with a document that showed that her husband had, as early as October 2012, established a power of attorney for another Assembly member, and that he had also provided his banking coordinates to the National Assembly. At the suggestion of the delegation, she obtained from her husband a new power of attorney dated 14 June 2013 to comply with the requirements of the parliamentary authorities. On 18 June 2013, Ms. Ndongala was able to obtain payment of approximately half of the amounts owed to her husband, on the basis of this power of attorney. On 26 June 2013 she requested that the parliamentary authorities pay the remaining amount; she has not been informed why the entire amount was not paid.

4. **The case of Mr. Bakungu Mythondeke**

68. The delegation was able to meet with Mr. Mythondeke and his attorney during the mission and to hear their version of events. The delegation considers that their testimony corroborates the information already received by the Committee. Mr. Mythondeke and his attorney told the delegation that they intended to ask for a retrial following the Supreme Court's decision. The delegation was also informed that Mr. Mythondeke had filed a lawsuit against the State (RC 16.800) on 3 June 2013 before the High Court of Goma, for compensation and damages for the harm inflicted on him and his family by the military and police during his arrest (ill-treatment, plundering and ransacking of their home). They expressed the hope that the Committee would be able to monitor the legal proceedings and the retrial, if it was admitted, in order to ensure that Mr. Mythondeke and his family were indemnified.

69. Mr. Mythondeke explained to the delegation that he considered his arrest and conviction to be the result of the abuse of the justice system for political ends. He thought that the point of the procedure was to humiliate him, to tarnish his reputation in his electoral district, and to neutralize him, at a time when the outcome of the legislative elections was being assailed because of massive fraud and a persistent climate of violence during the elections. He explained that, during the first elections in 2006, he had stood as a candidate for the majority and the presidential party,

the PPRD, but that he had gone over to the opposition in the 2011 elections, following Mr. Kamerhe, a former Speaker of the National Assembly. Having been the chief of Mr. Kamerhe's campaign staff in the east of the DRC during the 2011 election campaign, he saw the persecution directed against him as a punishment from the regime for having supported him, first in the National Assembly and then in the opposition. The president of the opposition group UNC, the party of Mr. Mythondeke, backed up his version of events and his political analysis. He said that in the Masisi elections, which had been annulled, the results had finally been announced by proclamation, with the Supreme Court reversing its position while Mr. Mythondeke was serving his sentence. The Masisi members currently sitting in the Assembly are therefore the same persons in respect of whom the Electoral Commission and the Supreme Court had found that their election had been marred by violence and fraud.

70. Finally, Mr. Mythondeke expressed his worries about his personal safety in Kinshasa. He told the delegation that the colonel who had ordered his arrest in Goma had been posted to Kinshasa and was seeking him. He had noticed that both he and his family were being routinely followed by the police and intelligence services, and he was afraid of being attacked again.

71. The delegation took note of the fact that the authorities with whom it had met during the mission had not provided any new information on the case, contenting themselves with observing that Mr. Mythondeke had served his sentence and was now at liberty. The delegation nevertheless notes that, in her letter of 18 May 2013, the Justice Minister added the following:

- ▶ The crime of tribal hatred of which Mr. Mythondeke was convicted is covered by Article 1 of Legislative Order No. 66-342 of 7 June 1968 on the repression of racism and tribalism;
- ▶ When a judge decides to press charges different from those filed by the prosecutor upon examination of the facts, he is required to "inform the accused of the change in the legal characterization of the facts and the charges against him or her, to ensure that the accused is able to muster his or her means of defence"; in the event, the procedure had guaranteed the rights of defence, because "the person in question had been informed of the charges, and presented his means of defence, which the judge used as the basis for the decision";
- ▶ It is true that no avenue of appeal exists in the case of criminal proceedings against National Assembly members pursuant to Article 98 of the Judicial Organization and Competence Code. However, the Minister indicated that, "in the mind of the DRC legislator, assigning the Supreme Court as the natural judge for the members of the National Assembly acts as a guarantee, given the knowledge of the law and the proven experience of the judge of this high court (...)" and "the law of the DRC in this respect is not in contradiction with international standards that determine what constitutes a fair trial; on the contrary, it acts as a guarantee. There is therefore no need to modify DRC law, which provides that the Supreme Court is the natural judge for members of the National Assembly."

5. The case of Mr. Roger Lumbala

72. The Speaker of the National Assembly pointed out that, in a situation where the DRC was essentially at war, Roger Lumbala had joined M23, the main rebel movement in the east. According to the Speaker, Mr. Lumbala had pretended to have been "invited" by M23. Nonetheless, he had several times been the deputy chief of the delegation sent to the negotiations in Kampala, which, in the Speaker's eyes, revealed the true nature of his ties to M23. The President of the Committee of Eminent Experts emphasized that, while struggles over ideas were acceptable, for an Assembly member to give support to an armed group committing serious crimes in the east of the country was not. With State institutions mobilized in efforts to restore peace and prosecute those guilty of crimes, the DRC simply could not accept that members of its parliament supported domestic armed groups.

73. In any event, as far as the National Assembly was concerned, Mr. Lumbala's parliamentary mandate had been revoked, on grounds of chronic absences. He was therefore no longer a parliamentarian. The Speaker did not explain to the delegation how it was that the original procedure concerning the lifting of parliamentary immunity had been transformed into

one for expelling a member on the ground of absences. The members of the Assembly's Special Commission with whom the delegation met confirmed that the Special Commission had never had the case of Mr. Roger Lumbala brought before it; rather, it was the Bureau of the National Assembly which alone had decided on the case in advance of the vote in the plenary. The Speaker of the National Assembly did, however, share with the delegation a copy of the letter he had written on 6 October to invite Mr. Lumbala to appear before the Bureau in the matter of the lifting of his immunity. The letter indicated that the Prosecutor General intended to prosecute him for treason, threatening the external and internal security of the State, and participating in an insurrection movement. The Assembly Speaker also shared with the delegation a letter from Mr. Lumbala dated 22 October 2012, in which the latter expressed his disappointment at the fact that the indictment by the Prosecutor General had not been sent to him before the proceedings had started, and arguing that in consequence his right to defence had been violated.

74. Mr. Lumbala's attorney said that his client's mandate had been revoked in arbitrary fashion, without prior notice and with no opportunity to mount a defence. He had been absent from the National Assembly at the time the vote was taken, and had not received the indictment from the Prosecutor General, with the details of the allegations against him. He indicated also that Mr. Lumbala had laid out his defence for the benefit of the plenary of the National Assembly in a letter addressed to the Assembly Speaker. However, the letter had not been forwarded to the members of the Assembly and it had not been taken into account in the debates. He added that Mr. Lumbala's attorneys had not been invited to appear before the Assembly or informed about the charges against their client. Finally, they had never been notified officially of the decision to revoke Mr. Lumbala's mandate nor of the reasons for doing so.

75. The chairmen of the opposition groups in the National Assembly told the delegation that Mr. Lumbala's expulsion violated the procedure provided for in the standing orders, in view of the failure to hold a roll-call vote and the vagueness of the question that had been put to the National Assembly in the matter of the revocation of his mandate. They confirmed that the Assembly Speaker had never tabled the letter from Mr. Lumbala setting out his defence. They reminded the delegation that Mr. Lumbala had been among those in the opposition who were close to Mr. Tshisekedi during the election campaign, and one of those who had publicly denounced the election fraud. On the question of M23, they confirmed that some members of the parliamentary opposition had indeed been invited by the group to go to Kampala for negotiations, but had ultimately decided against taking up that invitation. Roger Lumbala had been in France at the time, and it was only upon arriving in Kampala all alone that he found out about the opposition's decision not to participate. He decided nonetheless to pursue his contact with M23. According to the presidents of the parliamentary opposition groups, a part of the opposition had attempted to defend his political choice before the National Assembly, while another had attacked it. In the end, his parliamentary mandate had been revoked for the purpose of allowing the judicial authorities to prosecute him. The group presidents conceded that, in view of the situation in the east of the country and the crimes that had been committed by M23, it was hard to criticize the decision to revoke his mandate. However, they wondered about the wisdom of such an expulsion at a time when negotiations were in progress in Kampala, and suggested that the Bureau of the National Assembly was applying a double standard, as other Assembly members entertained close ties to armed groups with evident impunity.

6. The case of the 29 disqualified Assembly members

76. As the various means of internal recourse have been exhausted and the arbitrary nature of the disqualification judgments remains, the disqualified members of the National Assembly collectively filed a request for indemnification with the Speaker of the National Assembly and the Head of State. In the case of Mr. Kiluba Longo (DRC/51), who had been a senator prior to being elected to the National Assembly, application had also been made to allow him to return to the Senate.

77. The Speaker of the National Assembly told the delegation that he had submitted the matter to the Committee of Eminent Experts of the National Assembly, and that the Committee had heard both parties. The delegation obtained confirmation from the Committee's president that, in the opinion of the Committee, the disqualified members had a right to payment of the following

entitlements: the installation allowance (calculated as six months' pay); pay to the end of May 2012, to include the basic salary and the additional allowances referred to as "*les invisibles*"; reimbursement of expenses for removal back to their electoral district of origin, for the Assembly members and those members of their family who were registered at the start of the legislative period in accordance with the standing orders. As concerns the departure allowance, however, the Committee considered that they were not entitled to it, as this is an allowance that is paid at the end of a member's term. The Committee had not been asked to rule on compensation for the remuneration of parliamentary assistants, but its President indicated that, under the standing orders, members had to officially declare their assistants in order to qualify for such compensation, and as far as she knew that had not been done in the present case. The Committee provided its conclusions in December 2012, with a recommendation to the Speaker of the National Assembly to pay the sums agreed on this basis.

78. The Speaker of the National Assembly said that he had started by ordering payment for two months, the rest to be paid gradually as the budget situation allowed. The President of the Committee of Eminent Experts conceded that the procedure was advancing slowly due to budget difficulties but assured the delegation of the National Assembly's intention to settle the matter.

79. The Speaker of the National Assembly said that the disqualified members had also made claims for compensation for the total pay to which they would have been entitled if they had remained in office for the full legislative period of five years. The Speaker said that, in his reading of the Constitution, the Assembly was bound to implement decisions of the Supreme Court without delay, without attempting to qualify them in any way. For this reason he could not accept the invocation of the indemnities paid for the disqualifications of 2007 as a precedent. Applying the precedent would in any event have been problematic given that the indemnities paid at that time had been partially embezzled. The Committee President added that while it was not in her brief to study the question, she thought that with an element of good will the parties should be able to arrive at a solution. The President of the Senate also referred to the 2007 precedent, and said that, on the contrary, he thought that it applied to the current situation, given the similarities. He said that the precedent meant the disqualified members of the National Assembly would be entitled to indemnification for the entire duration of the parliamentary term. The Speaker of the National Assembly promised to see the disqualified members of the National Assembly again once the delegation had finished its visit, to attempt to move towards a resolution of the matter.

