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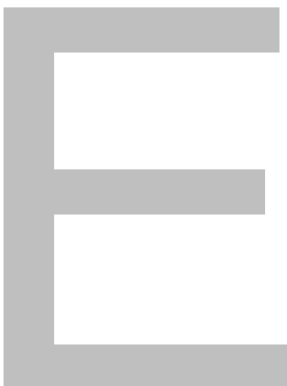
Democratic Republic of the Congo

- DRC/32 - Pierre Jacques Chalupa
- DRC/49 - Albert Bialufu Ngandu
- DRC/50 - André Ndala Ngandu
- DRC/51 - Justin Kiluba Longo
- DRC/52 - Shadrack Mulunda Numbi Kabange
- DRC/53 - Héritier Katandula Kawinisha
- DRC/54 - Muamus Mwamba Mushikonke
- DRC/55 - Jean Oscar Kiziamina Kibila
- DRC/56 - Bonny-Serge Welu Omanyundu
- DRC/57 - Jean Makambo Simol'imasa
- DRC/58 - Alexis Luwundji Okitasumbo
- DRC/59 - Charles Mbuta Muntu Lwanga
- DRC/60 - Albert Ifefo Bombi
- DRC/61 - Jacques Dome Mololia
- DRC/62 - René Bofaya Botaka
- DRC/63 - Jean de Dieu Moleka Liambi
- DRC/64 - Edouard Kiaku Mbuta Kivuila
- DRC/65 - Odette Mwamba Banza (Ms.)
- DRC/66 - Georges Kombo Ntonga Booke
- DRC/67 - Mabuya Ramazani Masudi Kilele
- DRC/68 - Célestin Bolili Mola
- DRC/69 - Jérôme Kamate
- DRC/70 - Colette Tshomba (Ms.)
- DRC/73 - Bobo Baramoto Maculo
- DRC/74 - Anzuluni Bembe Isilonyonyi
- DRC/75 - Isidore Kabwe Mwehu Longo
- DRC/76 - Michel Kabeya Biaye
- DRC/77 - Jean Jacques Mutuale
- DRC/78 - Emmanuel Ngoy Mulunda
- DRC/79 - Eliane Kabare Nsimire (Ms.)
- DRC/71 - Eugène Diomi Ndongala
- DRC/72 - Dieudonné Bakungu Mythondeke
- DRC/82 - Adrien Phoba Mbambi
- DRC/85 - Martin Fayulu Madidi

***Decision adopted unanimously by the IPU Governing Council
at its 198th session (Lusaka, 23 March 2016)***

The Governing Council of the Inter-Parliamentary Union,

Referring to the cases of former members of parliament Mr. Pierre Jacques Chalupa, Mr. Eugène Diomi Ndongala, Mr. Dieudonné Bakungu Mythondeke and 29 other parliamentarians who were removed from office, to the decisions it adopted at its 193rd and 194th sessions (October 2013 and March 2014), and to the decisions adopted by the Committee at its 143rd and 149th sessions (January 2015 and January 2016),



Having before it the cases of Mr. Adrien Phoba Mbambi and Mr. Martin Fayulu Madidi, members of the current opposition, which were considered by the Committee on the Human Rights of Parliamentarians pursuant to the Procedure for the examination and treatment of complaints (Annex 1 of the revised rules and practices),

Taking into account a letter from the Speaker of the National Assembly of 9 March 2016 and information provided by the complainants,

Referring to the hearing with the delegation of the Democratic Republic of the Congo (the DRC) during the 134th IPU Assembly (Lusaka, March 2016),

Recalling the conclusions and recommendations of the Committee on the Human Rights of Parliamentarians' report on the mission to the DRC in June 2013 (CL/193/11b)-R.2), as well as the additions made to the case files of the 34 members and former members of parliament listed above,

Recalling that the former members of parliament concerned were expelled from the National Assembly, and that some were even threatened, detained, prosecuted and sentenced to periods of imprisonment after having expressed political opinions that differed from those of the presidential majority and those of the Head of State himself, with the exception of Mr. Phoba and Mr. Fayulu, who are currently still serving their terms of office,

Recalling that the DRC currently has the highest number of cases before the Committee, with 34 members and former members of parliament subjected to serious violations of their fundamental rights; that a total of 50 cases relating to the DRC have been examined by the Committee since the country's 2006 legislative elections (36 since the last parliamentary elections of 2011, and 14 during the previous legislative term); that none of those cases have been fully resolved and the grounds for complaint, which have grown in number over the last few years, have displayed similar and recurring traits; that three cases were closed after it was found that the fundamental rights of the members of parliament concerned, namely Mr. Muhindo Nzangi (DRC/81), Mr. Jean Bertrand Ewanga (DRC/83) and Mr. Roger Lumbala (DRC/80), had been violated by the DRC authorities and that it had become impossible to find satisfactory solutions to their cases,

