Inter-Parliamentary Union
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145th IPU Assembly

Kigali, Rwanda
11-15 October 2022

145th IPU ASSEMBLY
2022 | Kigali, Rwanda

Governing Council
Item 14(c)

CL/210/14(c)-R.1
Kigali, 15 October 2022

Committee on the Human Rights of Parliamentarians

Decisions adopted by the IPU Governing Council at its 210th session (Kigali, 15 October 2022)

CONTENTS

Page

- **Brazil**: Ms. Talíria Petrone
  Decision *1*
- **Cambodia**: 57 parliamentarians
  Decision *4*
- **Côte d'Ivoire**: 14 parliamentarians
  Decision *9*
- **Democratic Republic of the Congo**: Mr. Jean-Marc Kabund
  Decision *12*
- **Eritrea**: 11 parliamentarians
  Decision *15*
- **Eswatini:** Three parliamentarians
  Decision *18*
- **Gabon:** Mr. Justin Ndoundangoye
  Decision *21*
- **Myanmar:** 63 parliamentarians
  Decision *24*
- **Tunisia:** Ms. Abir Moussi
  Decision *29*
- **Tunisia:** 56 parliamentarians
  Decision..... *32*
- **Türkiye:** 67 parliamentarians
  Decision *36*
- **Uganda:** Two parliamentarians
  Decision *41*
- **Venezuela:** 134 parliamentarians
  Decision *44*
- **Zimbabwe:** Ms. Joanah Mamombe
  Decision *49*
- **Zimbabwe:** Mr. Job Sikhala
  Decision *53*

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CL/210/14(c)-R.1
Kigali, 15 October 2022

Brazil

Decision adopted unanimously by the IPU Governing Council at its 210th session (Kigali, 15 October 2022)

Brazilian federal deputy for the Socialism and Freedom Party (PSOL), Talíria Petrone, poses for a photo at a square in Rio de Janeiro's city centre, Brazil, during International Women's Day on 8 March 2019. Daniel RAMALHO/AFP

BRA-16 – Talíria Petrone

Case BRA-16

Brazil: Parliament affiliated to the IPU

Victim: Female opposition member of parliament

Qualified complainant(s): Section I.(1)(a) of the Committee Procedure (Annex I)

Submission of complaint: March 2022

Recent IPU decision: March 2022

IPU mission(s): - - -

Recent Committee hearing(s): - - -

Recent follow-up:
- Communication(s) from the authorities: - - -
- Communication from the complainant: October 2022
- Communication to the authorities: Letter to the Attorney General: July 2022; Letter to the President of the IPU Group: September 2022
- Communication to the complainant: October 2022

Alleged human rights violations

- ✓ Threats, acts of intimidation
- ✓ Violation of freedom of opinion and expression
- ✓ Violation of freedom of movement
- ✓ Other violations: discrimination

A. Summary of the case

Ms. Talíria Petrone Soares, member of the opposition left-wing Socialism and Freedom Party (*Partido Socialismo e Liberdade* (PSOL)), was elected to the Chamber of Deputies of the Brazilian Federal Congress in 2018 and re-elected in October 2022. Ms. Petrone is a strong advocate for the human rights of women, people of African descent and people belonging to the lesbian, gay, bisexual, transgender and intersex (LGBTI) community.

The complainant claims that Ms. Petrone has faced multiple death threats since 2017, when she was a member of the Rio de Janeiro city council. According to the complainant, the threats have gained in intensity and scale following the assassination of Ms. Petrone's close friend and fellow PSOL member, Ms. Marielle Franco, in March 2018. Ms. Franco was a local council member in Rio de Janeiro, the state that Ms. Petrone represented in the Chamber of Deputies. The complainant reports that in 2019 Ms. Petrone was warned by the federal police that her life was in danger, several death threats against her having appeared on the dark web.

According to the complainant, in August 2020 Ms. Petrone moved to Brasilia, in another region of Brazil, along with her young daughter, acting on the advice of the security escort that was provided by Congress, as there were again serious grounds to believe that her life was in danger. The complainant reports that Ms. Petrone was forced to remain there for 18 months, from August 2020 until January

2022, which limited her ability to perform her duties as a parliamentarian and connect with her constituents in the state where she was elected.

According to the complainant, the threats and acts of intimidation against Ms. Petrone emanate from Rio de Janeiro-based right-wing militia groups operating on the dark web, in response to her commitment to the rights of minorities. Several other PSOL politicians have faced similar threats from these groups, including Mr. Jean Wyllys and Mr. David Miranda, two former members of the Brazilian Chamber of Deputies of the Brazilian Federal Congress.

The complainant states, with respect to Ms. Petrone's decision to return, as of February 2022, to live in the constituency she represents in parliament, that this decision can only be sustained if she receives the necessary protection, and if those responsible for the threats against her are held accountable for their acts. In this regard, the complainant states that, as in the case of Mr. Wyllys and Mr. Miranda (BRA-COLL-01), Ms. Petrone requires additional protection to the security escort already provided to her by Congress. According to the complainant, despite several complaints and repeated meetings with the competent authorities, including the federal police and local and federal prosecutors, there has been no effective investigation into the threats made against her. By September 2022, the complainant reported no progress in the human rights situation of Ms. Petrone.

B. Decision

The Governing Council of the Inter-Parliamentary Union

1. *Regrets* that the Brazilian authorities have not responded to the repeated requests for information sent by the Committee on the Human Rights of Parliamentarians; and *recalls* in this regard that, in line with its Rules and Practices, the Committee is doing its utmost to promote dialogue with the authorities of the country in question, particularly its parliament, to settle the cases at hand in a satisfactory manner;

2. *Is concerned* at the credible allegations that Ms. Petrone has been subjected to death threats and harassment because of her involvement in politics as a woman defending the rights of minorities, and at the allegation that despite the complaints she has lodged and the repeated meetings held with the competent authorities, there has been no effective investigation to identify those responsible for the death threats and hold them accountable;

3. *Recalls* that threats to the life and security of parliamentarians that go unpunished constitute a violation of their right to life, security and freedom of expression, and prevent them from exercising their parliamentary mandate, which affects the ability of parliament, as an institution, to fulfil its role; *urges* the competent authorities to duly spare no effort to identify the guilty parties and bring them to justice, the only way to prevent the recurrence of such offences; *considers* that parliament should help ensure that effective investigations are carried out into the threats; and *wishes* therefore to receive official information from parliament on any measure taken in this regard;

4. *Is concerned* that Ms. Petrone had to leave her Rio de Janeiro constituency and base herself temporarily in Brasilia to escape the imminent death threats against her; and *is perplexed* that the authorities recommended that Ms. Petrone take this security measure with no concrete steps apparently having been taken to arrest those responsible, which prevented her from carrying out her parliamentary duties for 18 months;

5. *Notes* the information provided by the complainant that Congress took steps to ensure that legislative police officials escorted Ms. Petrone in order to protect her during the exercise of her duties; *fails to understand* why, despite repeated requests to the competent authorities to be given adequate protection, Ms. Petrone has still not been given a sufficient level of protection to guarantee her safety; *also notes* the information from the complainant that Ms. Petrone's decision to return to her constituency can only be sustained if she receives the necessary protection; *calls on* the parliamentary authorities to spare no effort to ensure that Ms. Petrone is given sufficient protection as soon as possible; *considers*, moreover, that an analysis of the risks facing Ms. Petrone should be conducted by the competent authorities in order to

determine the level of protection she should be given, and *calls on* the parliamentary authorities to do what is necessary vis-à-vis the competent institutions to ensure that this analysis is carried out as soon as possible; and *wishes* to receive official information from the parliamentary authorities on any measure taken in this regard;

6. *Requests* the Secretary General to convey this decision to the parliamentary and judicial authorities, other competent national authorities, the complainant and any third party likely to be in a position to supply relevant information;

7. *Requests* the Committee to continue examining the case and to report back to it in due course.

CL/210/14(c)-R.1
Kigali, 15 October 2022

Cambodia

Decision adopted by consensus by the IPU Governing Council at its 210th session (Kigali, 15 October 2022) [1]

Former Cambodia National Rescue Party (CNRP) leader Kem Sokha arrives at the Phnom Penh municipal court for his trial in Phnom Penh on 22 January 2020. TANG CHHIN Sothy/AFP

KHM27 - Chan Cheng
KHM48 - Mu Sochua (Ms.)
KHM49 - Keo Phirum
KHM50 - Ho Van
KHM51 - Long Ry
KHM52 - Nut Romdoul
KHM53 - Men Sothavarin
KHM54 - Real Khemarin
KHM55 - Sok Hour Hong
KHM56 - Kong Sophea
KHM57 - Nhay Chamroeun
KHM58 - Sam Rainsy
KHM59 - Um Sam Am
KHM60 - Kem Sokha
KHM61 - Thak Lany (Ms.)
KHM62 - Chea Poch
KHM63 - Cheam Channy
KHM64 - Chiv Cata
KHM65 - Dam Sithik
KHM66 - Dang Chamreun
KHM67 - Eng Chhai Eang
KHM68 - Heng Danaro
KHM69 - Ke Sovannroth (Ms.)
KHM70 - Ken Sam Pumsen
KHM71 - Keo Sambath
KHM72 - Khy Vanndeth
KHM73 - Kimsour Phirith
KHM74 - Kong Bora
KHM75 - Kong Kimhak
KHM76 - Ky Wandara
KHM77 - Lath Littay
KHM78 - Lim Bun Sidareth
KHM79 - Lim Kimya
KHM80 - Long Botta
KHM81 - Ly Srey Vyna (Ms.)
KHM82 - Mao Monyvann
KHM83 - Ngim Nheng
KHM84 - Ngor Kim Cheang
KHM85 - Ou Chanrath
KHM86 - Ou Chanrith
KHM87 - Pin Ratana
KHM88 - Pol Hom
KHM89 - Pot Poeu (Ms.)
KHM90 - Sok Umsea
KHM91 - Son Chhay
KHM92 - Suon Rida
KHM93 - Te Chanmony (Ms.)
KHM94 - Tioulong Saumura (Ms.)
KHM95 - Tok Vanchan
KHM96 - Tuon Yokda
KHM97 - Tuot Khoert
KHM98 - Uch Serey Yuth
KHM99 - Vann Narith
KHM100 - Yem Ponhearith
KHM101 - Yim Sovann
KHM102 - Yun Tharo
KHM103 - Tep Sothy (Ms.)