80. The President of the Senate, the Speaker of the National Assembly and the President of the Committee of Eminent Experts agreed that the constitutional and legislative texts needed to be reformed in order to avoid a recurrence of this situation since, under the current procedure, members are confirmed by the National Assembly following publication of the provisional results, i.e. long before the procedure for resolving dispute relating to the election and the establishment of definitive member lists could run its course; this was a source of difficulties, aggravated by the fact that there were no rules about the entitlements of disqualified members. The Speaker of the National Assembly reported that a proposal was in existence, with a draft bill for a law intended to regulate these matters in the future.

81. Regarding the former senator Justin Kiluba, who had left the Senate for the National Assembly after his election and now found himself without any seat in parliament whatsoever, the President of the Senate said that the legal aspects of the case were currently under discussion to determine the full legal implications of the disqualification and whether it was possible for the Senate to consider that he had never resigned his functions in that body. While the Senate President himself had no objections to seeing Mr. Kiluba return to the Senate, he considered that the procedure should conform to the law in all respects, and the situation of his substitute had to be borne in mind, as he had been confirmed in his functions. Given the dispute surrounding a return to the Senate, the Bureau had decided to ask the Supreme Court officially to interpret its disqualification decision in this regard.

82. During its meeting with the disqualified members of the National Assembly who were in Kinshasa, the delegation observed their frustration with the National Assembly. The delegation took note of their perception that they had been deeply humiliated by the National Assembly, which, having divested them of their seats, refuses to recognize that they have any rights. They noted that

they had all been disqualified for having expressed opinions that were at odds with those of the majority, regardless of their political affiliation at the time of the elections. The disqualified members asserted that at the present time there was no dialogue to speak of between them and the National Assembly, and that the Assembly Speaker was refusing to receive them. Despite numerous requests for an appointment they had succeeded in seeing him only once, and finally were forced to admit that the only recourse remaining to them was to create protocol incidents in hopes of being received. They were very disappointed that no progress was being made despite the National Assembly's repeated promises to the IPU Committee.

83. The disqualified members of the National Assembly submitted a memorandum to the delegation in which they reiterated their principal claim, which was to be allowed to sit in the National Assembly since they had been elected. As an alternative, and in order to facilitate settlement of the dispute, they declared themselves ready to accept compensation for the incurred damage, in the form of alternative political posts or a financial indemnity. Their financial claims concerned, first, payment of what they considered as their entitlements for the period during which they had actually sat in the National Assembly, and, second, the compensation payments. They also expressed their support for amending the Electoral Law to avoid a recurrence of this situation during future elections. For some individual cases among the disqualified members of the National Assembly, other measures had also been discussed, such as allowing a disqualified member (Mr. Justin Kiluba) to return to the Senate, and allowing the two former provincial assembly members from among the disqualified members to return to their provincial assemblies.¹⁰ Incidentally, at least two of the disqualified Assembly members (both from the ruling party) are currently exercising official functions¹¹.

84. The disqualified members of the National Assembly confirmed that they had all received a partial payment of their entitlements from the Bureau of the National Assembly, in accordance with the resolution adopted by the Committee of Eminent Experts. They told the delegation that they were satisfied at receiving this first payment; nonetheless, they were disappointed at the continued failure to pay them the agreed amount, despite the fact that over a year had elapsed since they had lost their seats, leaving them without financial means. They drew the delegation's attention to the particularly worrying plight of disqualified members of the National Assembly from the provinces, who upon being disqualified found themselves stranded in Kinshasa, unable to pay for the return of their families or to settle the debts they were accumulating in Kinshasa since being forced to leave the National Assembly. Some of them had apparently been evicted from their homes and now lacked even the money necessary to obtain medical treatment. Providing funds to allow them to return to their provinces, along with their families, had become an urgent humanitarian concern for these former Assembly members, who pleaded with the delegation to communicate their difficulties to the Speaker of the National Assembly so that monies to cover their removal expenses and other entitlements could be paid out as rapidly as possible.

85. Regarding the details of their financial claims, the disqualified members of the National Assembly initially presented the delegation with a memorandum in which, in addition to their entitlements, they claimed compensation for the entirety of the pay and benefits accruing to them as elected members for a period of five years, including allowances for cars, parliamentary vacations, payment for parliamentary assistants, medical coverage, diplomatic passports and parliamentary immunity. The delegation said that it considered these demands to be excessive, and suggested that they be revised, with a clear distinction drawn between actual entitlements and demands for compensation. The delegation also drew their attention to the need to abide by the Assembly's standing orders, which meant that they could only claim reimbursement of spending on cars, parliamentary assistants and so on if they had actually incurred those expenditures in accordance with the rules applicable within the National Assembly. The delegation undertook, with the aid of Mr. Traoré as mediator, to meet once again with the Speaker of the National Assembly so as to present and discuss those claims with him, but only if the claims were in fact revised along those lines.

¹⁰ Mr. Célestin Bolili Mola and Mr. Jean-Jacques Mutuale

¹¹ Mr. Edouard Kiaku Mbuta is currently Provincial Minister in charge of Young People and Sports for the province of Bas-Congo, while Mr. René Bofaya is Minister of the Interior in the province of Equateur.

86. The disqualified members of the National Assembly revised their claims on that basis and sent a new memorandum, dated 12 June 2013, to the parliamentary authorities and the delegation. The compensation, now shown separately from the pay entitlements, is calculated on the basis of parliamentary pay for 30 months, and not a full five-year legislative period. In addition, the President of the Senate, who met with the disqualified members of the National Assembly on 12 June 2013, wrote a letter to the Speaker of the National Assembly on 15 June, setting out his position as follows:

"I believe that the answer to their question is to be found in the solution that was used for the members who in 2006 were elected and subsequently disqualified under the same conditions. Given that, with the green light they were given at the outset, they served in good faith in that quality prior to being disqualified, your predecessor and I considered that, during their brief period in office, they had the right to the benefits that accrued to those functions. They were therefore granted a satisfactory indemnity in compensation for those prerogatives. *De lege ferenda*, and to avoid a recurrence of this type of contradiction between the legislature and the judiciary, we must adapt Article 72 of the Electoral Law to Article 114 of the Constitution. We shall ensure that, under the draft law amending the Electoral Law, validation of the election mandates takes place only after a decision of the court competent to rule on electoral disputes."

D. DEVELOPMENTS SUBSEQUENT TO THE MISSION

87. In the time following the mission and during the writing of the present report, no new developments were reported concerning the cases of Mr. Chalupa, Mr. Mythondeke or Mr. Lumbala. In the case of the disqualified members of the National Assembly, they were able to meet with the questeur on 20 June and then the first Deputy Speaker of the National Assembly on 29 July. On 2 August they sent a letter to the questeur asking again for payment of the removal allowance for the 24 disqualified members of the National Assembly living outside the capital to be made. They informed the Committee that, despite these actions, as of the middle of August no further payments had been received. In the case of Mr. Ndongala, these have been added to the report, as they are of a nature to raise serious concerns.

1. Expulsion of Mr. Diomi Ndongala

88. On 14 June, in the course of a meeting organized by the Speaker of the National Assembly and Bureau to hear the delegation's preliminary conclusions from its mission, the delegation was informed that the National Assembly intended to revoke the mandates of those members who were boycotting the Assembly, on the grounds of chronic absences. No other information was provided, apart from noting that Mr. Diomi Ndongala was among the members concerned. The Speaker of the National Assembly stated that the opposition members would have to face the consequences of their political stand. He said that these members could not continue to contest the legitimacy of the Assembly, flout its operating procedures, and yet at the same time demand its protection and the continued respect for the rights and privileges they enjoyed as Assembly members.

89. In the course of the meeting, the President of the Committee alerted the Speaker of the National Assembly to the dangers associated with any decision to revoke Mr. Ndongala's mandate while he was in detention and at a time when the government authorities were talking about new charges, for which his immunity had not been lifted. The fact that Mr. Ndongala has never sat in the Assembly is uncontested, and Mr. Ndongala is far from being the only member in that situation. However, given the circumstances surrounding these absences, the Committee President said that he could not understand how the National Assembly could consider them as unexplained and terminate his mandate at the present time. While there is no disputing the fact that Mr. Ndongala had boycotted part of the ordinary session in 2012, subsequently he disappeared, under circumstances that remain unexplained, and he has alleged that it was the intelligence services that had abducted and secretly detained him, and backed that up with a judicial complaint. Throughout the next session, he had kept the National Assembly informed as to the state of his health, which was such as to preclude his participation. In the course of the first parliamentary session of 2013 he was arrested and remanded in custody, in violation of the law and court rulings.

90. The Committee President said that it would be hard not to conclude that any decision taken under the present circumstances would be a political one, given that it had been within the National Assembly's power, from the very first session, to impose sanctions for chronic absences. The Committee President urged the Speaker of the National Assembly and the Bureau to handle Mr. Ndongala's case separately from this decision, and invited them to act with due regard for the procedures and the right of defence in a transparent and fair manner for all of the expulsions being considered.

91. It was therefore with shock and deep alarm that the Committee President learned the very next day, 15 June, that the mandates of five opposition members, including Mr. Ndongala,¹² had had their mandate revoked during the Assembly's final session, without prior notice. The Committee President considered that this decision confirmed the political nature of the violent harassment to which Mr. Ndongala had been submitted for a long time, and, in a press release issued 18 June, expressed his fears that this decision could pose a threat to Mr. Ndongala's life. The delegation was deeply disappointed to note that the National Assembly provided no information to the Committee on these expulsions, unlike the sources, who provided information, including the text of the resolution adopted by the National Assembly and the letter of notification from the Speaker of the National Assembly, dated 17 June and served to Mr. Ndongala on 28 June.

92. Some members of the opposition in the Assembly have been quoted in the DRC press as affirming that the Bureau did not follow the procedure established in the standing orders, as the relevant report from the PAJ Committee had been tabled and debated at the last minute, instead of being put on the agenda, and this had taken place during the final session of parliament, without respecting the 48-hour delay to allow the parliamentarians to acquaint themselves with the report. Some also emphasized the selective and discriminatory nature of the expulsion decision. Thus, the above-mentioned report apparently records that 275 Assembly members had missed more than one in four sessions. Of these, 269 were notified of the need to provide due explanation of their absences, while 5 had had their mandates revoked immediately, apparently by invoking an unexplained distinction between "significant" and "not significant" absences.¹³

2. Intimidation and prosecution of Mr. Ndongala's attorneys

93. According to the delegation's sources, on **23 June 2013**, Mr. Yala Tutu, attorney-at-law retained by Mr. Ndongala, was the object of intimidation and threatened with arrest and prosecution on the basis of a road traffic infraction dating back to February 2012, hastily changed to insulting the Head of State and posing a threat to State security (RMP 80.736/Pr.023/JNT); this followed an interview he had given on the Ndongala case to the periodical *Jeune Afrique*. Mr. Yala Tutu said he was worried about his personal safety and the impact that the situation would have on his ability to prepare Mr. Ndongala's defence. Ms. Ndongala for her part said that she feared the objective was to undermine her husband's defence.

