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Democratic Republic of the Congo

DRC/71 - Eugène Diomi Ndongala

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

The Committee,

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 by the Governing Council at its 195th session (October 2014),

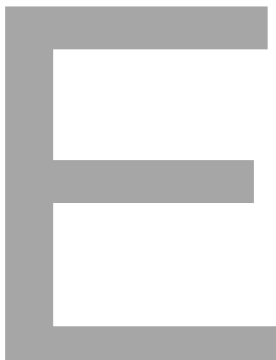
Referring to communications from the Speaker of the National Assembly dated 8 October and 21 December 2015 and 11 January 2016 and the information provided by the complainants,

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 campaign 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 time 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 pretrial detention from April 2013 until his conviction on March 2014; (vi) denial of medical care in prison since the end of July 2013,

Also recalling 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; that 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,

Further recalling that, 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 pretrial detention; and that he was tried on charges of rape of minors that were unrelated to his political activities,



Recalling in addition that, 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,

Recalling that, 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 appeals process; it expressed its fear that a serious miscarriage of justice might have occurred, particularly in light of the highly political nature of the case,

Recalling that, even though a recommendation to release Mr. Ndongala had been published in the final report of the national consultations held between the majority and opposition political blocs in September 2013, nothing to date had been done to act on this recommendation; due to the nature of the crime of which Mr. Ndongala was convicted, he did not qualify for a programme of presidential pardons and release on parole,

Considering that, according to the complainants, the Head of State announced in 2015 that he intended to organize a renewed process of political dialogue because of elections scheduled for 2016, and that the opposition parties had set the condition that talks could only take place if political prisoners were first released, including Mr. Ndongala,

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,

Recalling in that regard, that in her letter of 27 November 2013, the Minister of Justice stated that: there was no truth to the allegations that Mr. Ndongala had been denied medical care; the applicable legislative provisions had been respected; that Mr. Ndongala had been seen by a doctor at the military hospital at Kokolo camp in July 2013; and that the doctor had recommended x-rays and physiotherapy; *also recalling* that Mr. Ndongala had obtained a recommendation from the doctor that he continue his treatment at a hospital near the airport that had no agreement with the prison; that “the proximity of the international airport [was] indicative of Mr. Ndongala's intentions”; that the prison administration had acted in good faith and given Mr. Ndongala every opportunity to have access to appropriate care outside the prison; but, that he had abused that possibility through his behaviour; and that at the hearing held during the 130th IPU Assembly (March 2014), the delegation of the DRC said, with regard to the denial of medical care, that the fact that Mr. Ndongala was still alive was “irrefutable proof that he continued to receive treatment, otherwise he would already be dead”,

Recalling that the case of Mr. Ndongala was referred to the United Nations Human Rights Committee on 22 September 2014 and requested on 8 October 2014 that the DRC take all necessary measures to provide appropriate medical assistance in order to ensure that no irreparable health damage is incurred by Mr. Ndongala,

Considering that, in a letter dated 5 January 2016 from the Deputy Minister for Justice and Human Rights to the Speaker of the National Assembly, provided as part of the communication received from the Speaker of the National Assembly on 11 January 2016, the authorities reiterated that Mr. Ndongala had been and continued to be provided with appropriate medical care; that he had already attended the best medical establishments in Kinshasa; that he had chosen where to go himself; and that the current situation did not require Mr. Ndongala to be evacuated abroad for medical reasons,

1. *Thanks* the Speaker of the National Assembly for the information provided;
2. *Reaffirms* its previous preoccupations and *notes with concern* that no progress has been made towards resolving the case; *once more urges* the DRC authorities, including parliament, to take all necessary measures to ensure the release of Mr. Ndongala, in accordance with the recommendations made at the national consultations in October 2013;

3. *Reiterates* its concerns regarding Mr Ndongala's health; *draws attention* to the contradictory information provided by the complainants and the authorities in relation to the denial of medical treatment during his detention; and *therefore expresses the desire* to send a delegation to Kinshasa to visit Mr. Ndongala while he is detained and to discuss the situation with the competent authorities;
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. *Decides* to continue examining this case.