1 The delegation of Cambodia expressed its reservations regarding the decision.

Alleged human rights violations

- ✓ Violation of freedom of opinion and expression
- ✓ Violation of freedom of assembly and association
- ✓ Abusive revocation of the parliamentary mandate
- ✓ Lack of due process at the investigation stage
- ✓ Lack of fair trial proceedings and excessive delays
- ✓ Failure to respect parliamentary immunity
- ✓ Violation of freedom of movement
- ✓ Threats, acts of intimidation
- ✓ Torture, ill-treatment and other acts of violence
- ✓ Impunity
- ✓ Arbitrary arrest and detention
- ✓ Inhumane conditions of detention

Case KHM-Coll-03

Cambodia: Parliament affiliated to the IPU

Victims: 57 former opposition parliamentarians (50 male and seven female, 55 from the National Assembly and two from the Senate)

Qualified complainant(s): Section I(1)(c) of the Committee Procedure (Annex I)

Submission of complaint: November 2011

Recent IPU decision: November 2021

IPU mission: February 2016

Recent Committee hearing: Hearing with the Cambodia delegation to the 145th IPU Assembly (October 2022)

Recent follow-up:
- Communication from the authorities: Letter from the Secretary General of the National Assembly (September 2022)
- Communication from the complainant: September 2022
- Communication to the authorities: Letter to the Secretary General of the National Assembly (September 2022)
- Communication to the complainant: October 2022

A. Summary of the case

On 16 November 2017, the Supreme Court dissolved the sole opposition party in Cambodia, the Cambodian National Rescue Party (CNRP). It also banned 118 CNRP members (including all 55 CNRP members of the National Assembly) from political life for five years with no possibility of appeal. Their parliamentary mandates were immediately revoked, and their seats reallocated to non-elected political parties allegedly aligned to the ruling party. The Supreme Court decision was based on charges of conspiracy with a foreign country to overthrow the legitimate government brought against the President of the CNRP, Mr. Kem Sokha. Seventeen former parliamentarians subsequently fled Cambodia and went into exile. The dissolution of the CNRP left the ruling Cambodian People's Party (CPP) – and Prime Minister Hun Sen – with no viable challengers in the February and July 2018 elections to the Senate and National Assembly.

The dissolution of the CNRP took place against the backdrop of long-standing and repeated threats and groundless criminal charges against its members of parliament. They had been repeatedly warned by the Prime Minister that their only choice was to join the ruling party or be prepared for the dissolution and ban of their party.

Mr. Kem Sokha, who became CNRP Acting President after its President, Mr. Sam Rainsy, went into exile in 2015, is accused of attempting to topple the Government on the basis of a 2013 speech he made on television in which he called for peaceful political change in Cambodia, without at any point inciting violence or hatred or uttering defamatory words. Mr. Kem Sokha, who is currently on bail, faces a 30-year prison term on treason charges and is reportedly banned from taking part in political life, as well as from leaving Cambodia. Mr. Kem Sokha's trial began in January 2020, but was suspended in March 2020, and appears to have only recently resumed.

Seventeen parliamentarians, who have all been forced into exile abroad, have been sentenced in one or more of the following mass trials against CNRP members in the last two years:

Ruling of 14 June 2022 – plotting and incitement: This concerns 60 CNRP politicians and supporters, including 12 former CNRP leaders who were convicted *in absentia* on charges of plotting and incitement and handed prison sentences of eight years. This case relates to the failed return attempt to Cambodia of Mr. Rainsy in November 2019 and the alleged plan to gather supporters both in the country and overseas to accompany him, as well as the establishment of the Cambodia National Rescue Movement abroad. The evidence mostly comprised Facebook posts expressing support for the former opposition party or democratic principles. No clear links were apparently made between the evidence accepted, each individual defendant and each element of the charges and the judge reportedly failed to provide any analysis for the decision.

Ruling of 17 March 2022 on charges of plotting, incitement and inciting military personnel to disobedience: This concerns 21 senior CNRP leaders, including seven CNRP parliamentarians, as well as supporters. The trial covered multiple issues, including the formation of the overseas Cambodia National Rescue Movement in 2018 and critical comments made by former CNRP officials about the COVID-19 pandemic. In court, several accused have recanted their prior testimonies, alleging they were given under duress. The seven parliamentarians were found guilty of the charges and sentenced *in absentia* to 10 years in prison.

Ruling of 1 March 2021 - plotting and incitement: The case concerns nine CNRP leaders, all CNRP parliamentarians, who were found guilty of carrying out an attack against Cambodian institutions or territorial integrity, with the prosecution accusing the group of an attempted coup, presenting evidence of speeches about raising funds to support defecting soldiers. They were sentenced *in absentia* to 20 to 25 years in prison and stripped of their right to vote, stand for election or be a public official, and ordered to pay a sizeable fine.

With regard to these trials, the United Nations (UN) Special Rapporteur on the human rights situation in Cambodia, in his report of 18 August 2022 (A/HRC/51/66), stated that the "Mass trials, particularly of individuals from the main opposition party and those seen to be antithetical to the dominant power base, have caused great concern and stifled the possibility of political pluralism […] Irregularities inherent in these trials include the lack of credible evidence, failings concerning respect for fair trial rights and due process guarantees, and the fact that several of the so-called accused are being tried in absentia in breach of human rights guarantees".

With regard to the independence and transparency of the judiciary and prosecutors, the Special Rapporteur stated in the same report that "This is a long-standing issue referred to decades ago in earlier United Nations resolutions on Cambodia. There is a more recent turn, however, in that some judicial and related personnel have close links with the political party in power; for instance, they might sit on various key committees of the party".

With regard to the local council elections held in June 2022, the Rapporteur held that "In essence, the 2022 commune elections took place peacefully and there were no major allegations of violations. There was a glimmer of diversity in political participation and in the results, which opened the door to the limited number of seats won by the opposition. However, the whole scenario was subject to the constrained civic and political space, compounded by the predominating power monopoly in the country", and that "the narrow political and civic space, which is the major challenge facing the country today, is partly a consequence of a variety of draconian laws which hamper civil and political rights entrenching the power monopoly already identified. Those laws are often too broad in their scope, also a feature of excessive legislation, and impose exorbitant fines and sanctions on those prosecuted under them".

Among a series of recommendations, the Special Rapporteur suggested that the Cambodian authorities: "open up the political and civic space in preparation for the national elections in 2023, in particular to ensure a genuine multiparty system, free and fair elections, checks and balances against power abuse, and guarantees for people's participation and shared power; […] suspend and reform laws, policies and practices that are antithetical to human rights, including the State of Emergency Law, […], various laws impeding freedom of expression, other freedoms and the work of NGOs, and laws on political parties and related elections; open up to political pluralism and ensure the separation of powers and functions, especially in order to safeguard the judiciary from executive seepage".

Similarly, the UN Human Rights Committee, which supervises the implementation of the International Covenant on Civil and Political Rights to which Cambodia is a party, in its concluding observations adopted at its 134th session (28 February–25 March 2022) echoed these findings and recommendations in great detail.

The leader of the Cambodian delegation to the 143rd IPU Assembly (November 2021) invited the Committee on the Human Rights of Parliamentarians to send a delegation to Cambodia to discuss its concerns and questions with all relevant stakeholders. Despite efforts by the IPU Secretariat to organize the mission soon after, the Cambodian authorities did not follow up, with the Secretary General of the National Assembly finally responding in a letter of 9 September 2022 that "For Cambodia, in 2022 there have been positive developments of the political situation in Cambodia

through Cambodia's assuming the role as the rotating Chair of ASEAN, the high-level visits of ASEAN top leaders and other world leaders to Cambodia as well as the successful conduct of the recent 2022 commune elections. The Parliament of Cambodia is of the view that it is no longer necessary to send any IPU fact-finding mission to Cambodia". Similarly, the leader of the Cambodian delegation to the 145th IPU Assembly, in a hearing with the Committee on the Human Rights of Parliamentarians, echoed these observations. He added that, in addition to the ruling Cambodian People's Party (CPP), seven other political parties now had representatives on the local councils following the successful commune elections, in which several political parties participated, that there had been great progress in protecting labour rights, in ensuring full vaccination of the population against COVID-19, in allowing media outlets to flourish and in allowing Cambodians to freely express themselves online and offline. In a meeting held with the IPU Secretary General during the 145th IPU Assembly, the leader of the Cambodian delegation stated, however, that the Secretary General and the Committee on the Human Rights of Parliamentarians were welcome to visit Cambodia, but that the purpose should not be fact-finding.

On 7 October 2022, the Phnom Penh court sentenced Mr. Son Chhay, a former member of the CNRP and now the Vice-President of the opposition Candlelight Party, in two cases to pay the CPP and the National Election Committee 3 billion riels and 17 million riels (US$754,250) in damages, finding him guilty of defamation for saying that voting fraud occurred during the June 2022 commune elections.