3. Remanding in custody; conditions of detention

94. Since **29 June 2013**, Ms. Ndongala has been receiving reports that her husband is ill, and the prison doctor recommended that he be transferred to a suitable medical care facility. The only step taken so far has been to transfer him on 18 July to a military camp, where a military doctor performed an x-ray examination and diagnosed a dislocated shoulder. He also recommended that Mr. Ndongala be transferred to a hospital, according to several sources. His wife said that the diagnosis of a dislocated shoulder was the only symptom that the penitentiary authorities had considered to date, despite her husband's very worrying state of health. She claims that he has lost a considerable amount of weight and is suffering from episodes of acute fever and diarrhoea,

¹² Mr. Ndongala (Christian Democrat), Mr. Mbusa Nyamwisi (RCD/K ML), Mr. Félix Tshisekedi, Mr. Claude Iringa and Mr. Jean Maweja (UDPS).

¹³ See in particular the following articles: *Belga*, RDC: "Le mandat de cinq députés, dont l'opposant Félix Tshisekedi, invalidés", 17 June 2013; *Allafrica.com*, Congo-Kinshasa: "Assemblée nationale – Félix Tshisekedi, Mbusa Nyamwisi et Diomi invalidés", 17 June 2013; *kongotimes*, "Violation de règlement intérieur : 5 députés invalidés de l'Assemblée nationale en RDC", 16 June 2013; *Radio Okapi*, "Invalidé à l'Assemblée nationale, Mbusa dénonce un « acharnement » contre les opposants", 17 June 2013; *Radio Okapi*, "Invalidation de cinq députés pour absence non justifiée", 18 June 2013; *Radio Okapi*, "111 députés étaient absents à plus du quart de la session de September 2012", 18 June 2013.

stomach pains, back pains, and kidney dysfunction. She is afraid that the deterioration of his health is the result of the lack of suitable medical treatment and the medication administered in prison "in a disorderly manner over several weeks, with excessive doses".

95. Thus, as of early September 2013, Mr. Ndongala had still not had appropriate medical treatment and remained in custody, contrary to orders from the Supreme Court. Neither the Prosecutor General nor the Supreme Court had taken any step whatsoever to have him moved to house arrest. A number of domestic and international NGOs had issued urgent appeals and press releases denouncing the harassment, relentless political persecution and denial of medical care to which Mr. Ndongala was being subjected.¹⁴

4. Judicial procedure

96. According to the sources, on 28 June the registrar of the Supreme Court contacted Mr. Ndongala's attorney informally to let him know that the first court date had been fixed at 8 July (RP014). Mr. Ndongala for his part did not officially receive the summons ten days before the court date, as required by law. The Court took note of this situation and delayed the hearing to 22 July, so that the parties could be duly notified. On 9 July, Mr. Ndongala received the summons, indicating that he was being charged with having committed a rape on 20 June 2013 and attempted rape on 26 June, but the summons served had a number of flaws. On 17 July his attorneys filed a submission with the Court, alleging that the conduct of the prosecution against Mr. Ndongala to date had been characterized by a number of violations of basic criminal procedure and adding that "these violations, far from being the result of incompetence or omission, appear to us to be deliberate and intended". In addition, Mr. Ndongala filed a request for one of the magistrates assigned to the case to be recused. His defence also considers that, following Mr. Ndongala's expulsion from the National Assembly, the Supreme Court is no longer competent to judge the case, which concerns charges that are unrelated to his functions. His attorneys indicated that, according to recent case law, the Court determines its personal jurisdiction as of the date on which it is seized of a matter, with service of a summons, and not the date of the alleged commission of an offence, with the exception of any offence for which the Court retains personal jurisdiction even after the functions are lost.

97. At the 22 July hearing, the Court ruled that due process required the presence of the accused and decided that the questions raised by the defence regarding flaws in the process through which it had been seized would be answered at the next hearing, in the presence of the accused. Since that time the hearing has been repeatedly postponed, most recently to 16 September 2013.

E. CONCLUSIONS AND RECOMMENDATIONS

1. Conclusions and recommendations of a general nature

1.1 Political freedoms, reconciliation and national dialogue

98. As a general observation, the delegation was alarmed to see that, although the Government of the DRC has, in signing the Framework, committed itself to furthering reconciliation, tolerance and democratization, political space in the DRC is increasingly restricted to the pillars of the current regime, a development that is detrimental to political freedoms, in particular the freedom of expression.

99. The delegation wishes to point out that a functioning political opposition is a necessary, indeed indispensable, component in any democracy, and the members of that opposition need to be in a position to participate fully in the management of public affairs, and that they must be free to

¹⁴ *Voix des Sans Voix*, press release N° 22/RDC/VSV/CE/2013, "SOS opposant politique Eugène Diomi Ndongala détenu illégalement et condamné à mourir à petit feu à la prison centrale de Makala", 23 July 2013; *Collectif des ONGDH en République démocratique du Congo*, "Etat de santé alarmant de Mr. Eugène Diomi Ndongala : le collectif des ONG des droits de l'homme exige le respect des ordonnances de la Cour suprême de justice par le Procureur général de la République", Kinshasa, 29 July 2013; *OMCT*, Case COD 300713, "Déni de soins médicaux adéquats / Crainte pour l'intégrité physique et psychologique", Genève, 30 July 2013.

denounce any observed abuses before the parliament and public opinion so that remedial action can be taken, and to express their political opinions. The delegation also emphasized that members of the parliamentary opposition, no less than those of the majority, must be given impartial treatment in the functioning of a parliament and in the exercise of their parliamentary duties.

100. Given that a process of national consultation is about to be launched, in order to facilitate a broad and inclusive debate about the fundamental questions that divide the political players in the DRC at the present time, the delegation expresses its hope that the consultations will in fact take place in a fully inclusive fashion and lead to concrete measures that will make it possible to improve the political, economic and social situation in the DRC. The delegation further hopes that the consultations will create a broader political space and that the various political forces will demonstrate their ability to work towards a negotiated settlement, for the benefit of the population of the DRC and the public interest. The delegation wishes to emphasize that a free contest of political ideas in a democracy contributes to enriching a country's political life, while rivalry based on personal ambition leads to its impoverishment and demeans it in the eyes of the public.¹⁵

101. The delegation wishes to reiterate the importance that a strong, united and responsible opposition holds for a democratic State, an opposition that can propose a vision for society that can act as a credible alternative to the ruling majority's vision, and thereby strengthen the responsibility of the latter. The delegation hopes for a rapid strengthening of the opposition in the DRC, through the appointment of a spokesperson who is legitimate and credible in the opposition's eyes.

1.2 Legislative reforms

102. The delegation has taken note of the reform that the authorities have brought about in the CENI, and urges all of the institutions concerned and the political players from across the political spectrum actively to pursue the legislative reforms needed to resolve the disputes that have arisen from the elections of 2011, and to ensure that a new legal framework is set up rapidly. The delegation considers that the amendment of the process for dealing with electoral disputes and validating the results of legislative elections should be given a high priority in the programme of reforms for 2013 and 2014. The delegation welcomes the news that in May 2013 the Council of Ministers examined draft legislation to amend the electoral law, and urges the authorities to provide the Committee with a copy as soon as possible. It also expects the Constitutional Court to be put in place as soon as possible and to demonstrate its genuine independence so as to strengthen the credibility and legitimacy of judicial processes at the highest level.

103. The delegation is concerned to learn that the Justice Minister, in her 18 May 2013 letter, stated that the absence of an avenue of appeal in the judicial procedures conducted against the members of the National Assembly is not at odds with international fair-trial standards, on the grounds that the Supreme Court, being the natural judge of the parliamentarians, provides a sufficient guarantee in itself. The delegation wishes to express its complete disagreement with the Minister on this specific point, and to remind her that the existence of an avenue of appeal is one of the principles that guarantee a free trial, as recognized by the international human rights conventions to which the DRC is a signatory.¹⁶ The delegation therefore urges the National Assembly of the DRC to initiate a process of reform to create an avenue of appeal in the judicial procedure applicable to parliamentarians, so that their rights of defence may be fully protected in the event of judicial proceedings, the same as those of any citizen of the DRC, and in accordance with the international standards to which the DRC adheres.

1.3 Request to re-open the cases of the members of the National Assembly disqualified in 2007 (G18)

¹⁵ *Guidelines on the rights and duties of the opposition in parliament*, Part IV ("Duties of the opposition"). IPU publication adopted in May 1999 by the participants at the Parliamentary Seminar on Relations Between Majority and Minority Parties in African Parliaments (Libreville, Gabon, 17–19 May 1999).

¹⁶ See especially Article 8 of the Universal Declaration of Human Rights, Articles 9 and 14 of the International Covenant on Civil and Political Rights and the Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, from the African Commission on Human and Peoples' Rights.

104. The delegation took note of the request from the members of the National Assembly disqualified in 2007 that the Committee re-open their case. It noted that the Governing Council had closed the case in 2010 based on a commitment from the authorities to provide financial compensation to the 13 Assembly members concerned. Given that 11 of the 13 members have still not received such compensation, according to the delegation's sources, the delegation finds that the Committee cannot continue to consider the case as resolved. The delegation therefore invites the authorities as a matter of urgency to take the necessary measures so that the 11 members receive their compensation as rapidly as possible. The Committee is urged to examine the possibility of re-opening the case if it is not promptly resolved.

1.4 New case relating to the name-change of the UDPS/FAC parliamentary group

105. Subject to the Committee's confirmation and any new information that may yet be provided, the delegation considers that this matter does not meet the Committee's admissibility criteria, as the allegations do not relate to violations of the human rights of parliamentarians but rather to the internal functioning of the National Assembly and the parliamentary groups.

2. **The case of Mr. Pierre Jacques Chalupa**

106. The delegation is deeply troubled by the fact that a senior Assembly member such as Mr. Chalupa, a former supporter of the majority who went over to the opposition during the last election, should, even while the strongly disputed results are being announced, find himself (1) arrested by the presidential guard, after having been lured to a false meeting by telephone; (2) accused of fraudulently obtaining DRC nationality; (3) remanded in custody before receiving the maximum sentence, despite the absence of any previous conviction and his worrying state of health; and (4) stripped of his nationality. Taking into account the judicial decisions in the matter and the information that the parties have provided to the Committee in the past, as well as the new information received by the delegation during its mission to Kinshasa, the delegation finds that much of the information now on file points to a politically motivated case. As a result, it is not in a position to rule out that the judicial procedures engaged against Mr. Chalupa are indeed intended to neutralize him politically as a result of his decision to join the opposition.

107. Nevertheless, the delegation recognizes the definitive nature of the Supreme Court's verdict and Mr. Chalupa's conviction on appeal. The delegation has noted that Mr. Chalupa submitted a request for release on parole to the Justice Minister on 25 January 2013, and is deeply concerned to learn that the Minister's cabinet director claims the Minister has not been informed of the request, six months after it was submitted to the Ministry. The delegation points out that Mr. Chalupa has served one half of his sentence and has shown good behaviour during that time. The delegation wishes to repeat that Mr. Chalupa's medical condition requires surgery as soon as possible.

