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## Cameroon

### CM/01 - Dieudonné Ambassa Zang

*Decision adopted unanimously by the IPU Governing Council at its 197<sup>th</sup> session (Geneva, 21 October 2015)*

The Governing Council of the Inter-Parliamentary Union,

*Referring* to the case of Mr. Dieudonné Ambassa Zang, a former member of the National Assembly of Cameroon, and to the decision it adopted at its 195<sup>th</sup> session (October 2014),

*Recalling* the following information on file:

- Mr. Ambassa Zang, Minister of Public Works from August 2002 to December 2004 and known, according to the complainant, for having fought corruption within that ministry, was elected in 2007 on the ticket of the Cameroon People's Democratic Rally;
- On 7 August 2009, the National Assembly Bureau lifted Mr. Ambassa Zang's parliamentary immunity to permit an investigation into allegations of misappropriation of the public funds managed by him when he was Minister of Public Works; although Mr. Ambassa Zang left Cameroon on 12 July 2009, he had a defence note sent on 3 August 2009 to all members of the Bureau; there is no indication that the note was included in the file before the Bureau;
- According to the authorities, the charges laid against Mr. Ambassa Zang stem from audits prompted by a complaint by the French Development Agency (AFD), the funding source for the rehabilitation of the Wouri Bridge, works for which Mr. Ambassa Zang was responsible; according to the Prosecutor General, State companies, ministries and other State structures managing public funds are subject to annual audits by the Minister Delegate to the Office of the President in charge of the Supreme State Audit Office (CONSUPE); according to the complainant, Mr. Ambassa Zang was never informed about the audits, invited to contribute to the audit process, informed of the conclusions or invited to comment on them;
- On the basis of the audits, the Head of State first opted for criminal proceedings on a charge of misappropriation of public funds; on his orders, a decision was signed on 12 October 2012 also bringing the accusations against Mr. Ambassa Zang before the Budget and Finance Disciplinary Council (CDBF), before which, unlike in a criminal procedure, defendants can be represented in their absence by legal counsel; it would seem that the decision was notified to Mr. Ambassa Zang's counsel in May 2013, or nearly seven months after it was signed, without any explanation; on 20 August 2013, Mr. Ambassa Zang received a partial request for information from the CDBF rapporteur, to which he responded in two defence memoranda; more than two months later, the CDBF rapporteur sent, according to the complainant in violation of the CDBF rules of procedure, a second partial request for information, to which Mr. Ambassa Zang responded on 13 December 2013 with another defence memorandum; according to the complainant, the CDBF rapporteur has also broken the rules of procedure by formulating accusations in addition to those mentioned in the audits;

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- The Minister Delegate to the Office of the President in charge of the CONSUPE, President of the CDBF, stated that CDBF's rules of procedure strictly comply with the general principles of the presumption of innocence and the right of defence, notably the right to be informed, the right to be assisted by a lawyer or counsel, and the right to adversarial proceedings and that "should one or several new incidents arising from the rapporteur's investigations be closely connected to the presumed offences on the basis of which the respondent was brought before the CDBF, the rapporteur is authorized, in accordance with consistent case-law, to take them into account in his examination of the case; this principle is at all times limited to the management period considered by the audit;" he also stated that it was not possible to establish a timetable for winding up the proceedings because how long they last depended not only on the complexity of the case, but also on the rapidity with which the various people contacted by the rapporteur (the respondent, witnesses, and others) reply to the requests for information they have received; he stated that "in this case, the difficulties encountered by the rapporteur stem chiefly from the absence of the respondent and the fact that it is therefore impossible to reach him, and from the extensions requested by his counsel to reply to the requests for information and the incomplete nature of the replies provided"; moreover, he stated that "the defence would be well advised to contact the CDBF Permanent Secretariat with a view to consulting, on site and as provided for in the regulations, all the documents in the case",

*Recalling* that, according to the complainant, there was no wrongdoing or misappropriation in Mr. Ambassa Zang's favour of any sum whatsoever, the accusations have to do with objective facts and the relevant documents are available at the Ministry of Public Works, the Office of the Prime Minister, the Tenders Regulation Agency and donors such as the AFD; moreover, on 13 July 2010, the International Chamber of Commerce handed down an arbitral award in *UDECTO v. State of Cameroon*, a dispute concerning the execution of the Wouri Bridge rehabilitation works; the complainant affirms that, since Cameroon won the case, the company UDECTO being sentenced to pay it substantial sums, and on the strength of the legal principle *non bis in idem*, the charges brought against Mr. Ambassa Zang regarding a prejudice he allegedly caused Cameroon are no longer applicable; the AFD Director General stated in her letter of 7 January 2014 that the AFD wished to specify that it had filed no complaint against Mr. Ambassa Zang and relating to his activities in the context of the proceedings against him before the CDBF, and that, owing to the blocking statute, it was not in a position to provide any observations on the matter that could be used as proof in administrative or judicial proceedings abroad, except pursuant to an official request made as part of international judicial assistance procedures,

*Recalling* that with regard to the criminal procedure against Mr. Ambassa Zang, the Prosecutor General of the Special Criminal Court deferred him and four other defendants to that court by an Order (*Ordonnance de renvoi devant le Tribunal criminel spécial*) dated 9 June 2014; *recalling* in this regard that, on 11 June 2013, more than two years later after the police had completed their investigation, the Prosecutor General of the Special Criminal Court filed charges before the examining judge of that court, directed against 15 persons, including Mr. Ambassa Zang,