It should be noted that, out of the 57 CNRP parliamentarians, 13 have been politically rehabilitated after fulfilling certain conditions, which were said to include an admission of guilt and a promise of refraining from certain political activism. Three others have joined the CPP, and two others have died in natural circumstances. Twenty others are in Cambodia or abroad and do not wish to ask for forgiveness and rehabilitation in the belief that they have done nothing wrong. The remaining 17 others, as highlighted above, have been sentenced *in absentia* and are abroad and also do not wish to ask for forgiveness and rehabilitation.

B. Decision

The Governing Council of the Inter-Parliamentary Union

1. *Thanks* the leader of the Cambodian delegation for the information provided and his spirit of cooperation;

2. *Is pleased* to learn that the invitation extended by the parliamentary authorities for an IPU delegation to travel to Cambodia to discuss its long-standing concerns in this case is still in place; and *sincerely hopes* that the mission can soon take place;

3. *Is gravely concerned* in this regard about the mass trials of the leadership and supporters of the CNRP, in particular the alleged procedural and substantive irregularities, the fact that several of the accused were not allowed back into the country to stand trial, and the fact that the verdicts have eliminated any possibility of the 17 senior CNRP parliamentarians freely returning to Cambodia and taking part in the electoral process; *considers* that these trials, in light of its long-standing concerns, have to be seen as the culmination of ongoing efforts by the current authorities to limit any political opposition that could effectively lead to an alternation of power; *considers*, similarly, that the drawn-out trial against Mr. Kem Sokha serves as a reminder that he too could face a similar fate; and *recalls* in this regard that the so-called evidence against Mr. Kem Sokha includes videos of a 2013 speech in which he at no point incited hatred or violence or uttered defamatory words but, rather, emphasized that he was aiming to bring political change by winning the elections;

4. *Is shocked* that Mr. Son Chhay was found guilty of defamation, even though the remarks he made about the commune elections have been supported and substantiated by other entities at the national and international levels; *considers* that such defamation charges impede the right to freedom of expression and political pluralism; and *calls on* the authorities to put an end to such intimidation and instead to do everything possible to help ensure that the national elections in July 2023 can be truly free and fair and inclusive of all voices in Cambodian society;

5. *Expresses the hope*, therefore, that the authorities will resume political dialogue urgently with all opposition parties, both in and outside of Cambodia, and *urges* them to do so, in the belief that this is indispensable to help build trust and find solutions to the current political situation;

6. *Decides* to close the cases of the two deceased parliamentarians, the 13 parliamentarians, with the exception of Mr. Son Chhay, who have sought, and were granted, rehabilitation and the three CNRP parliamentarians who joined the CPP; *decides to do so* pursuant to section IX, paragraph 25(a), of the Procedure for the examination and treatment of complaints, with regard to the two deceased parliamentarians, given that a satisfactory settlement could not be reached, and 25(b) with regard to the 15 others who have not provided any updated information; and *reserves* the right, however, to re-open the case of these 15 individuals should new information be made available that would warrant such action;

7. *Requests* the Secretary General to convey this decision to the parliamentary authorities, the complainant and any third party likely to be in a position to help with the successful organization of the mission;

8. *Requests* the Committee to continue examining this case and to report back to it in due course.

Côte d'Ivoire

Decision adopted by consensus by the IPU Governing Council at its 210th session (Kigali, 15 October 2022)[2]

Riot police (left) confront members of the political party Generations and Peoples Solidarity (GPS) in front of the party's headquarters in Abidjan on 23 December 2019, after police intervened to evacuate party members.
SIA KAMBOU/AFP

CIV-07 - Alain Lobognon
CIV-09 - Guillaume Soro
CIV-10 - Loukimane Camara
CIV-11 - Kando Soumahoro
CIV-12 - Yao Soumaïla
CIV-13 - Soro Kanigui
CIV-14 - Issiaka Fofana
CIV-16 - Mohamed Sess Soukou
CIV-17 - Maurice Kakou Guikahué
CIV-18 - Pascal Affi N'Guessan
CIV-19 - Seri Bi N'Guessan
CIV-20 - Bassy-Koffy Lionel Bernard
CIV-21 - Mbari Toikeusse Albert Abdallah
CIV-22 - Jean-Marie Kouassi Kouakou

Case CIV-COLL-01

Côte d'Ivoire: Parliament affiliated to the IPU

Victims: 14 opposition members of parliament

Qualified complainant(s): Section I.1 (a) of the Committee Procedure (Annex I)

Submission of complaints: January 2019; February and November 2020

Recent IPU decision: February 2021

IPU mission(s): - - -

Recent Committee hearing: Hearing of the delegation of Côte d'Ivoire at the 145th IPU Assembly in Kigali (October 2022)

Recent follow-up:
- Communication from the authorities: Letter from the Speaker of the National Assembly (October 2022)
- Communication from the complainant: October 2022
- Communication to the authorities: Letter to the Speaker of the National Assembly and the Speaker of the Senate (September 2022)
- Communication to the complainant: October 2022

Alleged human rights violations

✓ Arbitrary arrest and detention
✓ Lack of due process at the investigation stage
✓ Lack of fair trial proceedings
✓ Violation of freedom of opinion and expression
✓ Failure to respect parliamentary immunity
✓ Threats, acts of intimidation

A. Summary of the case

This case concerns the situation of 12 Ivorian members of parliament[3] and two members of the Senate who have faced violations of their fundamental rights since 2019 in the exercise of their

2 The delegation of Côte d'Ivoire expressed its partial reservations regarding the decision.

3 Incumbent members of parliament at the time of the alleged acts.

parliamentary mandate. The violations of which they are victims are to be seen in the context of the presidential elections of October 2020, when the outgoing president Mr. Alassane Ouattara was declared the winner, thus obtaining a third term in breach of the provisions of the Ivorian Constitution, according to the opposition.

Some members of parliament, including Mr. Alain Lobognon, Mr. Loukimane Camara, Mr. Kando Soumahoro, Mr. Yao Soumaïla, Mr. Soro Kanigui, Mr. Maurice Kakou Guikahué, Mr. Pascal Affi N'Guessan, and senators Mr. Seri Bi N'Guessan and Mr. Bassy-Koffy Lionel Bernard, were accused of causing public disorder and endangering state security. They were arbitrarily arrested and detained between 2019 and 2020.

Members of parliament Mr. Loukimane Camara, Mr. Kando Soumahoro, Mr. Yao Soumaila and Mr. Soro Kanigui (re-elected in 2021) were released on bail in September 2020 until the end of their trial, when they were convicted of causing public disorder and sentenced to nine months in prison on 14 May 2021. As they had already served their sentence while on remand, they were free.

Mr. Alain Lobognon, until then the last member of parliament in detention, was released on 23 June 2021, following the conclusion of his trial and after having served his sentence. The main charges against him were dropped, leaving only the charge of causing public disorder. He was sentenced to 17 months in prison and deprivation of his political rights for five years. In 2019, Mr. Lobognon had already been sentenced to one year in prison for posting material amounting to false information on social media that had caused public disorder.

The former Speaker of the National Assembly, Mr. Guillaume Soro, was also among the members of parliament charged. He had been sentenced in April 2020 to 20 years in prison and the deprivation of his political rights, for misappropriation of public funds. On 23 June 2021, Mr. Soro was also sentenced to life in prison for conspiracy and endangering state security. In the judgment of 23 June 2021, members of parliament Mr. Issiaka Fofana and Mr. Mohamed Sess Soukou were also found guilty of attempting to endanger state security and were sentenced to 20 years in prison. The three men are currently in exile.

In November 2020, the two members of parliament, Mr. Maurice Kakou Guikahué, Mr. Pascal Affi N'Guessan and the two senators Mr. Seri Bi N'Guessan and Mr. Bassy-Koffy Lionel Bernard, were arrested and detained, even though their parliamentary immunity had not been lifted. These parliamentarians had been arrested for having taken part in the creation of the National Transitional Council with the aim of forming a "transitional government". In January 2021, the two members of parliament were released under judicial supervision, while the two senators were released on 26 November 2020.

In their letters of 4 January and 22 February 2022, the parliamentary authorities confirmed that all members of parliament had been released, stating that some of them were under judicial supervision. The authorities also stated that members of parliament Kanigui Soro, Maurice Kakou Guikahué, Pascal Affi N'Guessan and Mbari Toikeuse Albert Abdalah had stood in the legislative elections of March 2021, which they had won. The authorities stated that Mr. Jean Marie Kouassi Kouakou, who had come under attack in the same period, had been able to take part in the legislative elections in March 2021, but had not been re-elected.

During a hearing with the Committee on the Human Rights of Parliamentarians at the 145th IPU Assembly in October 2022, the Ivorian delegation reaffirmed the information conveyed in the letters of the parliamentary authorities of 4 January and 22 February 2022. The delegation also stated that the settling of the cases of a number of members of parliament was to be seen against the background of the process of reconciliation and rehabilitation initiated by the government in power, and motivated by a policy of conciliation. In addition, the Ivorian delegation supplied information that the Committee had been requesting since December 2020, including copies of court decisions in respect of the cases of a number of members of parliament. With regard to the procedure for lifting parliamentary immunity, the Ivorian delegation stated that under Article 92 of the Constitution, the National Assembly was not required to lift the parliamentary immunity of the members of parliament in question if they were caught *in flagrante delicto*, which was allegedly the case for all members of parliament in the case at hand.

