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Democratic Republic of the Congo

DRC/80 - Roger Lumbala

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. Roger Lumbala and to the decision adopted by the Governing Council at its 193rd session (October 2013),

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

Also referring to the report on the mission carried out to the Democratic Republic of the Congo (DRC) (CL/193/11b)-R.2),

Recalling that on 8 January 2013, Mr. Lumbala's parliamentary immunity was revoked by the National Assembly on the grounds of his unjustified and unauthorized absences,

Recalling the following information and allegations on the file:

- According to the complainant, Mr. Lumbala was arbitrarily arrested in Burundi on 1 September 2012 by the Burundian intelligence services, at the request of the intelligence services of the DRC and in violation of his parliamentary immunity; the Congolese authorities have denied any involvement in the arrest; international diplomatic efforts enabled Mr. Lumbala to leave Burundi on 15 September 2012;
- On 10 September 2012, the Prosecutor General requested the lifting of Mr. Lumbala's parliamentary immunity for his arrest for treason and offences against the State security; the President of the National Assembly confirmed that Mr. Lumbala was being prosecuted for having joined the M23 rebel movement;
- Following the Prosecutor General's request, the National Assembly initiated the procedure for lifting Mr. Lumbala's immunity in mid-October 2012; the procedure was subsequently interrupted without any explanation;
- On 8 January 2013, during an extraordinary session in which the issue was not on the agenda, according to the complainant, the National Assembly decided to revoke Mr. Lumbala's parliamentary immunity for unjustified and unauthorized absences, without having heard or notified him beforehand,

Recalling that the complainant has consistently stated that Mr. Lumbala had never joined the M23; that the latter claims that he was subjected to the arbitrary revocation of his parliamentary mandate and that the presumption of innocence and the rights of defence were infringed during the parliamentary and judicial proceedings, for the following reasons:

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- Mr. Lumbala was never formally notified of the charges against him; he was not questioned prior to the request for arrest and was unable to submit his defence;
- The letter sent by Mr. Lumbala to the Speaker of the National Assembly submitting his defence to the plenary Assembly in his absence was not forwarded to members of parliament; neither was it read out in plenary, nor considered during the debates;
- The decision to revoke Mr. Lumbala's parliamentary mandate was taken in breach of the procedure prescribed by the rules of procedure, without a nominal vote and on a vague question raised in the Assembly at the time of voting;
- Mr. Lumbala and his lawyers were never officially notified of the decision to revoke his parliamentary mandate, nor of the grounds for doing so;
- Both the parliamentary procedure and the legal proceedings are based on purely political considerations, given the lack of evidence against Mr. Lumbala,

Recalling that the public statements made by Mr. Lumbala on Radio France International, in which he claimed to support the M23 in its armed struggle against the Congolese regime, were documented in the file, together with the report of 15 November 2012 of the United Nations Group of Experts on the Democratic Republic of the Congo, which also established a link between Mr. Lumbala and the M23,

Recalling that the presidents of the opposition parliamentary groups informed the Committee delegation that visited the DRC in 2013 that the Bureau of the Assembly applied "double standards", given that other members of parliament were able to sit without interference despite their close links with armed groups,

Further recalling the conclusions of the report on the mission carried out to the DRC in 2013, which it endorsed:

- The National Assembly undeniably decided to revoke Mr. Lumbala's parliamentary mandate because he had joined the M23, with the parliamentary institution refusing to accept the support lent by a member of parliament to a rebel group responsible for serious crimes committed in the east of the country;
- No provisions in the Constitution, the law or the rules of procedure explicitly give the National Assembly the right to revoke the mandate of a member of parliament in such a case; article 119 of the rules of procedure, applied in this case, covers a different situation, that of member of parliament absenteeism;
- The permanent exclusion of a member of parliament must remain an exceptional procedure and be strictly confined to cases provided for in legislation, as it could otherwise become a dangerous weapon in the hands of the majority; the revocation of a parliamentary mandate is a serious measure, permanently depriving the persons concerned of the possibility of carrying out the functions entrusted to them, which must therefore be applied in strict compliance with the law and only on serious grounds; revoking the mandate of a member of parliament must, in any case, follow a procedure that strictly respects the rights of defence of the member of parliament concerned; these rights include the fact that a member of parliament must be notified in advance of the procedure initiated against him, have the opportunity to prepare his defence and to be present in person before parliament, or with the assistance of a representative;
- The National Assembly should have completed the procedure for lifting parliamentary immunity that it had originally initiated against Mr. Lumbala to allow the courts to decide on this matter; the Assembly, in this case, misused the procedure for dealing with unjustified absence, which was the only procedure that allowed it to exclude Mr. Lumbala from the parliamentary institution under its rules of procedure; neither the parliamentarian concerned, nor his lawyers, were notified of the revocation of the mandate and have therefore been deprived of the opportunity to submit their defence,

Knowing that the next parliamentary elections are scheduled for November 2016 and that the current legislature is coming to an end,

1. *Deplores* that, instead of completing the procedure for lifting parliamentary immunity, the National Assembly granted itself the power to revoke Mr. Lumbala's parliamentary mandate on grounds not provided for by law and in violation of the presumption of innocence and the rights of defence of the parliamentarian concerned;
2. *Recalls* that parliamentarians are entrusted with their mandate by the people and that a parliamentary mandate can only be revoked when in session in absolutely exceptional circumstances, in cases determined solely by the Constitution and by law and following procedures that strictly respect the rights of defence;
3. *Concludes*, therefore, that the National Assembly misused the revocation procedure for dealing with unjustified absence; and *decides* to close the file, in accordance with article 25(a) of its Procedure for the examination and treatment of complaints.