



Inter-Parliamentary Union
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Democratic Republic of the Congo

DRC/71 - Eugène Diomi Ndongala

***Decision adopted unanimously by the IPU Governing Council at its 201st session
(St. Petersburg, 18 October 2017)***

The Governing Council of the Inter-Parliamentary Union,

Referring to the case of Mr. Eugène Diomi Ndongala, a former member of the National Assembly of the Democratic Republic of the Congo (DRC), and to the decision adopted at its 198th session (Lusaka, March 2016),

Referring to communications from the Speaker of the National Assembly dated 10 October, 21 August, 30 March and 20 January 2017 and the information provided by the complainants,

Referring also to the report on the mission conducted to the DRC from 10 to 14 June 2013 (CL/193/11b)-R.2),

Recalling the following allegations provided by the complainants: Mr. Ndongala, the leader of an opposition political party, was framed because he publicly denounced large-scale electoral fraud during the 2011 elections and questioned the legitimacy of the election results; he also staged a protest at the National Assembly, in which 40 opposition members took part; for those reasons, Mr. Ndongala has been the target since June 2012 of a campaign of political and legal harassment aimed at removing him from the political process and at weakening the opposition; that harassment has in particular been marked by the following alleged violations of his fundamental rights: (i) arbitrary arrest on 27 June 2012, the day before Mr. Ndongala was to establish an opposition party platform, followed by unlawful incommunicado detention by the intelligence services from 27 June to 11 October 2012, during which Mr. Ndongala was allegedly ill-treated; (ii) arbitrary lifting of Mr. Ndongala's parliamentary immunity on 8 January 2013, in violation of his rights of defence; (iii) arbitrary revocation of his parliamentary mandate on 15 June 2013; (iv) baseless and politically motivated judicial proceedings that disregarded the right to a fair trial; (v) illegal pre-trial detention from April 2013 until his conviction on March 2014; (vi) denial of medical care in prison since the end of July 2013,

Recalling the following information and allegations:

- That the National Assembly has repeatedly asserted that, since Mr. Ndongala has boycotted the parliamentary institution to which he belonged and questioned its legitimacy, he could not expect to benefit from its protection; at the hearing held during the 130th IPU Assembly (March 2014), the delegation of the DRC stated that if Mr. Ndongala had not contested the legitimacy of the last elections and had agreed to take part in the parliamentary proceedings, the National Assembly would not have agreed to lift his parliamentary immunity and would not have revoked his parliamentary mandate;
- According to the authorities, Mr. Ndongala was never held incommunicado, but instead fled in late June 2012 to avoid arrest *in flagrante delicto*; that, after his parliamentary immunity had been lifted, he was arrested and placed in pre-trial detention; he was tried on charges of rape of minors that were unrelated to his political activities;

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- According to the complainants, the accusations that Mr. Ndongala had sexual relations with minors – qualified as rape by the prosecution – are unfounded and a pure fabrication;
- On 26 March 2014, at the end of a trial characterized by serious irregularities, Mr. Ndongala was sentenced to 10 years in prison for rape and for having both paid for and engaged in consensual sexual intercourse with underage females,

Also recalling that, in its previous decisions, it strongly criticized the fact that the trial had been tainted by serious violations of the guarantee of due process, as well as the fact that, in the DRC, judicial proceedings that involve parliamentarians do not include any appeal process; and that it has expressed its fear that a serious miscarriage of justice might have occurred, particularly in light of the highly political nature of the case,

Considering that the United Nations Human Rights Committee, to which Mr. Ndongala's case was also submitted, ruled in its conclusion of 3 November 2016 on the case that articles 2(3), 9(1), 10(1), 14(1) and 14(3)(b) of the International Covenant on Civil and Political Rights had been violated, and instructed the DRC to take appropriate steps to free Mr. Ndongala immediately, quash his conviction and, if necessary, launch fresh inquiries in accordance with the principles of equity and presumption of innocence, and to grant him suitable compensation; and that the DRC authorities have not implemented that decision,

Considering that the case was submitted to the national commission on human rights (CNDH-RDC), which on 29 May 2017 called on the Minister of Justice and the Prosecutor General of the Republic to implement the decision of the UN Human Rights Committee in accordance with the DRC's international obligations and to re-examine the case accordingly as soon as possible,

Recalling that the complainants, like the opposition parties in the DRC, consider Mr. Ndongala to be a political prisoner and have repeatedly demanded his release and that of other political prisoners, as a prerequisite to the resumption of political dialogue; and that the final report of the national consultations held between the majority and opposition political blocs in September 2013 recommended the release of political prisoners including Mr. Ndongala,

Considering that an inclusive overall political agreement signed on 31 December 2016 directs the National Assembly and Senate to give priority to the legislative agenda with respect to the elections and to the measures for easing political tensions in connection with the release of political prisoners; the parties to the agreement requested the National Episcopal Conference of Congo (CENCO) to "take the initiative in seeking an appropriate and satisfactory solution" in the case of Mr. Ndongala; they tasked CENCO with mediating to that effect and with facilitating agreement between the parties on modalities for implementing the agreement of 31 December through "particular arrangements", especially concerning the easing of political tensions; CENCO ended its mediation mission in the absence of agreement between the parties,

Considering that the particular arrangement for implementation of the measures to ease political tensions foreseen by the agreement of 31 December 2016 was signed on 27 April 2017 and that it provided for the release of seven symbolic political prisoners including Mr. Ndongala, on the fifth day following signature; and that Mr. Ndongala has not been released,

Considering that the Speaker of the National Assembly stated in his letters that the National Council for Follow-Up on the Agreement (CNSA) was put in place in July 2017, and that the CNSA, which is now responsible for measures to ease political tensions, had informed him on 2 October 2017 that initiatives were under way to obtain a presidential pardon for Mr. Ndongala;

Also recalling that, according to the complainants, Mr. Ndongala's health has deteriorated sharply since his detention began in late July 2013, but that the authorities have systematically refused to allow him to be taken to hospital and that he currently continues to be denied appropriate medical care; the UN Human Rights Committee, on 8 October 2014, requested the DRC to take all necessary measures to ensure that he receives appropriate medical care to prevent irreparable damage to his health; the authorities have stated that he has received appropriate medical care and that his situation does not require his evacuation for medical care abroad,

Considering that in April 2017 the authorities accepted his transfer from prison to a hospital in Kinshasa, where he currently remains; according to the complainants, further medical examination has revealed that Mr. Ndongala needs treatment not available in the DRC and which would require his transfer abroad; the application that his lawyer made to the authorities for that purpose remains unanswered,

1. *Thanks* the Speaker of the National Assembly for the information provided;
2. *Notes with interest* the steps being taken by the National Council for Follow-Up on the Agreement and Mr Ndongala's transfer to hospital; *wishes* to be informed of any new development as soon as possible;
3. *Deplores* the continuing detention of Mr. Ndongala although, over the past three years, the authorities have pledged many times to release him; again *urges* the authorities to proceed with his immediate release;
4. *Requests* the Secretary General to convey this decision to the parliamentary authorities, the Minister of Justice, the complainants and any third party likely to be in a position to supply relevant information;
5. *Requests* the Committee to continue examining this case and to report back to it in due course.