B. Decision

The Governing Council of the Inter-Parliamentary Union

1. *Thanks* the Ivorian authorities for the information provided in their letters of 4 January and 22 February 2022 concerning the situation of a number of members of parliament and senators of Côte d'Ivoire, and for the copies of the court decisions provided to the Committee on the Human Rights of Parliamentarians at its hearing with the Ivorian delegation at the 145th IPU Assembly;

2. *Is pleased* that all the members of parliament have now been released; and *welcomes* in this regard the efforts of the Ivorian authorities, in particular the implementation of a policy of conciliation and reconciliation, which led to the release of all the members of parliament;

3. *Regrets*, however, that Mr. Alain Lobognon, Mr. Loukimane Camara, Mr. Kando Soumahoro, Yao Soumaila and Mr. Kanigui Soro were found guilty *in flagrante delicto* of disturbing public order and sentenced to several months in prison at the end of their trial; *recalls* its doubts as to the *in flagrante delicto* acts with which the members of parliament were charged and which were used to justify the non-involvement of the National Assembly; *recalls also* that they have always denied the acts they were accused of and that they were subjected to restrictions that continue to this day – particularly in the case of Mr. Lobognon, who was deprived of his political rights for five years; and *calls on* the competent authorities to remove this restriction definitively;

4. *Takes note* of the information concerning the members of parliament Soro Kanigui, Maurice Kakou Guikahué, Pascal Affi N'Guessan and Mbari Toikeuse Albert Abdalah, who were re-elected to the National Assembly in the legislative elections of March 2021; *takes note* also of the situation of Mr. Jean Marie Kouassi Kouakou, who ran in the same elections but was not re-elected; *notes* further that Mr. Seri Bi N'Guessan and Mr. Bassy-Koffy Lionel Bernard have returned to their posts in the Senate and have resumed their work with no restrictions; and *decides* to close these cases pursuant to section IX, paragraph 25 b) of its Procedure for the examination and treatment of complaints, considering that the ability of these members of parliament to run in elections, the re-election of four of them, and the return of two senators to the Senate means that their cases have been resolved in a satisfactory manner;

5. *Reiterates* that the essence of a democracy resides in respect for diversity of opinions and that members of the opposition should be able to enjoy their rights and the protection of the National Assembly, which is responsible for guaranteeing the parliamentary immunity of its members when they are exercising their duties; therefore *calls on* the competent authorities to take measures to promote respect and the protection of parliamentary immunity in order to ensure that "in flagrante delicto" is not instrumentalized and invoked to authorize the arbitrary prosecution members of the National Assembly.

6. *Remains concerned* at the situation of members of parliament Guillaume Soro, Issiaka Fofana and Sess Soukou Mohamed, who are in exile; and *wishes* to examine the court decisions transmitted by the Ivorian delegation at its hearing on 12 October 2022, before stating its position on their situation;

7. *Requests* the Secretary General to convey this decision to the parliamentary authorities, the Minister of Justice and the complainant and to any third party likely to be in a position to supply relevant information;

8. *Requests* the Committee to continue examining the case and to report back to it in due course.

CL/210/14(c)-R.1
Kigali, 15 October 2022

Democratic Republic of the Congo

Decision adopted unanimously by the IPU Governing Council at its 210th session (Kigali, 15 October 2022)

Jean Marc Kabund © Twitter

Case COD-150

Democratic Republic of the Congo: Parliament affiliated to the IPU

Victim: An opposition member of parliament

Qualified complainant(s): Section I.1 (a) of the Committee Procedure (Annex I)

Submission of the complaint: August 2022

Recent IPU decision(s): - - -

Recent IPU mission(s): - - -

Recent Committee hearing(s): - - -

Recent follow-up:
- Communication from the authorities: Letter from the First Vice-President of the Senate (September 2022)
- Communication from the complainant: September 2022
- Communications to the authorities: Letters to the Speaker of the National Assembly (September 2022)
- Communication to the complainant: September 2022

COD-150 – Jean Marc Kabund

Alleged human rights violations

- ✓ Threats, acts of intimidation
- ✓ Arbitrary arrest and detention
- ✓ Lack of due process in proceedings against parliamentarians
- ✓ Lack of due process at the investigation stage
- ✓ Violation of freedom of opinion and expression
- ✓ Failure to respect parliamentary immunity

A. Summary of the case

On 9 August 2022, Mr. Jean Marc Kabund, member of parliament and former First Vice-President of the National Assembly, was arrested and prosecuted for allegedly defaming the authorities, public insults and spreading false rumours after he delivered a speech on 18 July 2022 where he criticized the President of the Republic.

Mr. Kabund was arrested after the Bureau of the National Assembly allegedly authorized proceedings against him by lifting his parliamentary immunity on 8 August 2022. The Bureau of the National Assembly had allegedly already criticized the member of parliament's speech in an official statement published on 21 July 2022.

The acts Mr. Kabund is accused of are covered under Ordinance-Law No. 300 of 16 December 1963 on defamation against the Head of State and other articles of the criminal law of the Democratic Republic of the Congo.

According to the complainant, the allegations against Mr. Kabund are a violation of his right to freedom of expression and are politically motivated given the growing political differences between the member of parliament and the party of President Tshisékédi to which Mr. Kabund belonged until he decided to join the opposition and create a new political party – the Alliance for Change – on 18 July 2022. The complainant claims that the case is part of a political strategy aimed at intimidating and instrumentalizing justice against President Tshisékédi's political opponents.

On 12 August 2022, the Court of Cassation ordered that the member of parliament be placed under house arrest. However, this decision has not been implemented to date. At the first hearing of the trial, which took place on 5 September 2022, Mr. Kabund's lawyers demanded that the said decision be implemented before proceeding with the trial, which was postponed at their request. On 12 September 2022, the date of the adjournment, Mr. Kabund did not attend the hearing for medical reasons. His lawyers reported that Mr. Kabund's health had deteriorated. The case was adjourned to 17 October 2022.

Since, to date, the judicial proceedings applicable to members of parliament have not been amended to allow for an appeal, if sentenced Mr. Kabund would not be able to appeal the decision.

B. Decision

The Governing Council of the Inter-Parliamentary Union

1. *Notes* that the complaint concerning Mr. Kabund is admissible, considering that the communication: (i) was submitted in due form by a qualified complainant under Section I.1(a) of the Procedure for the examination and treatment of complaints (Annex I of the Revised Rules and Practices of the Committee on the Human Rights of Parliamentarians); (ii) concerns an incumbent member of parliament at the time of the initial allegations; (iii) concerns threats and acts of intimidation, arbitrary arrest and detention, lack of due process in proceedings against parliamentarians, lack of due process at the investigation stage, violation of freedom of opinion and expression, and failure to respect parliamentary immunity, allegations which fall under the Committee's mandate;

2. *Is troubled by* the fact that Mr. Kabund continues to be held in detention, despite the Court of Cassation's decision ordering him to be placed under house arrest; *urges* the national authorities to take all necessary measures to ensure implementation of that decision; *wishes* to appoint a judicial observer to monitor the progress of the proccedings against Mr. Kabund; and *requests* the authorities to inform it of the next trial date following the hearing of 17 October and to facilitate the work of the observer;

3. *Notes with concern* that the charges brought against the member of parliament are based on a speech given while exercising his fundamental right to freedom of expression, in which he criticized the Head of State and the policies of the Government; *notes* that Mr. Kabund's speech was made in the context of launching his new opposition party and leaving the political party in power, of which he had until then been a member; also *notes* that, even if his speech was of a provocative nature, it fell within the scope of application of freedom of expression, guaranteed under Article 23 of the Constitution of the Democratic Republic of the Congo, and under Article 19 of the International Covenant on Civil and Political Rights, and should therefore have been protected;

4. *Stresses* that the right to freedom of expression is one of the pillars of democracy, is essential for members of parliament and covers all kinds of opinions, including opinions that may offend, shock or upset, as long as they respect the limits defined in the main human rights conventions and related case law;

5. *Is deeply concerned* at the measures taken by the Bureau of the National Assembly, which criticized Mr. Kabund's speech in its statement and authorized proceedings against him and the lifting of his parliamentary immunity; *notes with concern* that this is not the first case of this kind submitted to it concerning the Democratic Republic of the Congo; and *calls on* parliament to protect its members' right to freedom of expression in the future, regardless of their political affilitation, by taking all necessary measures to strengthen protection of the right to freedom of expression, including by repealing laws that establish offences constituting defamation against the Head of State or by bringing those laws into line with international human rights standards, as soon as possible, in order to prevent the recurrence of such cases; and *wishes* to be kept informed in this regard;

6. *Regrets* the absence of the possibility of appeal in legal proceedings against members of parliament of the Democratic Republic of the Congo, and *recalls* that the possibility of appeal constitutes one of the main elements of due process; and *calls on* the Parliament of the Democratic Republic of the Congo to create this possibility of appeal, so that parliamentarians' right to a defence in legal proceedings is protected in the same way as that of other citizens of the Democratic Republic of the Congo;

7. *Requests* the Secretary General to convey this decision to the parliamentary authorities, the complainant and any third party likely to be in a position to supply relevant information;

8. *Requests* the Committee to continue examining the case and to report back to it in due course.