108. The delegation therefore urgently calls on the authorities of the DRC to explore all the legal options for releasing Mr. Chalupa as soon as possible, in order to allow him to undergo surgery and be reunited with his wife and daughters. The delegation expects that the competent authorities will diligently process the application for release on parole, and urges the Justice Minister to grant Mr. Chalupa release on parole on humanitarian grounds as soon as the procedure can be completed. As an alternative, the delegation hopes that Mr. Chalupa will be granted a presidential pardon.

109. The delegation also calls on the authorities to take action to confirm Mr. Chalupa's DRC nationality. The delegation notes that in this matter Mr. Chalupa does not consider himself as a foreigner applying for DRC nationality but rather as a native-born Congolese: he was born in this country and did not obtain Portuguese nationality through his father by virtue of Portuguese nationality law. The delegation considers that, given Mr. Chalupa's long-standing ties to the DRC (birthplace, residence, marriage with a DRC national, etc.), recognition of his nationality should not cause any legal difficulties. Incidentally, if Mr. Chalupa has not yet acquired Congolese nationality when the attestation of nationality was delivered to him in 2001, as explained in the Justice Minister's letter, the delegation concludes that his application is still being processed by the DRC administration, and could therefore be finalized, given that under Article 50 of the nationality law,

any applications filed in a regular manner prior to the law's entry into force remain valid. The delegation therefore urges the Justice Minister to take the necessary steps to ensure that Mr. Chalupa's nationality is recognized.

3. The case of Mr. Eugène Diomi Ndongala

110. Concerning the facts at issue, and in particular the period of four months (June-October 2012) during which Mr. Ndongala disappeared or was illegally detained, the delegation notes that the discussions it held have only confirmed the complete contradiction between the version of events related by the sources and that given by the authorities, without however introducing anything new. The delegation takes note of the position of the DRC authorities, according to whom Mr. Ndongala went into hiding for four months to avoid arrest, and was never detained by the intelligence services, although none of the authorities with whom the delegation met was able to provide any concrete information to support such a view. The delegation deplores the absence of will on the part of the authorities to shed light on the precise circumstances behind Mr. Ndongala's disappearance and draws attention to the fact that the complaints filed on these serious charges do not appear to have been investigated.

111. Concerning the procedure for lifting Mr. Ndongala's parliamentary immunity, the delegation notes that the Special Commission's report reflected in detail the statements made by the Prosecutor General's representatives and Mr. Ndongala's attorneys, as well as the requests for additional information and the responses obtained from the two parties. The report shows that the members of the Commission made an effort to clarify some of the unresolved questions and shed light on the evidence underlying the allegations. The report explains the methodology used by the Special Commission to arrive at its conclusions and mentions disagreements among the Commission members. The delegation concludes from this that the report was a balanced one. The delegation further notes that this procedure was conducted at a time when Mr. Ndongala's state of health was particularly worrying and did not permit him to attend hearings in person. The delegation notes that, although it was not possible to hear Mr. Ndongala either in the plenary of the National Assembly or before the Special Commission for the reasons stated, he had been invited on three occasions to attend, and had been represented before the Special Commission by his attorney. Nonetheless, the delegation is disturbed by the dates chosen by the National Assembly for the hearings, and the short notice given to Mr. Ndongala, although his poor state of health was known and could be expected to interfere with his ability to prepare his defence in the short time provided. Apart from this point, the delegation considers that the procedure by which the member's parliamentary immunity was lifted was conducted in accordance with the standing orders of the National Assembly.

112. Concerning the judicial proceedings, the delegation notes that it has received confirmation that Mr. Ndongala's arrest on 8 April 2013 was exclusively for the charge of rape of minors, for which his immunity had been lifted. The delegation regrets that it has been unable to obtain any detailed information from the competent authorities regarding the charges against Mr. Ndongala, or regarding the evidence they have in the matter; this is all the more regrettable as the delegation is aware that he is being prosecuted in parallel on charges of forgery and use of falsified documents. The delegation therefore also regrets that it was not given access to the case file even though it had only just been deposited with the Prosecutor General and the first President of the Supreme Court. The delegation was disturbed to learn that not even the defence attorneys had been allowed to familiarize themselves with the file. The delegation notes with concern that Mr. Ndongala and his attorneys had not been notified officially of the deposition until 9 July, and that the attorneys had filed complaints about procedural flaws at each of the three hearings scheduled for 8, 17 and 22 July, all of which were ultimately adjourned. The delegation welcomes the Court's decision to examine the alleged flaws at a future hearing in the presence of the accused.

113. The delegation sincerely hopes that international fair-trial standards will be fully respected in the course of the proceedings and recommends that the Committee appoint an observer to monitor some or all of the hearings. The delegation hopes strongly that the justice system of the DRC will demonstrate its independence in this trial and ensure that it takes place in a transparent

and fair manner, in accordance with the law and the Constitution, particularly as Mr. Ndongala will not have the benefit of an avenue of appeal, given the Supreme Court's competence as the first and last instance in cases in which the accused are members of the National Assembly.

114. Concerning the continued detention of Mr. Ndongala, the delegation was profoundly shocked by the Prosecutor General's refusal to execute the decisions of the Supreme Court ordering Mr. Ndongala to be moved to house arrest. The delegation views this as a violation of the law and of the Constitution of the DRC, regardless of the motives cited; but the explanations provided in justification of the failure to implement the decisions of the court were far from convincing. The delegation further considers that this situation creates a dangerous precedent for all DRC parliamentarians, and should be a matter of the gravest concern for the Speaker and President of the two chambers. The delegation's view is that the court's decisions remain in force despite Mr. Ndongala's parliamentary immunity having been lifted, and strongly urges all competent authorities to enforce them without delay. The delegation wishes to draw the authorities' attention to the fact that a person awaiting trial has the right to liberty in the meantime, and should be remanded in custody only as a last resort, to be used only where the State can prove that there are relevant and sufficient reasons to detain the accused. Given Mr. Ndongala's current state of health, and the allegations regarding the refusal of the competent authorities to transfer him to a suitable health care facility, the delegation is gravely concerned, and draws the attention of the authorities to the fact that they are entirely responsible for the fate of persons in their custody, and that the denial of medical care is a violation of the DRC's international obligations and incurs the criminal responsibility of the competent authorities.

115. Concerning the fresh accusations announced by the Minister of the Interior against Mr. Ndongala on television on 11 April 2013, the delegation also notes with concern the contradictions between the sources and the authorities and the absence of clear information from the latter. The delegation draws attention to the declaration by the Prosecutor General that his office is not investigating the matter, while at the same time a magistrate attempted to question Mr. Ndongala on those very charges.

116. Concerning the question of Mr. Ndongala's parliamentary pay, the delegation was gratified to learn that, following the mission, a part-payment had been made. The delegation urges the authorities to pay the balance as soon as possible.

117. As a general observation, the delegation notes that, regardless of the specific charges brought against Mr. Ndongala, there was without any doubt a purely political dimension to the case, which made it very sensitive. Explanations provided to the delegation during its mission attribute this state of affairs to the radical political position of the two parties: on the one hand, a political majority that is attempting to reassert its control over the country's institutions, and on the other, a radical opposition, of which Mr. Ndongala is a member, that has been boycotting the National Assembly since the elections and has made very critical statements about the regime, accusing it of seeking to stifle any form of opposition within the DRC's institutions and political life.

118. The delegation is well aware of the argument made by the authorities encountered during the mission, according to which Mr. Ndongala could not legitimately expect to enjoy the protection and privileges that pertain to the office of an Assembly member even while he himself never considered himself as such, and did not act as a serving parliamentarian since the election, but did everything he could to undermine the legitimacy of his institution. The delegation recognizes the inconsistency of such a political position and the problems that could result in the functioning of the National Assembly. It also notes that, while such a political position does not appear to be favourable to strengthening parliamentary democracy, it is the result of the absence of any other framework for the dialogue and consultation needed to deal with important political questions and resolve the current political crisis. Consultations on a nation-wide basis and the appointment of an opposition spokesperson are two possibilities that, in the opinion of the delegation, deserve to be explored in an attempt to overcome the deep rift between the majority and the political opposition.

119. Nonetheless, as far as Mr. Ndongala's situation is concerned, the delegation is of the view that, as a member of the National Assembly, he had the right to express his political opinions freely.

The Assembly therefore had an obligation to guarantee the full protection of his fundamental rights, without discrimination because of his political opinions. The delegation is convinced that, at each stage of the case, the actions of the National Assembly would have been very different if Mr. Ndongala had been a member from the parliamentary majority. The Assembly's decision to revoke his mandate, which happened on the very day that the delegation left Kinshasa, only deepened the delegation's conviction that this is the case. The Committee President expressed his disappointment at a decision that, for him, served to confirm the political motivation behind the violent harassment to which Mr. Ndongala is exposed. The delegation is therefore deeply concerned about the turn for the worse that the case has taken since the mission to Kinshasa, and calls on the DRC authorities to take urgent measures to end the serious violations of Mr. Ndongala's fundamental rights as set out in this report.

4. The case of Mr. Bakungu Mythondeke

120. To the delegation's regret, little new information on this case was obtained. While Mr. Mythondeke served his sentence in its entirety, the concerns raised by the Committee on the events and the trial that led to his conviction remain unaddressed, given the paucity of information available. The delegation notes, nonetheless, that the Justice Minister, in a letter dated 18 May 2013, indicated that Mr. Mythondeke had been informed of the change in the charges against him and had presented his defence before the judge pronounced the verdict. In view of this statement by the Minister, which is contrary to the account given by the sources, the delegation considers that it would be useful, for the sake of verification, if the parties in the dispute sent the Committee the relevant documents from the prosecution file that can serve to substantiate their statements, such as the notification of the change in the charges, written submissions, or the reasoned judgment in its complete version.

121. The delegation notes in addition that Mr. Mythondeke and his attorney intend to file for a judicial review and have requested that the Committee monitor this procedure to ensure that it is conducted in accordance with the applicable international standards. The delegation notes that they already made a similar request for their claim for compensation at the Goma High Court (RC 16.800) and invites the Committee to request information on these procedures. Finally, the delegation emphasizes that Mr. Mythondeke, since being released from prison, has expressed fear for his personal safety and that of his family, and calls on the competent authorities to take all necessary steps to guarantee their safety.

5. The case of Mr. Roger Lumbala

122. The delegation considers it to be established beyond any doubt that the National Assembly decided to revoke Mr. Lumbala's mandate because he had joined M23. The delegation perfectly understands the National Assembly's refusal to condone the move of an Assembly member to join a rebel group that is responsible for serious crimes in the east of the country.

