



Inter-Parliamentary Union

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Democratic Republic of the Congo

DRC86 - Franck Diongo

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. Diongo, a member of the National Assembly of the Democratic Republic of the Congo (DRC) and president of an opposition party, whose case has been under review by the Committee on the Human Rights of Parliamentarians since December 2016 under its “Procedure for the examination and treatment of complaints” (Annex I of the Rules and practices of the Committee),

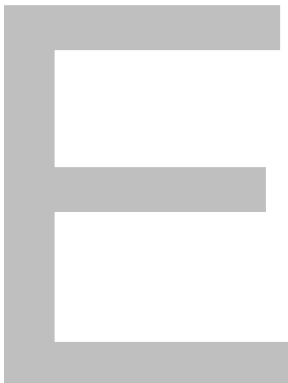
Referring to the letters from the Speaker of the National Assembly dated 10 October, 21 August, 30 March and 20 January 2017,

Referring to the hearing of a delegation from the DRC at the Committee’s 152nd session (January 2017),

Considering that the complainants and the authorities agree on the following facts: Mr. Franck Diongo, member of parliament and President of the *Mouvement Lumumbiste Progressiste* (MLP) opposition party, was arrested together with a dozen activists from his political party at his home on 19 December 2016 by Presidential Guard soldiers. He was summarily tried on 28 December 2016, under an accelerated procedure and sentenced, in both the first and the last instance, to five years in prison for arbitrary arrest and illegal detention aggravated by torture. He has been serving sentence at Kinshasa prison since that time,

Taking into account that the events took place in an atmosphere of tension following the postponement of the presidential and legislative elections initially scheduled for the end of 2016; that 19 December was the date when, under the Constitution, the mandate of the Head of State was due to end; the opposition had for months been calling for elections to be held and for the Head of State to step down,

Considering that, according to reports issued by the United Nations Mission in the DRC (MONUSCO), and in particular by the United Nations Joint Human Rights Office (UNJHRO), Mr. Diongo’s arrest took place amidst violent clashes in Kinshasa and elsewhere in the country; the UN deplored the gross negligence on the part of police, defence and security forces during those incidents, the violent suppression of dissenting voices and the heavy-handed and irresponsible reaction to protests on the part of the authorities, which it said risked leading to an escalation of the violence; also according to the UN reports, on 13 December 2016 Mr. Diongo had announced his support for the candidature of Mr. Moïse Katumbi (declared opponent of President Kabila) in the presidential election; he had also been the only opposition figure to continue calling for protests and to openly oppose the President on 19 December after the arrests and crackdown of the previous days,



Taking fully into account the following allegations and information on which the positions of the two sides differ:

- **Circumstances underlying the arrest of Mr. Diongo and parliamentary immunity**
 - According to the complainants, on 19 December three Presidential Guard soldiers – identified as such – who were dressed in civilian clothes and armed, tried to make their way to Mr. Diongo’s house. Fearing for the politician’s safety on a day of tension following his call for a demonstration despite the bans imposed by the authorities, young men from the neighbourhood “apprehended them” and took them to Mr. Diongo’s house. Mr. Diongo told the young men not to harm the soldiers, and requested a team from MONUSCO to intervene and take their testimonies so as to prevent their being exposed to vengeful acts by the public. Presidential Guard soldiers then arrived to arrest him and the 15 party members who were present. His house was looted and ransacked.
 - The complainants allege that Mr. Diongo has committed no offence and is a political prisoner. His parliamentary immunity was ignored and the recourse to accelerated procedure was improper, according to the complainants, since he had committed no offence. They consider that this was a plot staged by the ruling regime to silence him and weaken members of the opposition by any means and to prevent protests against the extension of the Head of State’s mandate. They state that Mr. Diongo had already suffered persecution, threats and assassination attempts during the previous months of his struggle for regime change. His protests to the authorities went unanswered, according to the complainants.
 - The authorities have provided several versions of events. There are several points of discrepancy between them:
 - (i) The Supreme Court of Justice gave the following version in its verdict: Three Republican Guard soldiers in plain clothes took a shortcut to return home and “found themselves ambushed by a group of young men who subjected them to a beating”. The young men took them to Mr. Diongo’s residence, on his instructions. There, they were subjected to “a detailed interrogation focusing on their rank, role and their reasons for being in the district, and all three were subjected to a number of blows from clubs and threatened with machetes”. They were detained for around four hours at Mr. Diongo’s residence and freed through the intervention of MONUSCO.
 - (ii) The official correspondence dating from Mr. Diongo’s arrest refers to “a subversive movement”, to “inciting civil disobedience” and to the organization of an “insurgency” by Mr. Diongo and his “militia”.
 - (iii) The version provided by the National Assembly refers to the fact that Mr. Diongo was arrested for his own safety to prevent any acts of vengeance by members of the Republican Guard.
 - The Speaker of the National Assembly asserts that he informed the Assembly’s plenary of the infringements that had triggered the recourse to accelerated procedure and had informed the Public Prosecutor to ensure that Mr. Diongo’s rights of defence and his parliamentary immunity were upheld. The specific circumstances behind the accelerated procedure have not been communicated by the authorities.
- **Torture of Mr. Diongo**
 - According to the complainants, Mr. Diongo and his party supporters were held in the Tshatshi military camp and at the premises of the military intelligence services (ex-DEMIAP) after their arrest and before being transferred to the prosecution service. They were forced to swallow a drink and also hemp. They were injected with an unknown substance. They were struck with rifle butts, beaten with an iron bar enclosed in a PVC tube, burned with sulphuric acid and seriously wounded with metal wire and bars. On 27 February 2017 Mr. Diongo lodged a complaint with the military courts concerning these acts, which was ignored.
 - No information has been provided in response to the allegations of torture and detention. The Speaker of the National Assembly has simply stated that he requested Mr. Diongo’s