Eritrea

Decision adopted unanimously by the IPU Governing Council at its 210th session (Kigali, 15 October 2022)

Aster Fissehatsion and Mahmoud Ahmed Sheriffo © Photo courtesy/Ibrahim (Ibu) Mahmoud Ahmed

ERI/01 - Ogbe Abraha
ERI/02 - Aster Fissehatsion
ERI/03 - Berhane Gebregziabeher
ERI/04 - Beraki Gebreselassie
ERI/05 - Hamad Hamid Hamad
ERI/06 - Saleh Kekiya
ERI/07 - Germano Nati
ERI/08 - Estifanos Seyoum
ERI/09 - Mahmoud Ahmed Sheriffo
ERI/10 - Petros Solomon
ERI/11 - Haile Woldetensae

Case ERI-COLL-01

Eritrea: Parliament not affiliated to the IPU

Victims: 11 opposition members of the National Assembly of Eritrea; 10 men and 1 woman

Qualified complainant(s): Section I.(1)(a) and (d) of the Committee Procedure (Annex I)

Submission of complaints: September 2002 and 2013

Recent IPU decision: March 2021

IPU Mission(s): - - -

Recent Committee hearings: Hearing with the United Nations (UN) Special Rapporteur on the human rights situation in Eritrea (Kigali, October 2022)

Recent follow-up:
- Communication(s) from the authorities: - - -
- Communication from the complainants: January 2021
- Communication to the authorities: Letter to the President and Speaker of the National Assembly (September 2022)
- Communication to the complainants: September 2022

Alleged human rights violations

- ✓ Murder
- ✓ Enforced disappearance
- ✓ Torture, ill-treatment and other acts of violence
- ✓ Arbitrary arrest and detention
- ✓ Inhuman conditions of detention – including denial of adequate medical care
- ✓ Violation of freedom of opinion and expression
- ✓ Impunity
- ✓ Other: crimes against humanity

A. Summary of the case

There has been no official information about the fate of the 11 parliamentarians concerned, as they were detained incommunicado on 18 September 2001 under accusations of conspiracy and attempting to overthrow the legal government after publishing an open letter in support of democracy. They have never been formally charged before a court. Their parliamentary mandates were revoked in 2002 by the National Assembly, which has not reconvened since then.

Since their disappearance, there have been sporadic reports by former prison guards who had sought asylum abroad alleging that the 11 parliamentarians were submitted to torture, ill-treatment and inhumane conditions of detention and denied medical care. It is feared that the 11 members of parliament may no longer be alive.

In November 2003, upon examination of a complaint concerning their situation, the African Commission on Human and Peoples' Rights found that the State of Eritrea had violated the right to liberty and security of person, the right to a fair trial and the right to freedom of expression. It urged the State of Eritrea to order their immediate release and to pay them compensation. This decision was ignored by the authorities.

In June 2016, a Commission of Inquiry on Human Rights in Eritrea mandated by the United Nations (UN) Human Rights Council referred to the disappeared parliamentarians and other similar cases and found that it had reasonable grounds to believe that these violations constitute crimes against humanity. In the absence of institutional reform that would allow for accountability, it recommended that the matter be referred to the Prosecutor of the International Criminal Court and urged all States to exercise their obligation to prosecute or extradite any individual suspected of these crimes present in their territory.

In her report of 11 May 2020, the then UN Special Rapporteur on the human rights situation in Eritrea once again urged the authorities to reinstate the National Assembly as a critical step towards the restoration of the rule of law. She reiterated her concern about the "use of the practices of indefinite and arbitrary detention and enforced disappearance to suppress dissent, punish perceived opponents and restrict civil liberties" and mentioned reports of scores of people continuing to disappear in the Eritrean prison system, where "basic due process rights are not guaranteed [and] many are not allowed access to legal counsel, judicial review, family visits or medical attention". She specifically recalled that the 11 parliamentarians – known as the G11 – have been held incommunicado since September 2001, adding that the authorities have provided no information about their fate and have not complied with the decisions of the African Commission on Human and Peoples' Rights.

In his 2021 oral update to the Human Rights Council, the new Special Rapporteur echoed these statements and added that he saw no progress in the situation. He added that it was difficult to speak of progress in Eritrea while the cases remain unresolved and that the "practice of arbitrary and incommunicado detentions in Eritrea has a serious impact on the life of many Eritreans". The Government of Eritrea has denied the findings and refused to cooperate. The Eritrean authorities have not responded to IPU communications for years. On 10 October 2022, the IPU Committee held a hearing with the Special Rapporteur, who called on the IPU to urge its members to exert pressure on the authorities and to renew the call made by the UN Commission of Inquiry on Human Rights in Eritrea to prosecute those responsible, through the Prosecutor of the International Criminal Court or under the principle of universal jurisdiction.

In September 2022, the Secretary General wrote to the Permanent Mission of Eritrea to the United Nations Office and other international organizations in Geneva on several occasions to request a meeting in order to discuss this case. The Permanent Mission has not responded to these requests.

B. Decision

The Governing Council of the Inter-Parliamentary Union

1. *Strongly condemns* the continued and utter contempt of the authorities of Eritrea for the most fundamental human rights of the 11 disappeared parliamentarians for having exercised their parliamentary mandate and their right to freedom of expression in calling for the establishment of a democratically elected parliament; *recalls* that, in light of the consistent jurisprudence of the Committee on the Human Rights of Parliamentarians, the national authorities are under a duty to spare no effort to shed light on the fate of disappeared parliamentarians through diligent investigations, as failure to abide by this duty has systematically been interpreted as the Government's responsibility in the disappearance; and *stresses,* in addition*,* the legitimate right of the relatives of the victims to know about the fate of their loved ones and to receive adequate compensation;

2. *Strongly disapproves* of the absolute impunity that reigns in this case and the persistent refusal of the authorities to engage with the IPU, the United Nations (UN) Working Group on Enforced or Involuntary Disappearances, the UN Human Rights Council's Commission of Inquiry on Human Rights in Eritrea, the UN Special Rapporteur on the human rights situation in Eritrea, the African Commission for Human and Peoples' Rights, and all other international human rights mechanisms that spoke out on this case;

3. *Emphasizes* that impunity, by shielding those responsible from judicial action and accountability, decisively encourages the perpetration of further serious human rights violations and that attacks against the life and personal integrity of members of parliament, when left unpunished, violate the fundamental rights of individual parliamentarians and of those they represent – even more so when leading figures of parliament are targeted in the context of a broader pattern of repression, as in the present case; and *stresses* that, as defined in article 7 of the Rome Statute of the International Criminal Court, the widespread and systematic practice of enforced disappearance, imprisonment and torture constitute a crime against humanity;

4. *Concurs,* in light of the elements at its disposal, with the findings of the UN Commission of Inquiry on Human Rights in Eritrea in its report of 8 June 2016 that the enforced disappearance of the 11 parliamentarians with the involvement of the Eritrean authorities amounts to a crime against humanity and that, given the unlikely prospect of proving accountability in Eritrea, other countries could exercise jurisdiction over Eritreans accused of crimes against humanity, in accordance with the principle of universal jurisdiction, as could the International Criminal Court, if the Security Council were to refer this situation to the Court; *calls on* all IPU Members, therefore, to prompt the relevant authorities of their respective States to exercise their jurisdiction by prosecuting any individual responsible for this crime against humanity if they are present in their territory, in keeping with the principles reflected in the Preamble to the Rome Statute of the International Criminal Court;

5. *Renews its call on* all national parliaments, in particular members of the IPU African Group, and IPU observers, in particular the Pan-African Parliament, to take concrete actions in the resolution of this case, including by making representations to the diplomatic missions of Eritrea in their countries and raising the case publicly, including within the UN Human Rights Council; *hopes* to be able to rely on the assistance of all relevant regional and international organizations, including the African Union, to ensure that justice is done in this case; and *calls on* all IPU Members and observers to support the mandate of the UN Special Rapporteur on the human rights situation in Eritrea to that end;

6. *Requests* the Committee to continue examining this case and to report back to it in due course.

CL/210/14(c)-R.1
Kigali, 15 October 2022

Eswatini

Decision adopted unanimously by the IPU Governing Council at its 210th session (Kigali, 15 October 2022)

Members of the Royal Eswatini Police Service (REPS) monitor affiliates of the Trade Union Congress of Swaziland (TUCOSWA) as they sing political slogans in central Manzini on 28 October 2021 during a pro-democracy protest. Michele Spatari – AFP

SWZ-02 – Mduduzi Bacede Mabuza
SWZ-03 – Mthandeni Dube
SWZ-04 – Mduduzi Gawuzela Simelane

Case SWZ-COLL-01

Eswatini: Parliament affiliated to the IPU

Victims: Three independent members of parliament

Qualified complainant(s): Section I.1.(b) of the Committee Procedure (Annex I)

Submission of complaint: January 2022

Recent IPU decision: March 2022

Recent IPU mission(s): - - -

Recent Committee hearing: Hearing with the delegation of Eswatini to the 145th IPU Assembly in Kigali (October 2022)

Recent follow-up:
- Communications from the authorities: Letters from the Speaker of the House of Assembly (March and October 2022)
- Communication from the complainant: September 2022
- Communication to the authorities: Letter to the Speaker of the House of Assembly (September 2022)
- Communication to the complainant: October 2022

Alleged human rights violations

- ✓ Arbitrary arrest and detention
- ✓ Inhumane conditions of detention
- ✓ Lack of due process at the investigation stage
- ✓ Lack of fair trial proceedings
- ✓ Excessive delays
- ✓ Violation of freedom of expression and opinion
- ✓ Violation of freedom of assembly and association
- ✓ Failure to respect parliamentary immunity
- ✓ Other acts obstructing the exercise of the parliamentary mandate

A. Summary of the case

Parliamentarians Mduduzi Bacede Mabuza and Mthandeni Dube were arrested in the evening of 25 July 2021 and have been held in detention ever since, first at Mbabane police station and then at the Matsapha Correctional Centre. A third parliamentarian, Mr. Mduduzi Simelane, fled the country before an arrest warrant could be implemented. Mr. Mabuza and Mr. Dube face charges under the Suppression of Terrorism Act, two murder charges and a charge for contravening COVID-19 regulations. A proper examination of the bail applications from the two parliamentarians in detention was reportedly repeatedly delayed and was finally processed and denied. The lawyers have filed another bail appeal, which is reportedly going to be heard on 8 November 2022. The trial itself is ongoing and, with the prosecution having presented its evidence, the counsel for defence is now presenting its defence. The next court dates have been set for 8 to 10 November and 12 to 16 December 2022.