*Recalling* that Mr. Simon Foreman, (partner, Courrégé Foreman law office and lawyer at the Paris Bar), was mandated to attend and report on the hearing which took place in this case before the Special Criminal Court on 17 September 2014; in his report, he mentions that "It is worth stressing that the examining judge's order seizing the court and presenting the charges against the accused mentions no sign whatsoever of personal enrichment on behalf of Mr. Ambassa Zang. Many of the accusations against him relate to the fact that the auditors found no justifying documents for various budgetary expenses, for which he could not account. Given that ministers do not normally leave office taking accounting documents with them, much of Mr. Ambassa Zang's defence arguments rely on the suggestion that such documents might be found, for instance, in the archives of the Ministry of Public Works or the Ministry of Finance. In any event, his inability to provide detailed justification for expenses that occurred 10 to 12 years' ago (2002-2004) does not amount to evidence of criminal misappropriation. In the absence of criminal intent, it should at the most qualify as mismanagement, possibly resulting in disciplinary proceedings. In reading the examining judge's order, I found no mention of any sign of criminal intent, let alone personal enrichment",

*Recalling also* that Mr. Foreman stated in his report that “the law in Cameroon does not allow an accused to be represented by defence counsels in a Criminal Court if he is absent [...] In other words, in the defendant’s absence, the court’s ruling will rely exclusively on the accusation and evidence brought by the prosecution. The European Court of Human Rights has ruled on a number of occasions that, although it is understandable that criminal systems may sanction defendants who refuse to present themselves to the court judging them, depriving them entirely from the right to be defended is a violation of their right to a fair trial. France, for instance, has had to amend its legislation accordingly. Even though the European Convention on Human Rights obviously does not apply in Cameroon, the right to a fair trial is also enshrined in international instruments that are binding upon Cameroon, such as the International Covenant on Civil and Political Rights or the African Charter on Human and People’s Rights. Fair trial principles are not only meant to protect the accused, but they also serve to guarantee better justice. A court of law’s findings are much less credible when it can rely on one party’s arguments only”,

*Recalling* its long-standing doubts about the fairness of the proceedings against Mr. Ambassa Zang and its conviction that the conditions were not met for the equitable and objective treatment of this case should Mr. Ambassa Zang, who enjoys official refugee status abroad, return to Cameroon,

*Considering* that the Special Criminal Court gave its decision on 18 June 2015, and found Mr. Ambassa Zang guilty and sentenced him in absentia to: (i) a penalty of life imprisonment; (ii) payment to the State of Cameroon of the sum of 5.8 billion CFA francs in damages; and (iii) lifelong forfeiture of his civil rights; Mr. Ambassa Zang sought from the Supreme Court annulment of the decision of the Special Criminal Court, arguing: (i) a material error regarding the amount of the financial penalty, the difference being no less than 91 million CFA francs; (ii) problems raised by the arbitral award concerning the authority of *res judicata*; and (iii) that Article 7 of the 2006 law organizing the judiciary stipulates that judges must state reasons for their decisions in law and in fact,

*Recalling* that, according to the complainant, Mr. Ambassa Zang’s prosecution must be seen in the context of “*Opération Épervier*” (Operation Sparrow Hawk), which was widely criticized as a campaign originally intended to combat corruption and misappropriation of public funds, but instead used to purge critically-minded public figures who, like Mr. Ambassa Zang, expressed views not always in line with those of their party,

1. *Is deeply concerned* about the verdict handed down against Mr. Ambassa Zang and the severity of the penalty imposed on him;
2. *Believes* that the proceedings leading to his conviction are fraught with irregularities to the point that they can in no way justify his conviction; *fears*, in fact, that the different worrying elements in his file, when taken together, lend strong weight to the accusation that he was subject to a criminal procedure motivated by other than legal concerns;
3. *Points out* in this regard the following: (i) the verdict does not show how the accusations amount to criminal misappropriation and personal enrichment and constitute a criminal offence; (ii) Mr. Ambassa Zang has provided extensive and detailed rebuttals of each of the accusations made against him; (iii) the chief accusation against Mr. Ambassa Zang relates to the Wouri Bridge rehabilitation works, which matter the International Chamber of Commerce already fully adjudicated by finding company UDECTO at fault; (iv) the State of Cameroon does not seem to have asked for, through a formal request for assistance, the information the AFD or other donors may have at their disposal to shed further light on the accusations against Mr. Ambassa Zang; (v) there is a discrepancy between the amount of money that appears in the original accusations and the one mentioned in the verdict against Mr. Ambassa Zang;
4. *Is deeply concerned*, therefore, that the Special Criminal Court did not find it fitting, even on a point of procedure, to take note of the submissions made by Mr. Ambassa Zang’s lawyer and therefore convicted Mr. Ambassa Zang without knowing the extensive arguments in his defence; *considers* that this is all the more worrying, given that no full appeal of the Special Criminal Court, which rules at single instance, is possible;

5. *Sincerely hopes* that the Supreme Court, in reaching its decision on the request for annulment of the sentence, will take due account of the multiple procedural irregularities that have occurred in the case; *decides* to closely follow those proceedings, including if possible, by mandating an observer;
6. *Is deeply concerned* that the disciplinary proceedings against Mr. Ambassa Zang appear to be stalled; *fails to understand* how, in light of his evident readiness to respond to the accusations in a timely and detailed manner, any delays can be attributed to him or his lawyer; *calls on* the authorities to do everything possible to expedite the proceedings so as to shed full light on the veracity of the accusations brought against him;
7. *Requests* the Secretary General to convey this decision to the relevant authorities, the complainant and any third party likely to be in a position to supply relevant information;
8. *Requests* the Committee to continue examining this case and to report back to it in due course.