123. Nonetheless, to the best of the delegation's knowledge there is no provision in the Constitution, the law or the National Assembly's standing orders that gives the Assembly the right to revoke a member's mandate in such a situation. The delegation notes that Article 119 of the standing orders, invoked in the present case, is clearly intended for use in a different situation: chronic absence of Assembly members.¹⁷

124. The delegation draws attention to the need to ensure that the definitive expulsion of a member from parliament remains an exceptional procedure, strictly limited to cases falling within specific legal provisions; otherwise, it risks becoming, like the verification of credentials, a dangerous weapon in the hands of the majority.¹⁸ The delegation also draws attention to the Committee's longstanding practice as regards expulsion from parliament, according to which "the revocation of a parliamentarian's mandate is a serious measure which definitively deprives such a member of the possibility of carrying out the mandate entrusted to him and that it should therefore be taken fully in accordance with the law and only on serious grounds". Disqualification of a

¹⁷ Article 119 of the standing orders of the National Assembly: "any deputy who misses more than one quarter of the meetings of a single session without due justification and authorization shall be expelled".

¹⁸ Marc Van der Hulst, *The Parliamentary Mandate*, Inter-Parliamentary Union, 2000, p. 22.

member must in any event be the outcome of a procedure that strictly respects the impugned member's rights of defence. These rights include, for a parliamentarian, the right to be notified in advance about the procedure launched against him or her; the right to be given an opportunity to prepare his or her defence; and the right to make that defence before parliament, either in person or through a representative.

125. The delegation does not understand why the National Assembly did not complete the procedure for lifting parliamentary immunity that it had initiated for the purpose of allowing the justice system to make a ruling on the matter. The delegation considers that the Assembly has misused the procedure for chronic unjustified absence, the only procedure in the standing orders that could be used to revoke Mr. Lumbala's parliamentary mandate. The delegation observes that neither Mr. Lumbala nor his attorneys were notified prior to the revocation of his mandate, nor did they have an opportunity to present a defence. The delegation deplors the creation of a dangerous precedent by which the National Assembly presumes to revoke an Assembly member's mandate for a reason that is not foreseen in law and in violation of the presumption of innocence and the parliamentarian's right to defence.

6. Case of the 29 disqualified members of the National Assembly

126. The delegation considers that the partial payment made by the National Assembly at the start of 2013 is a step in the right direction, and trusts that the process will be continued promptly. While the National Assembly has now accepted the principle of an amicable settlement with the disqualified members of the National Assembly by means of financial compensation, the delegation notes that the size of the compensation that the Assembly undertakes to pay to the disqualified members and the detailed payment arrangements have yet to be determined, formalized and endorsed by the two parties.

127. The delegation emphasized the importance of real dialogue between the parties if a solution was to be found that all could accept, and invited the National Assembly, through its Speaker, and the Committee of Eminent Experts to schedule regular meetings with the disqualified members and pursue a genuine dialogue with them until a final agreement is reached and implemented. The delegation considers that, apart from the question of law, it will be important for the Bureau of the National Assembly to show good will to settle an awkward situation that ill serves the image of the parliament of the DRC. Such a step would also address the humanitarian concerns regarding the former Assembly members now facing a situation of hardship.

128. In view of the conversations that the delegation was able to hold with the two parties, it considers that the solution set out below, amicably negotiated, could serve as a basis for compromise; it was brought to the attention of the National Assembly's Speaker and Bureau on 14 June 2013, during the mission de-briefing:

- ▶ Payment of the installation allowance, return allowance, and all parliamentary pay for the months during which they actually sat as members of the National Assembly. This corresponds strictly to their entitlements pursuant to the National Assembly's own standing orders. In addition, the delegation supports the demand of the disqualified members that the Assembly make full payment not just up to the date on which they were disqualified but up to September or October 2012, i.e. the date on which the appeals for correction of clerical errors were rejected by the Supreme Court and the disqualification decisions became final. The CENI forwarded the final list of members to the National Assembly at this very time. For this reason, the delegation supports the view that the disqualification only became final on this date.
- ▶ Payment of compensation for damages suffered as a result of the arbitrary disqualification and the delay in settling the entitlements (which had major financial consequences for some of the former members). The disqualified members of the National Assembly modified their initial demand for compensation representing the equivalent of their parliamentary pay and allowances for the five years of the legislature, reducing it to 30 months of their parliamentary pay. In discussions with the National Assembly Speaker, the delegation expressed the view that 15 to 20 months' pay might be a reasonable compromise.

- ▶ Concerning the payment arrangements and deadlines, the delegation encouraged the National Assembly to make a final settlement as soon as possible, so as to put the matter to rest for good. In view of the budget difficulties cited by the Speaker of the National Assembly, the delegation understands that there may be a need to make the payments in instalments. Even if that is the case, however, for the sake of transparency a schedule of payments should be written down and communicated to the persons concerned. The schedule should provide for the balance of the entitlements to be paid as rapidly as possible. Payment of the compensation instalments should follow a regular and established schedule that provides for the total amount due to be paid in the shortest time possible.
- ▶ The delegation considers that the existing legislative provisions, and indeed those in the Constitution, will have to be amended if the recurrence of such a situation in future elections is to be avoided; accordingly, the favourable resolution of the matter should include appropriate reform of the constitutional and legislative framework. In this regard, the delegation relies on the information provided by the Speaker of the National Assembly regarding the high priority that will be given to the new bills and draft laws to address this question in the legislative agenda of the forthcoming parliamentary sessions.

129. Finally, the delegation emphasizes that election disputes represent a very special case that lies at the boundary between law and politics. Thus, while the power to rule on such a dispute generally rests with the justice system, the power to recognize the parliamentary mandate of the newly elected members rests with the parliamentary institution itself. The delegation notes that case-by-case disqualifications in parliamentary elections are a relatively common occurrence in many countries, and are not in themselves a worrying sign. However, the disqualification of 32 members in the context of an election dispute is a very unusual occurrence and naturally raises serious questions about the functioning of the current political system. These doubts are only strengthened by the disqualification of six more members in 2013, making a total of 38 members (34 of whom have submitted their cases to the Committee) who have been stripped of their parliamentary mandates between the start of the present legislature and June 2013.

130. The delegation therefore wishes once again to draw attention to the principle that, in a democracy, members of parliament receive their mandate, which is a representative and not an imperative one (as confirmed by Article 101 of the Constitution of the DRC), from the people. For this reason, only the people can withdraw the mandate of a parliamentarian, through free, transparent and fair elections. While some parliaments, the DRC's among them, have provisions in their rules for terminating parliamentary mandates under certain conditions as a last resort, such as unexplained, prolonged absence from the work of the parliament, the disqualification of a member of parliament must remain an absolute exception. The delegation therefore considers that the large-scale disqualification of parliamentarians in the DRC during the present legislative period is a very worrying sign for the consolidation of democracy in the DRC, and strongly hopes that the National Assembly will find a way to correct these practices and in the future set an example by strictly following the law and its own standing orders, while fully respecting the rights of parliamentarians, regardless of their political affiliation.

Geneva, 6 September 2013

F. OBSERVATIONS SUPPLIED BY THE AUTHORITIES AND THE SOURCES

- **Communication from the Speaker of the National Assembly of the Democratic Republic of the Congo to the Secretary General of the Inter-Parliamentary Union (26 September 2013)**

Dear Mr. Secretary General,

I am in receipt of your letter of 10 September 2013 and the accompanying report from the IPU observation mission to Kinshasa, conducted by the Committee on the Human Rights of Parliamentarians from 10 to 15 June 2013 on the cases of the 29 disqualified members of the National Assembly and Mr. Pierre Jacques Chalupa, Mr. Eugène Diomi Ndongala, Mr. Roger Lumbala Tshitenga and Mr. Bakungu Mythondeke, which the Committee is currently investigating.

As you know, the Parliament of the Democratic Republic of the Congo continues to work towards the realization of the goals and objectives of the Inter-Parliamentary Union, in particular the promotion of democratic values, respect for human rights, sustainable development and the cultivation of peace, in accordance with our international commitments, the Constitution and the laws of the Republic. It is in this spirit that the Parliament has always maintained the on-going dialogue with the Inter-Parliamentary Union and with the IPU's Committee on the Human Rights of Parliamentarians.

It was in the same spirit that the National Assembly accepted without reservation the Committee's second observation mission, led by Mr. Tapo.

At the request of the mission delegation, the Bureau of the National Assembly received it for a debriefing at the end of the mission on 13 June 2013.

In reading the Committee's mission report, I have been struck by certain excessive allegations and untruths that cannot but reflect on its integrity, and I wish to register my reservations in this regard.

In the attachment to the present note, I am therefore forwarding a memorandum containing some preliminary observations on this report.

[signed]

Mr. Aubin Minaku Ndjalandjoko

- **Observations on the report from the observation mission conducted by the Inter-Parliamentary Union's Committee on the Human Rights of Parliamentarians**

I. Context of the observation mission

In his letter of 14 May 2013 to the Honourable Aubin Minaku, Speaker of the National Assembly of the Democratic Republic of the Congo, Mr. Anders B. Johnsson, Secretary General of the Inter-Parliamentary Union, requested an observation mission from the Committee on the Human Rights of Parliamentarians on the cases of the 29 disqualified members of the National Assembly and Mr. Pierre Jacques Chalupa, Mr. Eugène Diomi Ndongala, Mr. Roger Lumbala Tshitenga and Mr. Bakungu Mythondeke, which the Committee is currently investigating.

The 10–15 June 2013 mission was recommended by the Committee at its 140th session (January 2013) in the light of new facts submitted to it and recent developments, with a view to clarifying the facts, obtaining an update on the proceedings and meeting with the competent authorities of the Democratic Republic of the Congo to discuss the concerns that have been expressed. The delegation of the Democratic Republic of the Congo agreed to the mission at the 128th IPU Assembly (Quito, March 2013).

It may not be amiss to point out that the National Assembly of the Democratic Republic of the Congo continues to work towards the realization of the goals and objectives of the Inter-Parliamentary Union, in particular the promotion of democratic values, respect for human rights, sustainable development and the cultivation of peace, in accordance with our international commitments, the Constitution and the laws of the Republic. It is in this spirit that the Assembly has always maintained the on-going dialogue with the Inter-Parliamentary Union and with the IPU's Committee on the Human Rights of Parliamentarians.

It was in the same spirit that the Honourable Speaker authorized the Committee's observation mission, led by Mr. Tapo, the Committee President, from 10 to 15 June 2013, and provided support for the mission, in the same manner as with the July 2012 mission to Kinshasa, led by Mr. Agboyibo.

As indicated in its 21 May 2013 letter to the Secretary General of the IPU, the National Assembly prepared all the necessary support for the Committee's observation mission, assisting with the scheduling of meetings with the authorities and arranging for the Committee to see Mr. Pierre Jacques Chalupa and Mr. Eugène Diomi Ndongala, currently in custody at the Kinshasa Penitentiary and Correctional Centre, for the purpose of looking into the conditions under which they are being held.