With regard to Mr. Simelane, who is currently in the United Kingdom, it first appeared that he had not been officially charged for any offence, as his case had not yet been officially referred to court. News reports, however, have recently surfaced indicating that the Eswatini authorities have approached their British counterparts to seek Mr. Simelane's return to Eswatini. On the basis of Article 97(1)(c) of the Constitution, Mr. Simelane's seat in parliament was declared vacant due to his prolonged absence without permission or justification and a by-election for his replacement was held. His wife was elected and was sworn in as a member of the House of Assembly on 4 August 2022.

The legal action against the parliamentarians was taken in the following context. In May 2021, calls for political reform started circulating on various platforms across Eswatini, with the aforesaid three parliamentarians also advocating for these changes. To prove that these members of parliament had the mandate from their constituencies to make this call resulted in a series of petitions being delivered to parliament in support of the call for change. Protesters were calling for constitutional and political reforms, were lamenting the Government's reported failure to deliver basic services to its citizens, demanded responses to socioeconomic challenges, and invoked alleged ill-treatment by police. Petitions were delivered to various tinkhundla centres, predominantly by young people, to their members of parliament as an endorsement of the call for constitutional and political reforms. These calls were heightened during protests against alleged "police brutality" following the death of a University of Eswatini law student, Mr. Thabani Nkomonye. The aforesaid three parliamentarians joined the #justiceforThabani movement, which supported the call for constitutional and political reforms. On 24 June 2021, the then Acting Prime Minister, Deputy Prime Minster, Mr. Themba N. Masuku issued a ban on the delivery of these petitions. In his address, the Acting Prime Minister said that this was "a conscious decision to maintain the rule of law and de-escalate tensions that had turned the exercise into violence and disorder". Protesters continued to deliver petitions against the ban and were blocked by the police.

In its report released at the very end of June 2021 regarding the events that had occurred earlier that month, the Eswatini Commission on Human Rights and Public Administration (the Commission) – which is Eswatini's national human rights institution – found that human rights violations and abuses were perpetrated during the unrest. Further, the assessment indicates that lethal force was used indiscriminately on protesters and members of the public who were not even part of the protests. The protestors themselves appear to have been violent in that some areas were rendered inaccessible by road blockages and the burning of tyres. There was widespread damage, the burning of properties and businesses and looting of shops. The majority of people arrested were detained for unreasonably prolonged periods without trial. Even though they were eventually afforded their right to bail, the courts often imposed excessive bails and steep fines.

According to the complainant, the charges against Mr. Mabuza, Mr. Dube and, potentially, Mr. Simelane serve as reprisals and aim to silence them, given that they have been at the forefront of the aforesaid demands for democratic reforms in Eswatini, an absolute monarchy led by King Mswati III for over 30 years, where political parties are not legally recognized.

The Speaker of the House of Assembly has stated that the parliamentary immunity of the three parliamentarians with regard to speeches in connection with debates and proceedings in parliament had always been respected. The Speaker also stated that the prison conditions of Mr. Mabuza and Mr. Dube were the same as those of other trial inmates and that they were granted all the general benefits extended to inmates awaiting trial. He added that, as the matter was before the court, due to the separation of powers he could not comment on the specific charges.

In the early hours of 22 September 2022, the two detained parliamentarians were allegedly assaulted by prison guards who entered their cells and started beating them up for no reason. According to the Speaker, an inquiry into the matter has been opened in terms of the Correctional Services Act, No. 13 of 2017, read in conjunction with the Prison Regulations of 1965. The Speaker stated that "we are eager for the resultant recommendations and further action which the inquiry may further recommend. The legal processes have not been finalized and we hope that the above allegations shall be adequately addressed".

B. Decision

The Governing Council of the Inter-Parliamentary Union

1. *Thanks* the Speaker of the House of Assembly for the information provided in his letter of 4 October 2022 and during the hearing with the Committee on the Human Rights of Parliamentarians at the 145th IPU Assembly; and *appreciates* his spirit of cooperation and the fact that he would welcome a Committee delegation to Eswatini, as confirmed in his discussions with the IPU Secretary General in Kigali;

2. *Sincerely believes* that such a mission, which would include meetings with all the relevant authorities, a visit to the detained members of parliament and a meeting with their lawyers, along with meetings with relevant third parties, would offer a useful opportunity to discuss the issues that have emerged in the case at hand and to understand the context in which they have to be seen;

3. *Considers* that these concerns and questions refer in particular to the following: (i) the allegation that Mr. Mabuza and Mr. Dube have not committed any crimes and are being detained and prosecuted in response to their public appeal to strengthen democracy; (ii) their alleged recent beating-up in detention by prison wardens; and (iii) the continued dismissal of their bail applications;

4. *Requests* the Secretary General to make the necessary arrangements with the parliamentary authorities of Eswatini with a view to the dispatch of the mission in the coming months; and *reaffirms* its earlier decision to also send a trial observer to the ongoing criminal proceedings, which the Speaker kindly agreed to during his discussion with the Secretary General in Kigali;

5. *Thanks* the Speaker for his willingness, as expressed to the Secretary General, to facilitate the IPU's possible engagement in efforts to resolve issues stemming from the political crisis in the country;

6. *Requests* the Secretary General to convey this decision to the Speaker of the House of Assembly, the complainant and any third party likely to be in a position to supply relevant information;

7. *Requests* the Committee to continue examining this case and to report back to it in due course.

Gabon

Decision adopted unanimously by the IPU Governing Council at its 210th session (Kigali, 15 October 2022)

GAB-04 – Justin Ndoundangoye

Case GAB-04

Gabon: Parliament affiliated to the IPU

Victim: Member of the majority

Qualified complainant(s): Section I.1.(a) of the Committee Procedure (Annex I)

Submission of complaint: May 2020

Recent IPU decision: November 2021

IPU mission(s): - - -

Recent Committee hearings: Hearing with the parliamentary authorities at the 145th IPU Assembly (2022); hearing online with the complainant at the 145th IPU Assembly (2022)

Recent follow-up:
- Communication from the authorities: Letter from the Deputy Secretary General of the National Assembly (May 2022)
- Communication from the complainant: June 2022
- Communication to the authorities: Letter to the Speaker of the National Assembly (September 2022)
- Communication to the complainant: September 2022

Alleged human rights violations

- ✓ Torture, ill-treatment and other acts of violence
- ✓ Arbitrary arrest and detention
- ✓ Lack of due process at the investigation stage
- ✓ Failure to respect parliamentary immunity
- ✓ Impunity

A. Summary of the case

Mr. Justin Ndoundangoye, a Gabonese member of parliament, has been held at the Central Prison of Libreville since 9 January 2020. Initially accused of instigating misappropriation of public funds (*détournement de fonds publics*), bribery (*concussion*), money laundering and conspiracy offences, he was found guilty of bribe-taking (*corruption passive*) and sentenced at first instance on 10 December 2021 to a five-year prison term. He was also fined 10 million CFA francs and ordered to reimburse 145 million CFA francs to the State of Gabon by way of damages. On 4 March 2022, the Court of Appeal of Libreville upheld the ruling. An application for judicial review is currently under consideration.

The complainant claims that Mr. Ndoundangoye was kept in police custody for a period of two weeks in violation of the provisions of article 56 of the Criminal Procedure Code of Gabon, which provides for a maximum period of 48 hours, renewable once. During those two weeks, he was allegedly questioned by officials of the Directorate General for Counter-Interference and

Military Security, who were not judicial police officers. He was reportedly unable to speak to his lawyers while in police custody. It is alleged that the lawyers did not have access to the file, either to the procedural documents or to the evidence against him, and that the only document available to the defence at the start of the proceedings was the remand order.

The complainant claims that, on the night of 25 to 26 January 2020, after ordering him to take all his clothes off, three hooded prison officers tied up Mr. Ndoundangoye with his hands behind his back. They allegedly asked him to lie flat on his stomach, legs apart. Held by each leg by an officer, he was reportedly beaten on his testicles, carried out by the third officer using a thick rope knotted at the end. He reportedly received sustained blows to his testicles for some time, and was then turned over, knees pressed against his temples, legs still apart, and subjected to blows by the knotted rope to his penis. He also reportedly at this time received several punches and kicks to his ribs and hips. The officers allegedly photographed him while he was naked. Before leaving him, they are said to have strongly advised him not to say a word to his lawyer, otherwise they would come back for "a killing". In taking these threats further, they allegedly threatened to rape his wife and kill his children if the matter was publicized.

A request for intervention in the form of protection was reportedly sent to the specialized investigating judge, with an official copy sent to the Public Prosecutor. In particular, the judge was reportedly asked to order that Mr. Ndoundangoye be admitted to hospital so he could undergo appropriate examinations following the alleged acts of torture. This request reportedly remained unanswered.

In a letter dated 19 November 2020, the Deputy Secretary General of the National Assembly of Gabon sent a timetable for the procedure implemented by the National Assembly to lift Mr. Ndoundangoye's parliamentary immunity, as well as copies of related documents. During its hearing before the Committee on the Human Rights of Parliamentarians, the Gabonese delegation to the 145th IPU Assembly indicated that the procedure followed by the National Assembly when ruling on the lifting of Mr. Ndoundangoye's parliamentary immunity had been carried out in accordance with the relevant provisions. On the allegations of torture, the delegation said that the prosecution service and the Directorate General of Research and the National Human Rights Commission had conducted enquiries within their respective remits and concluded that Mr. Ndoundangoye's rights had not been violated, but that the documents relating to the findings of these investigations were not available. The delegation also claimed that a group of members of parliament had gone to the Libreville Central Prison to visit the member of parliament but that he had refused to see them.

