



Inter-Parliamentary Union
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Democratic Republic of the Congo

DRC/83 - Jean-Bertrand Ewanga

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

The Governing Council of the Inter-Parliamentary Union,

Referring to the case of Mr. Jean-Bertrand Ewanga, a member of the National Assembly of the Democratic Republic of the Congo (DRC), and to the decision that it adopted at its 195th session (Geneva, 16 October 2014),

Referring to the information provided by the Speaker of the National Assembly in his letter of 8 October 2014, and by the complainant,

Recalling that Mr. Ewanga, an opposition member of parliament, gave a speech on 4 August 2014 at a public rally, and was arrested on the morning of 5 August 2014; he was charged with insulting the Head of State and inciting racial and tribal hatred; he was tried before the Supreme Court in first and last instance under the flagrante delicto procedure; during the trial, Mr. Ewanga claimed that the Constitution was violated, causing the judges to suspend the proceedings until a decision on these matters was made by the Constitutional Court; his challenges were rejected by that court and the trial before the Supreme Court resumed; he was subsequently sentenced to one-year imprisonment on 11 September 2014 on the charge of insulting the Head of State and other state officials,

Recalling that, according to the complainant, Mr. Ewanga was arrested, charged, and convicted in violation of his freedom of expression, parliamentary immunity and right to liberty and due process,

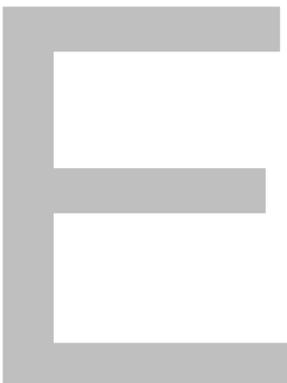
- **As regards freedom of expression**

Recalling that, according to the complainant, article 23 of the DRC Constitution on freedom of expression was violated; Mr. Ewanga was exercising his freedom of expression and did not make any statements that went beyond legal criticism of a Head of State,

Recalling that, according to the Speaker, a video of Mr. Ewanga's speech was broadcast during the Supreme Court trial and led to the Court's conviction that his words went beyond legal criticism of the Government's action and constituted a criminal offence,

Recalling that the video and the transcript of Mr. Ewanga's speech, provided by the complainant and other reliable sources of information, indicated that he stated that "Kabila must go", that "he stole the elections", that "he lied", and that the Speakers of the Senate and the National Assembly, as well as the Prime Minister, were sorcerers,

Recalling that members of the international community, including the European Union and the United Nations peacekeeping mission in the DRC (MONUSCO), expressed concern over the arrest of Mr. Ewanga, questioned the appropriateness of the use of the flagrante delicto procedure, and called on the authorities of the DRC to take necessary measures to ensure that freedom of expression was protected,



Recalling that, according to the complainant, Ordinance Law No. 300 of 16 December 1963, which stipulates the crime of insulting the Head of State, is not in compliance with the DRC Constitution promulgated in 2006 and with international human rights standards, and should be repealed or amended,

Emphasizing that freedom of expression is protected under article 19 of the International Covenant on Civil and Political Rights and that general comment No. 34 (2011) of the United Nations Human Rights Committee states that, “the mere fact that forms of expression are considered to be insulting to a public figure is not sufficient to justify the imposition of penalties [...] all public figures, including those exercising the highest political authority such as heads of state and government, are legitimately subject to criticism and political opposition” (paragraph 38), and that “defamation laws must be crafted with care to ensure that they [...] do not serve, in practice, to stifle freedom of expression” (paragraph 47),

Recalling that, during the universal periodic review (UPR), in 2014, the DRC agreed to “ensure that the freedoms of expression and peaceful assembly are respected in conformity with international standards and that members of political parties, journalists and human rights defenders are able to exercise their activities and to criticize the Government without being subject to intimidation, reprisals or harassment” (paragraph 134.134 of the UPR Working Group’s report),

Considering that, in its resolution A/HRC/30/L.30 of 29 September 2015, the United Nations Human Rights Council encouraged the Government of the DRC “to continue its efforts to provide for an expansion of political space in the context of elections, while ensuring respect for human rights and fundamental freedoms, including the freedoms of expression, of association and of peaceful assembly”, and also emphasized the importance of ensuring a fair trial for persons involved in proceedings,