The report confirms that the Committee's delegation was able to meet with all the authorities relevant for the mission's purposes, with the exception of His Excellency the President of the Republic, whose schedule was excessively busy. At the end of the mission, the Bureau of the National Assembly received the delegation and received a briefing on its discussions with the authorities, its observations, and the successful conduct of the mission to Kinshasa from 10 to 15 June 2013.

II. Comments and preliminary observations on the report

On the mission report as it currently stands, a number of comments and brief observations are called for; detailed observations will be provided by the National Assembly's delegation at the next session of the Committee, scheduled to be held in October 2013 in Geneva.

1. Regarding the dispute within the UDPS/FAC and *UDPS & Alliés* parliamentary group

Part 3.5 of the report, dealing with an internal dispute of the *UDPS & Alliés* parliamentary group, raises the question as how this dispute, which concerns the internal organization of a parliamentary group, relates to the mandate of the Committee on the Human Rights of Parliamentarians.

For your information, the mission report contains two untruths on this matter. In paragraph 19 of the report, the delegation notes that the Union for Democracy and Social Progress (UDPS) is the main opposition party. This is true: the UDPS is the second largest political force in the National Assembly today. The parliamentary group UDPS/FAC counted 52 members, including 10 or so members from

allied parties that supported the candidate Mr Etienne Tshisekedi. Since its founding declaration, the group had been operating without internal regulations, which is contrary to Article 49, para. 1 of the National Assembly's standing orders. For reasons that fall within their prerogative, the majority of the members of the group took the decision to adopt internal regulations and change the name of the group to *UDPS & Alliés*. In a letter dated 8 January 2013, the president of the group informed the Bureau of the National Assembly of the name change. Replying on 20 February 2013, the Bureau took note of the change and asked the group to forward the minutes of the meeting at which the name change had been agreed. In response, the president of *UDPS & Alliés* on 4 May 2013 sent the Bureau a copy of the 26 April 2013 minutes, signed by the 35 Assembly members who had adopted the internal regulations, as required under the standing orders of the National Assembly.

When seven UDPS/FAC members contested the procedure used to change the group's name, the Assembly's Bureau asked the political, administrative and legal committee of the Assembly (*Commission politique, administrative et juridique*) to examine the matter. The committee's findings and recommendations were examined on 1 June 2013 by the plenary of the Assembly, its supreme body, which took note of the name change, as is its prerogative. Whatever the reasons behind the decision to change the group's name, it is wrong to assert that Assembly members in the *UDPS & Alliés* group, upon signing the internal regulations, ceased to be in the opposition. It is interesting, therefore, that the mission report on page 2 states that among the representatives of the parliamentary authorities with whom the delegation met were "the presidents of the main parliamentary opposition factions", including the Honourable Fabien Mutomb, vice-president of the group *UDPS & Alliés*, and Martin Fayulu, member of the group UDPS/FAC, who were received together during the 12 June 2013 meeting at the Hôtel du Fleuve. There is nothing in the report to indicate why it was that the delegation neither asked the two parliamentarians about this issue nor raised its concerns with the Speaker of the National Assembly, with whom they met on two occasions, after all. Clearly, on this issue the delegation failed to respect the principle that both sides have the right to be heard, a principle that is enshrined in numerous international instruments on human rights.

In view of the above, it is unfortunate that the mission report does not recognize the prerogatives of the plenary of the Assembly as the supreme body of a legislative chamber, and that it insinuates that *UDPS & alliés* is a new parliamentary group "created by the Speaker of the National Assembly".

2. Regarding the case of Mr. Pierre Jacques Chalupa

The Honourable Speaker of the National Assembly had a long exchange with the Secretary General of the IPU on the procedure that was followed up to Mr. Chalupa's final conviction in October 2012, with a sentence of three years in prison for forgery and use of falsified documents, an offence in ordinary law. In application of the Congolese Code of Criminal Procedure, he continues to serve his sentence at the Kinshasa Penitentiary and Correctional Centre. The application for release on parole filed by his attorneys is currently being examined by the competent authorities.

3. Regarding the case of Mr. Eugène Diomi Ndongala

The delegation held a working meeting with two members of the bureau of the special commission set up to study the indictment preparatory to lifting parliamentary immunity. The members explained the procedure followed up to the decision taken by the plenary ruling on the lifting of immunity. The members said that the correct procedure had been followed at all stages, right up to the lifting of the Honourable Eugène Diomi Ndongala's parliamentary immunity. The delegation was given a copy of the commission's final report.

Mr. Ndongala remains remanded in custody for the purposes of the investigation of the offences of which he has been accused by the justice system. He was brought before the judge at public hearings on 17 and 22 July and 16 September 2013. The investigation is proceeding normally, and the presumption of innocence continues to apply to Mr. Diomi.

4. Regarding the case of Mr. Roger Lumbala

The Honourable Speaker also corresponded with the Secretary General of the IPU on the subject of the indictment brought by the Prosecutor General for several offences against State security.

To recapitulate: Mr Roger Lumbala abandoned his parliamentary functions and joined the M23 insurgency, which has been condemned by the United Nations Security Council. He was stripped of his mandate due to unjustified chronic absences that had not been authorized by the plenary of the National Assembly, as required under Article 110 of the Constitution and Articles 85 and 119 of the Assembly's standing orders. The mission delegation was presented with documents substantiating the validity of the procedure followed in this case, in particular the invitations sent by the Speaker of the National Assembly and the responses received from Mr Lumbala's attorney, Mr. Kabengela. In the matter of the legal proceedings against him that were initiated by the Prosecutor General, the latter received the mission on 12 June 2013. The delegation did not bring up any questions about this case, limiting itself to raising concerns about the Chalupa and Ndongala cases and requesting a prison visit, release on parole for Mr. Chalupa and a move to house arrest for Mr. Ndongala. The delegation was also provided with a copy of the 19 May 2013 letter that the Justice Minister sent you on the subject of those cases that have to do with the judiciary.

5. Regarding the case of Mr. Bakungu Mythondeke

The mission delegation was informed that the individual had been released on 25 February 2013, having served his sentence. For your information I have forwarded an excerpt from the Supreme Court's 25 February 2012 decision RP 011, in Public Prosecutor versus Bakungu Mythondeke et al., which you should already have received in a letter from the Minister for Justice and Human Rights dated 19 May 2013.

6. Regarding the case of the Assembly members disqualified by the plenary of the National Assembly pursuant to the decisions of the Supreme Court in the matter of certain electoral disputes

Regarding the case of the Assembly members disqualified by the plenary of the National Assembly pursuant to the decisions of the Supreme Court in the matter of certain electoral disputes, the National Assembly continues to respect the principle of the separation of powers, which is enshrined in Articles 151 and 68 of the Constitution, as pointed out by the Honourable Speaker in his earlier correspondence with the Secretary General of the Inter-Parliamentary Union and the Committee on the Human Rights of Parliamentarians.

To date, the Bureau of the National Assembly has received claims from the former Assembly members in question requesting, on the basis of Article 98, para. 1 and Article 99 of the Assembly's standing orders, the payment of the installation allowance, back pay and the removal allowance, on the grounds that their election mandate had been confirmed by the National Assembly.

Conscious of the need to restore political calm, the Bureau partially acceded to the demands, and accepted the principle that the following payments should be made to the former colleagues who had been disqualified:

1. An installation allowance equal to six months' salary;
2. Full payment of the salary due up to the date on which the plenary of the Assembly disqualified them;
3. A removal allowance to cover their return to their constituencies, along with spouses and dependent children duly declared to the registry of the National Assembly.

To date, the Bureau has already paid the disqualified former members' hospitality expenses and salaries for the month of May 2012, in addition to the first two part-payments for the installation allowance. The balance of the installation allowance, along with the removal allowance to cover their return to their constituencies, therefore remains to be paid.

Drawing a lesson from the challenges that were raised against the process by which the electoral disputes of 2006 and 2011 were managed, and the concerns voiced by the Governing Council of the Inter-Parliamentary Union at the 27th [sic] IPU Assembly (Quebec, October 2012), the Parliament intends, *de lege ferenda*, to amend the electoral law with a view to not only strengthening the eligibility conditions and improving the mechanisms for resolving electoral disputes, but also, and above all, ensuring that electoral disputes are dealt with before the electoral mandates are confirmed, for both chambers of the Parliament.

The National Assembly's delegation to the IPU Assembly in October 2013 in Geneva will in any event be available to the Committee on the Human Rights of Parliamentarians for the purpose of providing any other information that may be required regarding specific allegations in the mission report.

Kinshasa, 26 September 2013

- **Communication from Ms. Patrizia Diomi, spouse of Mr. Eugène Diomi Ndongala, addressed to the Committee on the Human Rights of Parliamentarians (21 September 2013)**

OBSERVATIONS, REFLECTIONS AND COMMENTS ON THE CONFIDENTIAL REPORT OF THE COMMITTEE'S DELEGATION ON ITS MISSION TO THE DEMOCRATIC REPUBLIC OF THE CONGO FROM 10 TO 14 JUNE 2013

- **CASE DRC/71 - EUGÈNE DIOMI NDONGALA**

- **These observations, reflections and comments refer to specific paragraphs in the CHRP's report and are submitted for your consideration with a view to incorporation in the final report.**

Paragraph 20, page 6

The Supreme Court has issued three separate orders for Eugène Diomi Ndongala to be placed under house arrest. The Prosecutor General of the DRC ignored all three, refusing to execute them. Accordingly, Mr. Ndongala filed a complaint against the Prosecutor General; to date, that complaint has not been investigated. In this climate of lawlessness, a request for interpretation was filed with the Supreme Court on 3 September 2013, asking the Court to give its interpretation of the meaning of house arrest as ordered in the case of Mr. Ndongala. To date the Court has not pronounced itself. It may be useful to recall that his family, his attorneys, and even his political party, the Christian Democrats, have already filed more than 15 complaints, none of which has been investigated, let alone ruled on, to date. In a situation where justice is denied, we consider that Mr. Ndongala is a political prisoner of the Government of the DRC and of the majority currently in control of the Parliament of the country, who have not respected his rights as a parliamentarian, let alone as a citizen of the DRC, and seek to eliminate him physically.

Paragraph 45, page 12

It should be borne in mind that Mr. Ndongala underwent emergency surgery for the injuries from the beatings and other mistreatment he suffered while in secret detention, from 27 June to 11 October 2012 (a copy of the medical report was provided to the IPU). The injuries included a serious skin ailment and an injury to his left arm. Photographs of the injuries were forwarded to the IPU.