According to the complainant, Mr. Ndoundangoye has been held in solitary confinement in inhumane and degrading conditions since the start of his detention. In particular, he is reportedly being held in a very small cell in the disciplinary wing of Libreville Central Prison without access to drinking water. It is said that he is only able to keep himself hydrated thanks to the cans of water brought to him by his family every week. He is reportedly also forbidden from taking part in the religious services held every Sunday in the prison's multi-purpose room. During his online hearing with the Committee at the 145th IPU Assembly, the complainant provided more information on the ongoing proceedings against the member of parliament and the alleged breaches of procedural rules and basic fair-trial standards. The complainant also stated that the time allowed for Mr. Ndoundangoye to take a walk had been increased marginally and that he was now able, with certain restrictions, to receive visits from his relatives, which represented a slight improvement in his situation. Finally, the complainant stated that he was not aware of any investigation or action taken by the competent authorities regarding the allegations of torture.

B. Decision

The Governing Council of the Inter-Parliamentary Union

1. *Thanks* the Gabonese delegation for the information provided at the hearing with the Committee on the Human Rights of Parliamentarians held during the 145th IPU Assembly;

2. *Notes with interest* the initiative taken by some members of parliament to visit Mr. Ndoundangoye in prison; *reaffirms its deep concern* at the worrying allegations regarding his conditions of detention; and *urges* the national authorities once again to take all necessary steps to ensure Mr. Ndoundangoye can fully enjoy his rights, including his right to be treated

with humanity and with the respect due to the inherent dignity and value as human beings, in accordance with the United Nations Standard Minimum Rules for the Treatment of Prisoners ("the Nelson Mandela Rules");

3. *Reaffirms its deep concern* given the allegations of threats, acts of torture and other cruel, inhumane or degrading treatment against the member of parliament concerned and at the fact that, according to the complainant, the perpetrators have not been prosecuted; *stresses* that the findings of the investigations reportedly carried out by several Gabonese institutions into these allegations should be made available; and *urges*, once again, in this regard the parliamentary authorities to provide detailed information and copies of relevant documents concerning these investigations;

4. *Takes note* of the conviction of the member of parliament at first instance, upheld on appeal, and of the cassation appeal under consideration; *remains deeply concerned* at the allegations of violations of the right to a fair trial in the proceedings against the member of parliament; *hopes*, in this respect, that the latter appeal will be examined in an independent and impartial manner and in strict compliance with the relevant national and international standards; and *reiterates its wish* to receive official and detailed information on the facts justifying each of the charges against Mr. Ndoundangoye and copies of the relevant court decisions;

5. *Regrets* that, despite the assurances of support given in this respect by the Gabonese delegation at the 143rd IPU Assembly, the mission to Gabon requested by the Committee on the Human Rights of Parliamentarians has still not been officially approved by the relevant Gabonese authorities; *urges* the parliamentary authorities to redouble their efforts to obtain a response from the executive authorities in this regard as soon as possible; and *hopes* that the competent national authorities will cooperate fully and that the mission will help to bring about a speedy and satisfactory settlement of this case, in accordance with applicable national and international human rights standards;

6. *Requests* the Secretary General to convey this decision to the Speaker of the National Assembly of Gabon, the Ministry of Justice, which is responsible for human rights and gender equality in Gabon, the complainant and any third party likely to be in a position to supply relevant information;

7. *Requests* the Committee to continue examining the case and to report back to it in due course.

Myanmar

Decision adopted unanimously by the IPU Governing Council at its 210th session (Kigali, 15 October 2022)

Prison officials stand outside the Insein prison in Yangon on 12 February 2022.| STRINGER/AFP

MMR-267 - Win Myint
MMR-268 - Aung San Suu Kyi (Ms.)
MMR-269 - Henry Van Thio
MMR-270 - Mann Win Khaing Than
MMR-271 - T Khun Myat
MMR-272 - Tun Tun Hein
MMR-274 - Than Zin Maung
MMR-275 - Dr. Win Myat Aye
MMR-276 - Aung Myint
MMR-277 - Ye Khaung Nyunt
MMR-278 - Dr. Myo Aung
MMR-279 - Kyaw Myint
MMR-280 - Win Mya Mya (Ms.)
MMR-281 - Kyaw Min Hlaing
MMR-283 - Okka Min
MMR-284 - Zarni Min
MMR-285 - Mya Thein
MMR-286 - Tint Soe
MMR-287 - Kyaw Thaung
MMR-289 - Phyu Phyu Thin (Ms.)
MMR-290 - Ye Mon (aka Tin Thit)
MMR-291 - Htun Myint
MMR-292 - Naing Htoo Aung
MMR-293 - Dr. Wai Phyo Aung
MMR-294 - Zin Mar Aung (Ms.)
MMR-295 - Lwin Ko Latt
MMR-297 - Win Naing
MMR-298 - Nay Myo
MMR-299 - Zaw Min Thein
MMR-300 - Win Naing
MMR-301 - Zay Latt
MMR-302 - Myat Thida Htun (Ms.)
MMR-303 - Saw Shar Phaung Awar
MMR-304 - Robert Nyal Yal
MMR-305 - Lamin Tun (aka Aphyo)
MMR-306 - Aung Kyi Nyunt
MMR-307 - Lama Naw Aung
MMR-308 - Sithu Maung
MMR-309 - Aung Kyaw Oo
MMR-310 - Naung Na Jatan
MMR-311 - Myint Oo
MMR-312 - Nan Mol Kham (Ms.)
MMR-313 - Thant Zin Tun
MMR-314 - Maung Maung Swe
MMR-315 - Thein Tun
MMR-316 - Than Htut
MMR-317 - Aung Aung Oo
MMR-318 - Ba Myo Thein
MMR-319 - Soe Win (a) Soe Lay
MMR-320 - U Mann Nyunt Thein
MMR-321 - Khin Myat Thu
MMR-322 - Nay Lin Aung
MMR-323 - Hung Naing
MMR-324 - Shwe Pon (Ms.)
MMR-325 - Wai Lin Aung
MMR-326 - Pyae Phyo
MMR-327 - Mr. Lin Lin Oo
MMR-328 - Kyaw Lin
MMR-329 - Tin Htwe
MMR-330 - Aung Myint Shain
MMR-331 - Pital Aung
MMR-332 - Ohn Win
MMR-333 - Ma Ma Lay (Ms.)

Alleged human rights violations

- ✓ Abduction
- ✓ Enforced disappearance
- ✓ Torture, ill-treatment and other acts of violence
- ✓ Threats, acts of intimidation
- ✓ Arbitrary arrest and detention
- ✓ Inhumane conditions of detention
- ✓ Lack of fair trial proceedings
- ✓ Violation of freedom of opinion and expression
- ✓ Violation of freedom of assembly and association
- ✓ Violation of freedom of movement
- ✓ Failure to respect parliamentary immunity
- ✓ Impunity
- ✓ Other violations: unlawful revocation of citizenship
- ✓ Other violations: crimes against humanity

Case MMR-COLL-03

Myanmar: Parliament affiliated to the IPU

Victims: 63 parliamentarians from the opposition (55 male and 8 female)

Qualified complainant(s): Section I.1(a) of the Committee Procedure (Annex I)

Submission of complaint: March 2021

Recent IPU decision: March 2022

Recent IPU Mission(s): - - -

Recent Committee hearing: Hearing with the United Nations Special Rapporteur on the situation of human rights in Myanmar (March 2022)

Recent follow-up:
- *Note verbale* from the Permanent Mission of the Republic of the Union of Myanmar to the United Nations Office and other international organizations in Geneva: February 2022
- Communication from the complainant: August 2022
- *Note verbale* to the Permanent Mission of the Republic of the Union of Myanmar to the United Nations Office and other international organizations in Geneva: September 2022
- Communication to the complainant: August 2022

A. Summary of the case[4]

After refusing to recognize the results of the November 2020 parliamentary elections, the military declared a state of emergency that would last for a year, and proceeded to seize power by force on 1 February 2021, the day that the new parliament was due to take office. This state of emergency was extended on 31 January 2022, with a promise to hold elections by August 2023. Although the military authorities allowed overwhelmingly peaceful protests to take place in the first few weeks, the situation in Myanmar took a devastating turn for the worse in March 2021, with reports of live automatic ammunition and explosive weapons used against civilians. The United Nations Special Rapporteur has recognized the widespread and systematic nature of the violations carried out by the military (known as the "*Tatmadaw*") and declared that their scale met the threshold of crimes against humanity.

The complainant reports that the Speaker of the Parliament of Myanmar (*Pyidaungsu Hluttaw*), State Counsellor Aung San Suu Kyi and six other parliamentarians of the majority National League for Democracy (NLD) were placed under house arrest while 20 other members of parliament were arbitrarily arrested shortly after the coup. The arrest of Ms. Ma Ma Lay on 14 May 2022 brought the total number of parliamentarians who were arbitrarily detained to 31, of which 27 are still in detention. Of those detained, many are reportedly being held incommunicado in overcrowded prisons, where they are facing mistreatment and torture, with little or no access to medical care or legal counsel, a fate that is shared by thousands of arbitrarily detained citizens according to human rights reports. According to the Assistance Association for Political Prisoners (AAPP), 15,592 people have been arbitrarily arrested since the coup, and 12,456 remain in detention. On 1 July 2022, the AAPP published a report on crimes against humanity committed by the military authorities, claiming that the widespread and systematic use of arbitrary detention without judicial control, accompanied by the concealment of the whereabouts of victims, also amounts to crimes against humanity.[5]

According to the complainant, on 4 February 2021, some 70 elected members of parliament from the NLD met in the capital Naypyidaw and took an oath of office pledging to abide by the mandate granted to them by the people. On 5 February, 300 members of parliament met online and established the Committee Representing the *Pyidaungsu Hluttaw* (CRPH), composed of 20 members of parliament. The CRPH is considered illegal by the military regime, while the CRPH have labelled the military-appointed State Administration Council a terrorist organization. On 31 March 2021, the CRPH appointed a National Unity Government (NUG), which they see as the legitimate interim government.