Considering that no progress has been made towards a satisfactory resolution of the cases currently under examination,

Considering that Mr. Phoba was subjected to an attack in February 2014, and that the perpetrators have not yet been brought to justice, even though a complaint against them was lodged with the judicial authorities immediately after the attack,

Considering that, according to the complainant, Mr. Fayulu, member of the opposition and leader of the political party *Engagement for Citizenship and Development* (ECIDE), was arbitrarily arrested in violation of his parliamentary immunity on 14 February 2016 by officers of the military intelligence services; that those officers allegedly ill-treated, threatened and insulted Mr. Fayulu; that the officers allegedly confiscated his vehicle and personal effects, including documents relating to the activities of his political party, considerable sums of money and his mobile telephone – the entire contents of which were also downloaded by the officers; that Mr. Fayulu lodged a complaint after that incident; that the Prosecutor General is reported to have opened prosecution proceedings against Mr. Fayulu and then reportedly submitted an application to the National Assembly requesting that Mr. Fayulu's parliamentary immunity be lifted; that, according to the complainant, Mr. Fayulu was not informed of the charges laid against him, nor was he informed that a request for his parliamentary immunity to be lifted had been made, nor of the reasons for that request; that the complainant alleges that the aim of arresting Mr. Fayulu was to prevent the staging of a day of opposition protests scheduled for 16 February ("Dead City Day") and formed part of an element of a wider campaign of repression of the opposition in the context of numerous attempts to impede Mr. Fayulu's political activities and weaken the opposition,

Considering that the cases under examination bear witness to the existence of general problems within the National Assembly, but also in the executive and the judiciary, all of which relate to the protection of the fundamental rights of parliamentarians in the DRC, irrespective of their political

affiliations, given the number of members and former members of parliament concerned, and the severity of the common concerns in the various cases, which relate to:

- **Violation of freedom of opinion and expression:** the parliamentarians and former parliamentarians concerned all voiced opinions criticizing the Head of State, government policy and the presidential majority before suffering violations of their rights;
- **Instrumentalizing of justice and absence of due process:** the independence of the judiciary and observance of international fair trial standards have been very much called into question in all the cases examined, given the conditions in which the trials took place and the lack of any legal remedy for the parliamentarians sentenced (and, in the case of Mr. Phoba, given the continuing impunity of those who attacked him);
- **Arbitrary revocation of the parliamentary mandate and violation of parliamentary immunity:** in several of the cases examined, the mandate of the deputies concerned was revoked on questionable grounds while they were in office. Those members of parliament were not informed or given the chance to argue their side of the case in advance. The prosecution used the *flagrante delicto* procedure to short-circuit the process of lifting parliamentary immunity. The parliamentary authorities never requested to see the evidence that proved that *flagrante delicto* applied, and neither discussed nor called into question the fact that provisions of the Constitution had been circumvented in this way in violation of the rights of the parliamentarians concerned. In addition, the provisions of the Code of Criminal Procedure regarding *flagrante delicto* cases and observance of the rights of defence have not been fully respected in the subsequent judicial process,

Also considering that serious concerns remain in the cases of Mr. Chalupa and Mr. Ndongala regarding their state of health and their inability to receive appropriate care because of the actions of the Congolese authorities; that the arbitrary stripping of Mr. Chalupa's Congolese nationality also raises a particularly serious problem for the former member of parliament and businessman, who has indisputable ties to the DRC and who was made stateless as a result of being found guilty of forgery and counterfeiting after a trial characterized by serious irregularities and which offered no legal remedy,

Considering that no legislative or constitutional reforms that had previously been recommended have since been implemented in order to bring Congolese law in line with relevant international standards, particularly with regard to: (i) strengthening the independence of the judiciary and respect for fair trial standards, particularly on the issue of introducing a two-stage judicial procedure with regard to parliamentarians, in order that their right to defence be fully guaranteed where prosecutions arise, as is the case with all Congolese citizens; (ii) amendments to legislation relating to attacks on national security and crimes relating to the Head of State, in conformity with international standards on freedom of expression; (iii) the overhaul of the procedure for settling electoral disputes designed to strengthen transparency and equality, including by clarifying the rules for the provision of evidence; (iv) amendments to the procedure for the validation of the parliamentary mandate to ensure that the final validation of newly elected parliamentarians is only declared at the conclusion of the final results of any electoral dispute, once all avenues of appeal have been exhausted, or at the very least to ensure that a mechanism be found to avoid situations in which, at each election, disqualifications systematically occur some months after newly elected members have taken up their seats,

Considering that, during the hearing that took place at the 134th IPU Assembly (Lusaka, March 2016), the delegation referred to correspondence that had previously been sent by the Speaker of the National Assembly, and reaffirmed its commitment to finding solutions to the cases submitted to the Committee, and highlighted once again that those cases did not fall within their competence at the present time because of the principle of the separation of powers. In relation to the recent arrest of Mr. Fayulu, the delegation noted that the Speaker of the National Assembly had issued a statement calling for his immediate release and confirming that, to date, no request for the lifting of Mr. Fayulu's parliamentary immunity had been sent from the Prosecutor General. The delegation also noted that the question of compensation for disqualified members had been passed to the Government, which had not yet responded,

