



Inter-Parliamentary Union

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## Niger

### RN/116 - Seidou Bakari

*Decision adopted by the Committee on the Human Rights of Parliamentarians at its 149<sup>th</sup> session (Geneva, 15-25 January 2016)*

The Committee,

*Referring* to the case of Mr. Seidou Bakari, a member of parliament of the National Assembly of Niger, and to the decision it adopted at its 148<sup>th</sup> session (October 2015),

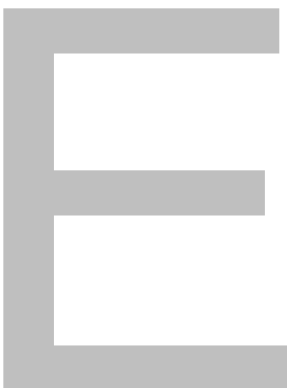
*Considering* that, on 28 July 2015, the Bureau of the National Assembly authorized the arrest of Mr. Seidou Bakari, Chairperson of the Parliamentary Group Modenfa/Lumana Africa, following a government arrest application of 10 July 2015 in connection with an embezzlement case dating from 2005; Mr. Bakari has not been arrested to date,

*Referring* to the following information and allegations conveyed by the complainant:

- **As regards the procedure followed by the Bureau of the National Assembly**

*Considering* that the complainant alleges that Mr. Bakari was a victim of a violation of his parliamentary immunity, and of his defence rights and the presumption of innocence while parliamentary proceedings were ongoing, which was unfair for the following reasons:

- The Bureau refused to hear Mr. Bakari before authorizing his arrest: the final decision was reached by a majority of seven members of the Bureau belonging to the majority, after five Bureau members belonging to the opposition groups had voted against after demanding in vain that Mr. Bakari be heard before any decision was taken;
- The 28 July 2015 meeting of the Bureau of the National Assembly did not have on its agenda the matter of authorizing Mr. Bakari's arrest, and the members of the Bureau had not received the case material beforehand; the file, consisting solely of the request of the Public Prosecutor passed on by the Government, was not communicated to the members of the Bureau until the end of the meeting and did not include the other case material (in particular the report of the administrative investigation mentioned in the Government's application and the report of the preliminary investigation conducted by the National *Gendarmerie*);
- The Bureau did not ask the Government to send it other case material and therefore did not verify that the allegations in the Government's arrest application were serious, reliable and genuine; neither did it place the issue on the National Assembly's agenda or create an ad hoc committee to carry out these checks, in accordance with the Constitution and the jurisprudence of the Constitutional Court;
- The Government waited until the end of the National Assembly session to file its application; the arrest application was deliberately lodged when parliament was in recess so as to short-circuit the procedure for lifting immunity by taking the matter via the Bureau of the National Assembly;
- The Bureau made its decision two weeks after the Government had filed its application, even though the case was not urgent and the prosecution service had not yet established whether Mr. Bakari had committed any criminal offences,



- **As regards the allegations of embezzlement and administrative and judicial proceedings**

*Considering* that, with regard to the allegations of embezzlement behind the arrest application, the complainant considers that they are unfounded and believes that Mr. Bakari provided substantial documentation and explanations in support thereof; the complainant also emphasized that Mr. Bakari had never been heard during the administrative investigation, or been informed of its findings; the complainant also provided a recent preliminary investigation report from the National *Gendarmerie* following up the administrative investigation, which appears to contradict the findings of the investigation, as it concludes that all transactions were consistent with the applicable legal framework,

*Considering* that the facts behind the Government's arrest application concern embezzlement allegations dating back to 2005; at that time, Mr. Bakari was in charge of coordinating the food crisis cell (CCA), attached to the Cabinet of the Prime Minister – who was at that time Mr. Amadou Hama – and operated under the twin control of the Prime Minister and Niger's international partners; the purpose of the CCA was to provide food assistance in food crisis periods; the complainant stated that Mr. Bakari simply acted upon the decisions reached collegially by the CCA and had no power to take individual decisions or order disbursements; and that, at the time, Niger's international partners had been satisfied with the management of funds, which was why they had certified the accounts,

*Considering* that, according to the complainant, the accusations stem from an administrative investigation conducted by a State inspector by order of the President of the Republic, after Mr. Amadou Hama and his political party – Modenfa/Lamana Africa – went over to the opposition; the complainant believes that, after Mr. Amadou Hama was rejected as Speaker of the National Assembly, Mr. Bakari had in turn been the victim of a political settling of scores seeking, for the regime in place, to sideline the opposition members of parliament ahead of the 2016 elections; the complainant emphasized that the proceedings instigated by the Government and the National Assembly against Mr. Bakari are similar to those previously used against Mr. Amadou Hama, apart from the nature of the charges,

*Considering* that, finally, the case is now in the hands of the Chief Examining Magistrate, who will decide on possible subsequent criminal proceedings,

*Bearing in mind* the applicable constitutional, legislative and regulatory framework, in particular articles 88 and 89 of the Constitution of Niger, articles 9 to 13 of the law establishing the status of members of parliament, articles 14 and 15 of the law establishing the status of the opposition and, lastly, articles 49 to 55 of the Standing Orders of the National Assembly,

*Taking into account* the fact that, in his letter of 23 March 2015, the Speaker of the National Assembly had stated that the latter had pledged to review its basic texts to ensure greater protection for parliamentarians, given the existence of a legal vacuum concerning the procedural steps for authorizing the arrest of a member of parliament when parliament was in recess,

1. *Regrets* that the National Assembly of Niger did not respond to its requests for information and *urges* it to provide its observations on the case;
2. *Notes with concern* the serious irregularities alleged by the complainant with regard to the procedure followed by the Bureau of the National Assembly for authorizing the arrest of Mr. Bakari, and the fact that it considers these irregularities to be similar to those previously observed during the arrest authorization of Mr. Amadou Hama in August 2014;
3. *Deplores* that the Bureau appears to have once again processed an arrest application in violation of the rights of defence, and despite the fact that no criminal charges had yet been established against the member of parliament concerned; *recalls* that the *raison d'être* of parliamentary immunity, and in particular parliamentary inviolability, is to ensure that parliament functions smoothly and in complete independence, shielding its members from frivolous accusations, and that, therefore, lifting a member's parliamentary immunity is a serious measure that must be taken in conformity with the applicable constitutional, legislative and regulatory provisions and with absolute respect for the rights of defence of the parliamentarian concerned;

4. *Observes with concern* that, unlike the procedure for lifting immunity, the procedure for authorizing the arrest of a member of parliament by the Bureau while in recess is currently governed by no legal provisions; *considers* that this legal vacuum is not conducive to ensuring due process and *is surprised to learn* that the Standing Orders have not been amended with a view to establishing an appropriate framework for the procedure, despite the commitment made by the Speaker of the National Assembly to that effect in March 2015; *wishes* to know why not;
5. *Notes* that the judicial proceedings are ongoing and that it is up to the Chief Examining Magistrate to decide on whether or not criminal proceedings should be brought against Mr. Bakari; *urges* the authorities to inform it as soon as possible of the decision taken in this respect and of subsequent judicial proceedings where appropriate;
6. *Requests* the Secretary General to convey this decision to the parliamentary authorities, the complainant and any third party likely to be able to provide relevant information;
7. *Decides* to continue examining the case.