- **As regards parliamentary immunity**

Recalling that the complainant alleges that Mr. Ewanga was arrested in violation of his parliamentary immunity; it contested the application of the flagrante delicto procedure and claimed that it was abusively used to override the National Assembly and article 107 of the DRC Constitution, which reads that “Parliamentarians may not be prosecuted, investigated, arrested, detained or tried for opinions expressed or votes cast by them in the exercise of their functions”; it alleges that the use of the flagrante delicto procedure was abusive, both because Mr. Ewanga was simply exercising his freedom of expression and therefore did not commit a crime, and also because he was not arrested at the moment that he gave his speech, but only the following day,

Recalling that the Speaker of the National Assembly noted that, according to article 107 of the Constitution, parliamentary immunity only protects opinions or votes expressed in the exercise of parliamentary functions; he also stated that according to article 7 of the Congolese Criminal Code, the procedure of flagrante delicto can be applied whenever an infraction “produces effects [...] provided that this occurs shortly after the violation”,

- **As regards due process**

Recalling that, according to the complainant, due process was not respected in the judicial proceedings, in particular: (i) Mr. Ewanga’s lawyers were not provided with access to the court files at the initial hearing of the Supreme Court proceeding and could not consider the evidence against him; (ii) the composition of both the Supreme Court and the Constitutional Court was not consistent with domestic law; (iii) the sentencing was made without the presence of Mr. Ewanga’s legal counsel, who had left the courtroom in boycott; (iv) Mr. Ewanga was convicted for additional offences – namely insulting the presidents of the National Assembly and the Senate and insulting the Prime Minister – not on the original charge sheet, although he was never notified of the charges during the trial and could not therefore prepare a defence to them,

Recalling that, according to the Speaker of the National Assembly, Mr. Ewanga’s lawyers had access to the Supreme Court files, otherwise they would not have obtained a stay of enforcement of the case on account of pleas of unconstitutionality,

Bearing in mind that the Constitutional Court was not yet fully operational and that its proceedings continued to be conducted by the Supreme Court at that time,

Considering that the Supreme Court and Constitutional Court decisions were never transmitted by the parties, despite several requests to that effect, and that Mr. Ewanga was released on 30 July 2015 after serving the whole of his sentence without any steps being taken by the Congolese authorities to reach a satisfactory resolution of the case,

Considering also that, following his release, Mr. Ewanga resumed his political activities and was reinstated in his parliamentary duties, which he currently continues to exercise,

1. *Notes with interest* that Mr. Ewanga regained his freedom after serving the whole of his sentence and *deplores* that no steps have been taken by the DRC authorities to reach a satisfactory resolution of the case;
2. *Is deeply concerned* that Mr. Ewanga was convicted for criticizing government policy and the Head of State, in violation of his fundamental right to freedom of expression; *notes with concern* that this is not the first case of its kind to have been submitted and *urges* parliament to protect the freedom of expression of its members in the future, irrespective of their political affiliation; also *calls on* the authorities to repeal or bring into line with international human rights standards any laws providing for the offence of insulting the Head of State as soon as possible, so as to prevent similar situations from recurring; *wishes* to be kept informed in this regard;
3. *Is shocked* that Mr. Ewanga has been unable to pursue appeal proceedings, despite the alleged irregularities during his trial; *recalls* that the possibility of lodging an appeal is one of the principal guarantees of a fair trial; *deeply regrets* that no reform has been undertaken to date to create an avenue of redress in the judicial process applying to parliamentarians, so that they may enjoy the same full protection of the rights of defence in judicial proceedings as all other citizens of the Democratic Republic of the Congo;
4. *Considers* that the National Assembly should have enquired, in full respect of the principle of separation of powers, as to the grounds justifying the use of the flagrante delicto procedure and *expresses its concern* that flagrante delicto appears to have been used abusively to override the procedure for lifting parliamentary immunity; *recalls* that parliamentary immunity serves to protect parliamentarians against potential politically motivated unfounded accusations and prosecutions, and that parliamentary institutions have a duty to ensure that any accusation against one of their members is well founded;
5. *Regrets* not receiving a response to its offer of technical assistance and reiterates that the IPU is available to share its experience in order to help the Parliament of the DRC to reform its existing legal framework so as to strengthen the protection of the fundamental rights of parliamentarians and of freedom of expression, reforms that are essential to provide for an expansion of political space in the context of elections;
6. *Requests* the Secretary General to convey this decision to the parliamentary authorities, the complainant and any third party likely to be in a position to supply relevant information;
7. *Decides* to close the case.