Paragraph 52, page 14

Subsequent to Mr. Ndongala's release by the security services, he was discharged from hospital and stayed at his home, the address of which is known to the authorities of the DRC, until he was arrested, at 9:30 p.m. on 8 April 2013. Not once, either before or after his release from secret detention, was he served any invitation, summons, or arrest warrant. The authorities state that they were looking for him, but no summons was ever sent to his home at Allée Verte 52, the address that is shown in his documents and that figures on his identity card as a member of the National Assembly. On Mr. Ndongala's file, likewise, there is no record of any invitation or summons served to him. It follows that his arrest was illegal, given that Mr. Ndongala had never been served with any kind of summons or invitation from the public prosecutor before the arrest warrant was issued. Also, on 21 and 22 December 2012 Mr. Ndongala, his wife and his attorney met with the chiefs of the security services ANR and DGM and with the Inspector-General of the police, who gave every sign of wishing to resolve the issue on an amicable basis. The meeting was witnessed by several people, including members of the National Assembly.

It is therefore more than puzzling that the Congolese authorities claim that a search was underway for Mr. Ndongala, given that they never undertook a procedure for that purpose and Mr. Ndongala continued to live at his normal place of residence, which is well-known in Kinshasa; he has been living there with his family for 24 years, and it was there that he received numerous visits of Assembly members and journalists during his convalescence.

Paragraph 54, page 14

No medical certificates were ever produced in the file (this is probably a clerical error, to be corrected in the report.) The only certificates on file are the birth certificates of the two women presented as minors; the certificates have been attacked by Mr. Ndongala's attorneys as fakes and outright forgeries, and are not on record in the registry of births of the issuing municipality. This was verified during the August 2013 visit of magistrates from the Mateete Magistrate's Court to the municipality of Kalamu as part of the procedure launched to annul the forgeries. The magistrates found no trace of these certificates in the registry of civil status. This shows that Mr. Ndongala was the victim of a staged political plot.

Paragraph 55, page 14

The claim that Mr. Ndongala attempted to flee justice, not once but several times (?), is false, as he never left his home after being released from secret detention. Furthermore, as of 18 May 2013, Mr. Ndongala was already subject to a house arrest order, and the Prosecutor General has no discretion whatsoever in the application of decisions of the justices of the Supreme Court, who are the only ones authorized to place any restrictions on an Assembly member's liberty.

The position taken by the Minister for Justice and Human Rights is contrary to law, and intended to cover the unlawful detention of a political opponent and the Minister's own responsibility in the physical and psychological torture that was inflicted on Mr. Ndongala.

Paragraph 58 - page 15

At the time of the delegation's mission, the Supreme Court had already taken two decisions placing Mr. Ndongala under house arrest: one on 15 April 2013 and another two weeks later on 30 April 2013; a third decision was taken on 15 May 2013. In early September 2013 Mr. Ndongala's attorneys filed a request for an interpretation from the Supreme Court to explain what the Court meant by house arrest. The Supreme Court has not seen fit to issue a statement, any more than it did in response to three applications for annulment filed by Mr. Ndongala's attorneys: one concerning procedural violations that took place when his parliamentary immunity was lifted, another concerning the illegal composition of the ad hoc commission created for that purpose, and the third disputing the legitimacy of the process by which Mr. Ndongala's mandate was revoked. While Art. 121 of the Constitution stipulates that an application for interpretation or annulment by the Supreme Court must have a suspensive effect on any *legal or administrative action*, the National Assembly and the Supreme Court have consistently failed to apply this constitutional principle in the case of National Assembly member Ndongala. To date the Court has not produced a decision on any of these formal applications.

Paragraph 59, page 15

The Speaker of the National Assembly, unlike his predecessor in the Bureau of the Assembly, did not take any action to ensure the respect of Ndongala's legal rights and protections as a member of the National Assembly, despite being regularly informed of developments by Mr. Ndongala's correspondence.

Worse, the Bureau of the National Assembly condoned the revocation of the mandate despite the fact that he was being illegally detained under conditions that made it impossible for him even to be aware that a procedure to that effect was in progress, let alone to mount a proper defence, at an unscheduled plenary meeting following the work of a committee that had worked surreptitiously, on the final day of the parliamentary session, without submitting its report to the Assembly members 48 hours in advance, as required under the Assembly's standing orders.

Paragraph 65, page 16

The first few sentences of this paragraph in the draft report are tendentious and contain a gratuitous affront against the Diomi family.

Ms. Ndongala demands that the wording in the report concerning Mr. Ndongala's supposed reputation with women be struck, as it is quite clearly based on unfounded and malicious rumours intended to discredit her family and her husband; this is entirely consistent with the smear campaign that the DRC Government launched against Mr. Ndongala, with a public lynching in the media controlled by the majority in power, at a time when he was being held in secret. Such gratuitous and defamatory speculations have no place in this report.

Paragraph 66, page 17

As an Assembly member, Mr. Ndongala followed the same procedure as all other members to obtain reimbursement of his medical expenses. Here again, the Bureau of the Assembly has discriminated against him and infringed on his fundamental rights as a member for political reasons. All of his receipts were deposited at the Assembly's Bureau in the required form and manner. He had to undergo emergency abdominal surgery and this could not be done by the National Assembly's doctor, who is not a surgeon and does not have Mr. Ndongala's trust. It must be borne in mind that the Congolese authorities attempted to influence the director of the Sino-Congolese Hospital in Kinshasa (a public hospital) to prevent the surgery from being performed. The surgeon who performed the operation had to call on the hospital's medical union to defend his professional ethics as a doctor against the pressure being exerted by the Health Ministry and the hospital director, who wanted to deny Mr. Ndongala urgent medical care. Ms. Ndongala was obliged to call on the MONUSCO as witnesses.

Paragraph 67, page 17

On 17 September 2013 Ms. Ndongala received a letter from the National Assembly asking her to report to its financial office in order to receive the installation allowance for Mr. Ndongala, while refusing reimbursement of the accommodation and transport expenses, despite the promise that the Assembly's Bureau had made to the IPU delegation regarding settlement of what was owed to Mr. Ndongala.

Ms. Ndongala reported to the Parliament on two occasions, presenting the letter from the National Assembly, and each time she was prevented from entering as invited. She contacted the people in charge of the Parliament's financial office through her lawyer, but they did not do anything to obtain permission for her to enter the premises of the National Assembly. To the present day, more than half of the pay that is due to this Assembly member remains outstanding.

Section D, pages 22-23

Mr. Ndongala asks the IPU not to endorse the flawed revocation of his mandate as a representative from the city of Kinshasa. He notes that, while he was being detained illegally, the Bureau of the Parliament, aware of the situation, did not intervene to make sure that he was moved to house arrest, in accordance with three separate orders from the Supreme Court, but rather organized a meeting to revoke certain members' mandates, something that was not on the Assembly's agenda. This was done without putting him in a position defend himself, although he had always kept the Bureau informed about the reasons for his absence. It needs to be borne in mind as well that more than 250 members are considered as chronically absent, but only 5 members, all of them from the opposition, have had their mandates revoked, and only one, Mr. Ndongala, was physically prevented from defending himself, as he was not informed about the scheduling of the plenary, which was held, furthermore, without distributing the PAJ Committee's report 48 hours in advance, as required. According to some members of the opposition, the meeting on mandate revocation was aimed primarily at Mr. Ndongala, as the Government and the majority that controls the DRC Parliament see this as a way of dealing with the diplomatic objections it is hearing because of the fact that it is keeping an opposition parliamentarian in prison.

Mr. Ndongala has filed an application for annulment with the Supreme Court, denouncing the summary revocation of his parliamentary mandate. To date the Court remains silent.

Mr. Ndongala has therefore also asked that the plenary of the Inter-Parliamentary Union refuse to recognize the summary, politically motivated revocation of his status as an elected member from

the city of Kinshasa, which was carried out while he was being held in illegal detention, in contravention of three separate decisions of the Supreme Court. He points out that the IPU delegation to the DRC told Ms. Ndongala that it did consider the revocation to be flawed, and had informed the Bureau of the Assembly accordingly.

Paragraph 95, page 24

The military doctor at the Kokolo military camp where Mr. Ndongala was taken against his will also prescribed two scans, physiotherapy and appropriate care in a health care establishment where he would have to be supervised by a neurologist. These documents were sent to the Prosecutor General and to the president of the Supreme Court. The order to transfer Mr. Ndongala to the Nganda hospital (one of the few in Kinshasa that have a scanner) was confirmed to Honoré Yala, the lawyer, two months ago by the director of the prison where Mr. Ndongala has been held illegally for almost eight months. The transfer, despite being decided by the doctors of the CPRK prison and signed by the director of the prison in person, was subsequently prevented from taking place, due to political interference (a person from the executive branch telephoned the prison director, ordering him to withhold medical care from Mr. Ndongala).

Ms. Ndongala asked the director of the prison why he refused to transfer Mr. Ndongala to a hospital, as had been decided, and was told first that the prison's vehicle had broken down. Two weeks later he said it was because the prison police refused to accompany Mr. Ndongala to the hospital. Ms. Ndongala called the Inspector General of the police, Mr. Bisengimana, to inform him of the refusal by the prison's guards to escort Mr. Ndongala to hospital as per the signed transfer orders, a grave breach; but the Inspector General declined to take any action against his subordinates who had refused to obey an order to perform this service.

Paragraph 97, page 24

The hearing of 28 August 2013 did not take place, because Mr. Ndongala was not let out of the prison in time. He had to hire two taxis at his own expense, one for himself and one for the police escort, and ended up getting to the Supreme Court too late.

The hearing of 16 September 2013 was held despite the fact that Mr. Ndongala was ill, and he was obliged to pay for the escort and for the fuel for the car that took him to the Supreme Court. The hearing was marred by numerous procedural faults. The presiding judge did not want to let the defence lawyers speak: he wanted to go straight to an examination of the merits of the case, putting aside for the time being all the defence's objections, "present and future", including those dealing with Mr. Ndongala's state of health and the Supreme Court's lack of jurisdiction for judging Mr. Ndongala by virtue of his status as a member of the National Assembly. Seeing the prospects for a fair trial imperilled by the lack of legal certainty, the trial being closed to the public, Mr. Ndongala asked to take the floor. Remaining seated as he did so, because he could not stand, he asked the presiding judge about the three orders of the Supreme court regarding house arrest, which had not been carried out. He also raised the issue of his state of health, and the denial of health care over several months. When the defence lawyers made a motion to elaborate on their client's words, as he lacked the strength to continue, the presiding judge refused to let them do so, scolding them as "badly brought up". At this point Mr. Ndongala, mustering what strength he had, told the judge that, if he wanted to conduct a sham trial and pronounce a sentence without hearing Mr. Ndongala's defence and objections, insulting his lawyers and ignoring the fact that he was ill, he (the judge) was free to do so, but without him (Mr. Ndongala), as he would rather die than submit to a trial of this type. At this point he collapsed.

After regaining consciousness, Mr. Ndongala challenged the fitness of the presiding judge, a Mr. Bombule, to judge him, for jurisdictional and procedural reasons. Faced with that situation, and in particular the evident seriousness of Mr. Ndongala's illness, the judge, despite that challenge, said that it was clear that Mr. Ndongala needed to obtain care, and granted him 45 days to obtain medical care. The lawyers for the defence, having been allowed to speak after their client's collapse, pointed out that merely granting Mr. Ndongala 45 days to obtain care would not be sufficient: he needed to be checked into a suitable health care facility, having been illegally locked up in prison for months without access to the care he needed. The court failed to take any decision to break this vicious circle

of illegal detention and a Prosecutor General who refused to either carry out the order on house arrest order or allow Mr. Ndongala to be treated in a proper hospital.