transfer to the National Public Prosecutor's Office because a military intelligence unit was not an appropriate place of detention for a member of parliament. The Supreme Court did not mention these allegations in its decision although, according to his lawyers and the photographs taken of the trial, Mr. Diongo was forcibly taken to the hearings in a hospital bed while attached to a drip.

- **Fairness of Mr. Diongo's trial**

- According to the complainants, the minimum guarantees of the right to a fair trial were not observed: Mr. Diongo was not capable of preparing his defence or of appearing in court owing to his maltreatment in detention; he had no access to lawyers prior to the trial; no defence witness was heard by the court; the defence could not question prosecution witnesses; many procedural irregularities were committed including the airing of the verdict on national television before it had been read out at a public hearing; no remedy existed to appeal against his conviction, the court refused, without any reasoned decision, to accept his constitutional challenge against that absence;
- The Speaker of the National Assembly emphasized that Mr. Diongo had indeed enjoyed the support of his lawyers during the trial proceedings;
- The reasoned decision of the Supreme Court adduced no proof in support of its conclusions and did not present Mr. Diongo's version of events, despite the stark contradictions between the versions given by Mr. Diongo and his supporters, on one hand, and the public prosecutor and plaintiffs on the other; the court took no account of the political security context prevailing at the time, nor of the background of oppression and threats to which Mr. Diongo stated he had long been subjected, particularly from Republican Guard soldiers;
- The 15 party members arrested with Mr. Diongo were tried separately by a regular court. Eight of them were acquitted on 3 June 2017 and the other seven were handed 7-month prison sentences for abduction and assault and battery, with extensive mitigating circumstances. Unlike the Supreme Court decision, the court ruling referred clearly to the grounds raised by the defence lawyers and to the evidence used by the court in reaching its verdict.

- **Conditions of detention**

- The complainants allege that, despite repeated requests, Mr. Diongo was not given proper medical care while in detention following the maltreatment he suffered during his arrest and given his chronic health problems; his health therefore deteriorated in prison, according to the complainants; Mr. Diongo was transferred to hospital on 18 August 2017, but under the supervision of the Presidential Guard, not the police, an illegal procedure that raised concerns about Mr. Diongo's safety; following a brief stay in a private clinic he was forcibly returned to prison on 31 August without having received the necessary care;
- The Speaker of the National Assembly stated in his letter dated 30 March 2017 that he had contacted the Minister of Justice to ensure that Mr. Diongo was assured appropriate medical treatment and visiting rights at all times while in prison; no information on the events of August has been provided;

Considering the above-mentioned contradictions and discrepancies concerning the facts underpinning the conviction of Mr. Diongo and the fact that the Speaker of the National Assembly, in his letter dated 20 January 2017, suggested contacting MONUSCO, "an organization whose independence is beyond doubt" in order to verify that the facts were genuine,

Considering the following conclusions published by MONUSCO, in particular in the UNJHRO report on human rights violations committed in the context of the events of 19 December 2016:

- "On 19 December, in Kinshasa, soldiers of the Republican Guard arrested at least 16 MLP members, including their president and member of the national parliament, Franck Diongo. Mr. Diongo was allegedly arrested for having neutralized, held and beaten three soldiers of the Republican Guard who had tried to enter into his residence. Following MONUSCO intervention, Franck Diongo and his sympathizers released the three soldiers. After MONUSCO had left, several soldiers of the Republican Guard

attacked Mr. Diongo's residence and arrested him and 15 MLP members, before looting and damaging the residence.