Considering that the situation of the 34 members and former members of parliament in question forms part of a worrying political context in which the political space has continued to shrink, while at the same time, fears have been expressed in relation to the Constitution and whether the

presidential and legislative elections scheduled for November 2016 will be held; that in a report of December 2015, the United Nations Joint Human Rights Office in the DRC documented that restrictions on freedom of opinion and expression were on the rise with regard to opposition politicians, the media and civil society. The United Nations High Commissioner for Human Rights has called on the authorities to ensure that all its citizens, irrespective of their political opinions, are able to participate fully in open, democratic debate, and that civil society campaigners, media professionals and opposition politicians are able to conduct their work without fear, in order that the next elections are conducted credibly and peacefully,

Bearing in mind that the DRC is party to the International Covenant on Civil and Political Rights and, by virtue of articles 2, 9, 10, 14, 19, 25 and 26 in particular, has committed to the requirement to respect and guarantee the fundamental rights of its citizens, including members of parliament, notably the rights to liberty and security of the person, to freedom of expression, the right to vote and to be elected in elections that ensure the free expression of the will of the electorate, the right to participate freely in the management of public affairs, the right to equality before the law, and the prohibition of all forms of discrimination and equitable and effective protection against all forms of discrimination, particularly with regard to political opinions; that the African Charter on Human and Peoples' Rights, to which the DRC is also a signatory, includes similar provisions,

Also bearing in mind that the preamble of the Constitution of the DRC reaffirms that the Congolese people support and are attached to international human rights standards, and that title II of the Constitution guarantees human rights and fundamental freedoms for Congolese citizens,

1. *Reiterates its profound concern* with regard to the situation of many members and former members of parliament, who have been subjected to serious violations of their fundamental rights, and to the concerning developments of the political situation in the DRC in relation to the upcoming elections;
2. *Urges* the authorities, once again, to take urgent measures to end those violations and resolve the situation of all the parliamentarians concerned using all possible means;
3. *Expresses the hope* that satisfactory solutions can be found quickly in the cases under consideration; and *believes* that a follow-up visit by the Committee to Kinshasa could help speed up the process; *hopes* that the delegation can meet with all the relevant authorities, with the complainants – including Mr. Ndongala in prison – and with any other persons it might deem useful to meet with for the successful fulfilment of its mission; *requests* the Secretary General to make contact with the authorities for that purpose;
4. *Reaffirms* that the cases are of a particularly political nature and that the authorities, and the parliamentary authorities above all, are both duty-bound and obliged to guarantee respect for and the protection of the fundamental rights of all parliamentarians, irrespective of their political affiliation; *recalls* that depriving a member of parliament of his mandate, his freedom and/or security because of a political opinion that he or she expressed constitutes a contravention of the provisions of article 19 of the International Covenant on Civil and Political Rights, to which the DRC is a signatory;
5. *Remains deeply preoccupied* by Mr. Chalupa's medical condition; and *renews its call to the authorities*, for humanitarian reasons, to issue as a matter of urgency travel documents that would allow him to travel abroad to receive medical care and then return to the DRC; *also considers* that the authorities should recognize as swiftly as possible that he has a right to Congolese nationality;
6. *Deeply regrets* Mr. Ndongala's continued detention; and *yet again urges* the DRC authorities to release him, in accordance with the recommendations made by the Head of State at the end of the national consultation exercise held in October 2013; and *reiterates* its concern over Mr. Ndongala's health; *highlights* the contradictory information provided by the complainants and the authorities with regard to the denial of medical care in detention; and *renews its call to the authorities* to ensure that measures are taken as quickly as possible to enable him to receive proper medical care;

7. *Also expects* that, before the end of the next ordinary parliamentary session, the National Assembly should undertake to transfer the financial entitlements due to the 29 members of parliament whose mandates were declared invalid, as well as providing them with a symbolic amount of compensation; *fails to understand* why the National Assembly referred the case to the Government, since responsibility for the payment of parliamentary allowances falls under its jurisdiction; *wishes* to have clarification in this regard; and *reiterates its wish* to be kept informed of any progress made;
8. *Renews its invitation* to the authorities to undertake appropriate legislative and constitutional reforms to bring an end to these recurrent violations of the parliamentarians' fundamental rights; and *reaffirms* the availability of the IPU to provide technical assistance to the Parliament of the DRC in that regard;
9. *Requests* the Secretary General to convey this decision to the competent authorities, the complainants and any third party likely to be in a position to supply relevant information;
10. *Requests* the Committee to continue examining this case and to report back to it in due course.