With that the hearing was adjourned until 28 October 2013, Mr. Ndongala being returned to his cell despite his state.

Among the *partie civile* represented at the hearing was the Honourable Francis Kalombo, who had previously been recused from the ad hoc committee set up to lift Mr. Ndongala's parliamentary immunity for disrupting its functioning.

Mr. Bondo, the attorney retained by Mr. Ndongala, drew the attention of the Supreme Court to the fact that DRC law does not allow an Assembly member to act as an attorney. He pointed out that it is public knowledge that Mr. Kalombo, a member of President Kabila's inner circle and a member of the ruling majority, has been linked to the staged affair involving the alleged sexual assault victims, which he is thought to have helped organize, and that the mother of Mr. Ndongala was approached by Mr. Kalombo while her son was being held in secret and told that she should pay him a ransom of so and so many thousand dollars so that her son might be released and the matter closed. Ms. Nsona Dikiadi had denounced this incident at a press conference in the Carter Centre in Kinshasa.

It must be emphasized that Mr. Kalombo was elected in the same constituency as Mr. Ndongala, whose party, the Christian Democrats, had issued a release on the day of the legislative elections in November 2011, with a document entitled "Monitoring the November 2011 elections", recounting how voters from the constituency had caught Mr. Kalombo with boxes full of ballot papers already filled out with his name, which were in his car. Mr. Kalombo had not denied the facts, publicly denounced and well known among the voters in his constituency. In addition, the supposed "father" of the alleged sexual assault victims, Mr. Kennedy Kambala, is a close associate of Mr. Francis Kalombo and was another unsuccessful candidate in the Funa constituency, the scene of Mr. Ndongala's massive election victory in November 2011.

Paragraph 111, page 27

The procedure used for lifting Mr. Ndongala's parliamentary immunity did not meet the criteria set out in the most recent resolution of the General Assembly of the IPU on his case.

The ad hoc committee was stacked, with 16 members from the majority and only 4 from the opposition. Also, and contrary to the most recent resolution of the General Assembly of the IPU on Mr. Ndongala's case, it had set about its work in a rushed manner, without waiting for Mr. Ndongala to recover completely following surgery.

In addition, the ad hoc committee set up to decide on the lifting of parliamentary immunity for Mr. Ndongala was officially notified by Mr. Ndongala's lawyers about the objection the lawyers had filed with the Supreme Court regarding the composition of the committee. The nature of such a filing being such that all jurisdictional and administrative should be suspended, according to Article 121 of the Constitution, the committee should have waited for the Supreme Court to issue its decision on the matter before proceeding with its action on the lifting of Mr. Ndongala's immunity. Despite being officially notified, the committee proceeded anyway, flouting the Constitution of the DRC.

In these circumstances it is difficult to see how the IPU can venture to qualify the lifting of Mr. Ndongala's immunity as valid, given that the procedure used failed to comply with the resolutions of the IPU adopted at your last General Assembly, in Canada; is in violation of the Constitution of the DRC; and openly flouts Article 92 of the National Assembly's standing orders.

This article explicitly requires that, before an ad hoc committee is charged with deciding on lifting the immunity of a member of the National Assembly, the member must be heard before the plenary of the Assembly. In view of the fact that Mr. Ndongala regularly kept the Bureau of the National Assembly informed about his situation, and about the absolute impossibility for him to comply with the Assembly's invitations, on grounds of substantiated medical reasons (copies have

been provided to the IPU), it would be against all logic for the IPU to recognize the validity of a revocation of parliamentary immunity whose sole, and clearly political, objective is to neutralize an opponent, imprison him unlawfully and make it impossible for him to defend himself against the summary and invalid revocation of his mandate, while the victim was deprived of liberty.

All of this was done while blatantly ignoring the advice in the IPU resolutions, addressed to the DRC Parliament, and the delegation's advice on the revocation of the mandate of a member who was being illegally detained.

Paragraph 119, page 29

Mr. Ndongala's family welcomes the recognition, in the report, of the eminently political nature and violent character of the harassment to which Mr. Ndongala has long been exposed for his political opinions.

The continuing violent political harassment of Mr. Ndongala cannot be separated from the dispute regarding the November 2011 election, following legislative elections that lacked credibility, according to the Carter Center's election observation mission and the EU election observation mission to the Democratic Republic of Congo in 2011.

It should be noted as well that the grim list of Assembly members in the DRC who have been targeted, directly or indirectly, because of their political opinions, continues to grow.

The consistent call of Mr. Ndongala, president of the Christian Democrat party, has been to allow Congolese voters not just to vote, but to elect their Government.

These values deserve the attention of the delegates to the Inter-Parliamentary Union, which should take a strong stand against the violent political harassment to which elected members of the opposition are exposed in the DRC.

It is for this reason that the family of Mr. Ndongala, an Assembly member condemned to the outrageous position of being turned into a non-person, asks the IPU:

1. To dispute the lifting of Mr. Ndongala's parliamentary immunity, because of the flaws mentioned above, in particular the violation of Art. 92 of the standing orders of the National Assembly, but also because of the blatant disregard of the IPU's earlier resolutions on the same subject;
2. Not to recognize the outrageous lifting of the mandate of the Christian Democrat member of the National Assembly from the city of Kinshasa, Mr. Ndongala, as it was decided by the Assembly in contravention of the principle of the right of defence of the member concerned by this ultimate sanction, in violation of the DRC Parliament's standing orders, and, above all, adopted in clandestine fashion and targeting, in a seriously discriminatory way, exclusively those members who are in the opposition.

In the specific case of Mr. Ndongala, he was detained in secret, his parliamentary immunity was lifted at a time when he was ill from the effects of the secret detention, and then he was imprisoned and had his mandate as Assembly member revoked while still in illegal detention.

In view of Mr. Ndongala excruciating experience, in a situation where he finds himself turned into a non-person as a political prisoner, his family asks that the Inter-Parliamentary Union take a strong stand with respect to the authorities of the DRC by adopting measures to condemn these acts against the Parliament of the DRC so that these demonstrated grave violations of the rights of an opposition Assembly member do not ever happen again.

Specifically, we ask the IPU not to recognize the revocation of Mr. Ndongala's Assembly mandate, with all the legal, political and economic consequences that this would have.

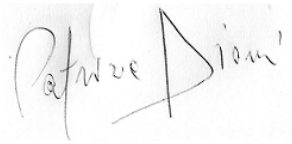
This is indispensable, as the uninterrupted series of cases of political repression, summary revocations of the parliamentary mandate, arrests, imprisonment, bullying and violence of all sort that has been directed at parliamentarians in the last few years is unprecedented in the history of the DRC.

If the Inter-Parliamentary Union fails to confront the political leaders who emerged from the not very credible elections of November 2011 on the subject of the need to respect the guarantees and immunities of members of the National Assembly of the DRC, and in particular on the extremely serious case of Mr. Ndongala, whose persecution has been recognized by the IPU as containing a "purely political" dimension, Congolese citizens in general and Congolese parliamentarians in particular will continue to be deprived of their freedom of expression, the foundation of all their other civil and political rights under the universal rules of pluralist, representative democracy.

Kinshasa, 21 September 2013

Patrizia Diomi

Spouse of Diomi Ndongala, member of the National Assembly

A handwritten signature in black ink, appearing to read "Patrizia Diomi". The signature is written in a cursive style with a large, stylized initial 'P'.

- **Communication addressed to the Secretary of the Committee on the Human Rights of Parliamentarians by the Administrative Council of the G32 collective (2 October 2013)**

[...]

The G32 collective has just met and requests your consideration of the following remarks:

- We are prepared to accept compensation equivalent to twenty months' salary instead of fifteen.
- Call on the Bureau to live up to its promises to resolve the situation peacefully.
- We deplore the attitude of the Speaker of the National Assembly and some Bureau members, who refuse to meet with us any more despite our repeated, formal requests.
- We are in need of protection, as we are about to enter into a phase of repression in our attempt to get our just entitlements; according to recent leaks, after the June mission to Kinshasa the Assembly's Bureau held a meeting, at which the option was brought forward to refuse to pay our entitlements, since your resolutions are not binding. This also explains the refusal to meet with us.
- We require rapid payment of our entitlements, including the "invisibles" allowances, for May; the balance of four months' worth of installation allowance; our entitlements for June to October, including the allowance for the parliamentary assistants we declared in our individual files in March 2012, during the resumption of parliament in the current legislature, considering that we paid them up to the time we were disqualified; and the removal allowance.

Thank you in advance for your support.

Serge Welo, Focal Point
Charles Mbutamuntu, Secretary General
Bolili Mola, 1st Rapporteur
Makambo Simol, 2nd Rapporteur

- **Communication addressed to the Secretary of the Committee on the Human Rights of Parliamentarians by Mr. Justin Kiluba (1 October 2013)**
- **CASE DRC/51 - EUGÈNE DIOMI NDONGALA**

[...]

I do not wish to comment on the report at this time. I find it to be clear, relevant and complete. However, I would like to inform the Committee on the Human Rights of Parliamentarians that, as far as my particular case is concerned, relating to my return to the Senate, the president of the Bureau on 25 June 2013 applied to the Supreme Court for its interpretation of the decision by which I was disqualified from the National Assembly (see attached copy).

My party has been following the proceedings in the case, and considers that the Senate's application to the Court shows its unwillingness to reinstate me. This also explains its decision to ask the same court to interpret its own decision: given that the Senate was not a party to the case that led to the decision in question, the Court is likely to invoke Article 74 *quinquies* of the Electoral Law and declare the request inadmissible.

Without waiting for such a dismissal, therefore, the political party PALU, as a party to the case that led to the decision, has made a filing with the court to obtain an interpretation in accordance with the above-named article, *quinquies*. If the Court follows the same reasoning, it is clear that the Senate's application will be viewed, and not without some justification, as a delaying tactic that will create an electoral dispute about a seat that was not concerned by the original dispute. In this way, the Senate will have subordinated the question as to whether I can continue to hold my seat in the Senate to the decision of a judge, knowing full well that this is the same court that disqualified me for my seat in the Assembly. The Senate will thus have successfully shirked its responsibility to annul the legislative act by which the mandate of my substitute was hastily confirmed, leaving the decision to a court whose past rulings show that it lacks independence and impartiality.

If it turns out nevertheless that this time a fair interpretation is issued, reinstating me, or at least not stripping me of my remaining rights, the justice system will have shown that it has begun to rule on the law and ensure fairness in justice.

We are therefore participating in the proceedings for the second case, filed by my party, and awaiting a decision in the case filed by the Senate.

Justin Kiluba