- Following their arrest, Mr. Diongo and the members of his party were sent to the Tshatshi military camp, where they were tortured by soldiers of the Republican Guard. They were then transferred to the prison in Makala. Franck Diongo was detained at the premises of the military intelligence services, where he suffered cruel, inhuman and degrading treatment before being transferred the same night to the criminal police, then the Public Prosecutor's Office and finally to Makala prison."
- Before, during and after the events of 19 and 20 December, the Congolese authorities carried out mass arrests and detained individuals suspected of planning or taking part in protests, in an attempt to prevent any demonstration. The complete bans on protests decreed by the authorities were unjustified and disproportionate in terms of maintaining law and order, and contravened articles 25 and 26 of the Constitution as well as international law. The UNJHRO report also condemned the disproportionate use of force and repressive measures used against peaceful demonstrators and the impunity enjoyed by the security forces for their acts. The UNJHRO emphasizes that "despite several appeals made by national and international organizations, including United Nations Human Rights Council special procedures, the authorities took no steps to establish an environment more conducive to peaceful political activity."

Considering lastly that the agreement of 31 December 2016 concluded by the majority and opposition political stakeholders to try to find a way out of the crisis provides for the implementation of measures to improve the political situation, namely by freeing all political prisoners; the DRC delegation, at its hearing in January 2017, considered that Mr. Diongo's situation could be settled within that framework in such a way that he could receive a measure of leniency and regain his freedom; to date, Mr. Diongo's name has not appeared on the list of political prisoners affected by these political tension-easing measures,

Recalling the seriousness of the shared concerns about the 34 cases involving other current and former members of parliament from the DRC that have long been before the Committee, especially those concerning violations of the freedom of expression of parliamentarians who spoke out against the position of the Head of State, the policy of the Government and the presidential majority, the manipulation of the justice system and the absence of fair process, and given the conditions in which the various trials involving these parliamentarians have taken place and the absence of remedy, as well as the repeated attacks made on parliamentary immunity, short-circuited on several occasions in the past by the public prosecutor using an unfair accelerated procedure,

1. *Thanks* the Speaker of the National Assembly for the information provided and the communications sent to the competent authorities;
2. *Considers* that the allegations of the complainants are credible in respect of the information received from both parties and of the context in which events have unfolded; *notes in particular* that there is nothing in the Supreme Court of Justice's sentencing of Mr. Diongo to indicate that the Court attempted to establish what actually happened and that, rather, it seems to have focused solely on the version of events given by the public prosecutor and did not try to verify it by means of either incriminating or exculpatory evidence, *also notes with concern* that the Court's decision cites no evidence demonstrating that Mr. Diongo was personally responsible for the incidents of 19 December, by contrast with the decision issued by the court which tried the party activists arrested with him and acquitted most of them;
3. *Fears* that Mr. Diongo was arrested and sentenced for attempting to continue expressing his opposition to the extension of the Head of State's mandate, and so as to put an end to the protests organized by the opposition; *considers* that the basic rights of freedom of expression, peaceful assembly and a fair trial have been neither observed nor protected by the executive, judicial and legislative authorities of the DRC;

4. *Is alarmed* that an incumbent member of parliament was kept in military confinement and tortured *and shocked* that the authorities appear to have taken no appropriate action;
5. *Calls upon* the authorities to release Mr. Diongo as quickly as possible in the framework of implementing the measures for improving the political situation as provided for in the agreement of 31 December 2016, since Mr. Diongo meets all the conditions for inclusion in the list of political prisoners; *likewise urges them* to ensure that the complaint which Mr. Diongo submitted to the military courts concerning the abuse he suffered is processed without delay and in a transparent, impartial and independent manner;
6. *Reminds* the authorities, principally the parliamentary authorities, that they have a duty and obligation to guarantee respect and protection for the fundamental rights of all parliamentarians, whatever their political affiliation, and *urges* the National Assembly to perform that task to the full in the future; *emphasizes* that the integrity and independence of the entire institution of parliament is at stake when it permits such situations to occur and reoccur, especially when, in such a tense political context, only genuinely inclusive political dialogue that respects the opposition's role offers any hope of a way out from the crisis that will bring benefits to the Congolese population;
7. *Requests* the Secretary General to convey this decision to the parliamentary authorities, the complainants 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.