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4 For the purposes of this report, the term "opposition" relates to members of parliament from political groups or parties whose decision-making power is limited and who are opposed to the ruling power.

5 https://aappb.org/wp-content/uploads/2022/07/AAPP_Crimes-Against-Humanity-Report_8-Jul-2022-English.pdf.

According to the complainant, the CRPH members have been forced into hiding, fearing reprisals because of their political activities. The relatives of the CRPH members have allegedly been repeatedly subjected to harassment and abuse by the military, with the father of Mr. Sithu Maung allegedly being tortured to death after his arrest. The former Speaker of the upper house of parliament and Prime Minister of the NUG, Mr. Mann Win Khaing Than, has reportedly been charged with high treason, while several other members of parliament face criminal charges for inciting civil disobedience and other charges carrying heavy penalties.

On 16 November 2021, State Counsellor Aung San Suu Kyi and 15 other senior politicians were charged with election fraud during the November elections, and on 5 December 2021 she was found guilty and convicted to four years in prison, which was followed by another conviction on 10 January 2022 on three separate charges. Altogether she has been sentenced to 20 years in prison, with more charges pending against her. In addition, according to information provided by the complainant, Mr. Yee Mon (aka Tin Thit), the Hon. Mr. Lwin Ko Latt, the Hon. Ms. Zin Mar Aung and Ms. Phyu Phyu Thin were stripped of their citizenship for allegedly "harming the interests of Myanmar".

On 24 April 2021, the Association of Southeast Asian Nations (ASEAN) held a leaders' meeting, inviting a representative from the military authorities of Myanmar to attend. This meeting led to the adoption of a five-point consensus on Myanmar, calling for the immediate cessation of violence and the nomination of a special envoy to Myanmar to visit the country to meet with all parties concerned. As the military authorities showed no willingness to implement the five-point consensus, they have been excluded from ASEAN meetings as of October 2021.

At a hearing with the IPU Committee on the Human Rights of Parliamentarians in March 2022, the UN Special Rapporteur reported that over 1,600 civilians have been killed by the *Tatmadaw*. The Special Rapporteur called for greater and more concerted pressure on the military authorities by the entire international community. He also renewed his call to halt the flow of arms towards the military, which had reportedly received weapons that were used against the civilian population from a limited number of countries well after the coup d'état, as described in one of his latest reports.[6] Meanwhile, the IPU Secretariat has received correspondence from the military authorities accusing the NUG of fostering terrorism and disorder, which has allegedly claimed over 1,000 lives, while indicating a commitment to implementing the five-point consensus and the possibility of resuming dialogue provided that trust and confidence-building measures are taken first.

However, the military authorities have not written to the IPU Committee Secretariat since then, despite repeated requests for detailed information on the status of detained members of parliament. In July 2022, the complainant communicated that the situation of detained members of parliament had deteriorated further, as the military authorities had banned all visits and communication with detained members of parliament, who have reportedly been transported to secret locations. The whereabouts of some members of parliament has been hidden by the authorities, prompting fears that they may be victims of enforced disappearance. This move followed the news that the *Tatmadaw* executed four democracy activists – including former member of parliament Mr. Phyo Zayar Thaw – which provoked consternation and unrest among prisoners; some have reportedly gone on hunger strike. After the first executions in three decades, the *Tatmadaw* claimed that more would follow; the IPU adopted a statement calling on the parliamentary community to act to safeguard the lives and uphold the rights of the imprisoned members of parliament.[7]

B. Decision

The Governing Council of the Inter-Parliamentary Union

1. *Notes* that the current case also includes a new complaint regarding the situation of Ms. Ma Ma Lay; *notes* that the complaint is admissible, considering that the complaint: (i) was submitted in due form by a qualified complainant under section I.1.(a) of the Procedure for the examination

6 Report by the United Nations Special Rapporteur on the situation of human rights in Myanmar – *Enabling Atrocities: UN Member States' Arms Transfers to the Myanmar Military*. Available at: https://reliefweb.int/sites/reliefweb.int/files/resources Myanmar.pdf.

7 https://www.ipu.org/news/statements/2022-08/ipu-calls-respect-rights-detained-mps-in-myanmar.

and treatment of complaints (Annex I of the Revised Rules and Practices of the Committee on the Human Rights of Parliamentarians); (ii) concerns an incumbent member of parliament at the time of the initial allegations; and (iii) concerns allegations of enforced disappearance, torture, ill-treatment and other acts of violence, arbitrary arrest and detention, inhumane conditions of detention, lack of fair trial proceedings, violation of freedom of opinion and expression, violation of freedom of assembly and association and failure to respect parliamentary immunity, allegations that fall under the Committee's mandate;

2. *Regrets* the lack of information provided by the Permanent Mission of the Republic of the Union of Myanmar to the United Nations Office and other international organizations in Geneva since February 2022, despite several letters submitted to it by the Committee;

3. *Is appalled* that 27 parliamentarians are being held incommunicado in prisons where they allegedly face ill-treatment, torture and gender-based violence, and that they are being held in inhumane detention conditions with limited or no access to medical care or legal counsel; *is dismayed* by reports that their situation has deteriorated even further following a ban on all communication and visits enforced by the military authorities after the execution of four men by hanging on 23 July 2022, including former parliamentarian Mr. Phyo Zayar Thaw; and *is shocked* by official declarations that following these first executions in 30 years, more executions would follow, indicating that the lives of detained parliamentarians are threatened;

4. *Demands* that the military authorities release the parliamentarians forthwith in light of the serious allegations of ill-treatment and poor prison conditions and in the absence of any concrete evidence showing that the parliamentarians have done anything other than merely exercise their basic human rights; *urges* the military authorities, for as long as the parliamentarians' release fails to materialize, to provide specific information on each detained parliamentarian, including on their location, state of health and access to humane and safe detention conditions, family visits and confidential meetings with their lawyers, as well as on the trial of each detained parliamentarian; and *urges*, once again, the military authorities to allow access to the International Committee of the Red Cross in order to visit parliamentarians in detention;

5. *Believes* that the release of all detained parliamentarians is also an essential step towards ending violence and building the trust that would allow a de-escalation of violence and a return to dialogue, as prescribed by the five-point consensus; *calls on* the military authorities to protect the lives and respect the rights of all members of parliament elected in November 2020 and hence to allow them to associate, assemble, express their views, receive and impart information and move about without fear of reprisals; *urges* the military authorities to refrain from taking physical or legal action against the 20 members of the Committee Representing the *Pyidaungsu Hluttaw* (CRPH), and any other person elected in November 2020, in connection with their parliamentary activities; *wishes* to receive, as a matter of urgency, specific information on these points from the military authorities; and *urges* the military authorities also to honour their commitment by: implementing in earnest the five-point consensus brokered by ASEAN; immediately ceasing the use of lethal force against non-combatants and employing genuine restraint against those exercising their human rights; and abiding by the international principles of human rights and international humanitarian law;

6. *Considers* that the silence of the military authorities gives serious weight to reports of the widespread use of torture, rape, enforced disappearance and extrajudicial killings against political prisoners, including elected legislators; *recalls* that impunity, by shielding those responsible from judicial action and accountability, decisively encourages the perpetration of further serious human rights violations – even more so when leading figures of parliament are targeted in the context of a broader pattern of repression, as in the present case; and *stresses* that the widespread and systematic practice of enforced disappearance, imprisonment and torture constitute a crime against humanity;

7. *Calls on* all IPU Member Parliaments to exhort the relevant authorities to exercise their jurisdiction by prosecuting any person responsible for this crime against humanity if they are present in their territory, in keeping with the principle of universal jurisdiction reflected in the Rome Statute, which sets out that it is the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes; *renews its call on* all IPU Member Parliaments

and observers, in particular the ASEAN Inter-Parliamentary Assembly, to press for respect for human rights and democratic principles in Myanmar and to show solidarity with the members of parliament who were elected in 2020, including members of the CRPH; *welcomes* the actions taken thus far and *calls on* IPU Member Parliaments to do more, including by raising the case publicly; *hopes* to be able to rely on the assistance of all relevant regional and international organizations, including ASEAN, to ensure that justice is done in this case; and *calls on* all IPU Member Parliaments and observers to support the International Parliamentarians Alliance for Myanmar and the United Nations Special Rapporteur on the situation of human rights in Myanmar to that end;

8. *Requests* the Secretary General to convey this decision to the military authorities, the complainant and any third party likely to be in a position to supply relevant information; also *requests* the Secretary General to explore all other possibilities for the concerns and requests for information raised in this decision to be effectively addressed;

9. *Requests* the Committee to continue examining this case and to report back to it in due course.

Tunisia

Decision adopted unanimously by the IPU Governing Council at its 210th session (Kigali, 15 October 2022)

Abir Moussi (centre), President of the Free Destourian Party (PLD), lifts her face mask as she gestures during a parliamentary session as Tunisian lawmakers debate ahead of a confidence vote on the new government reshuffle by the Prime Minister at the Tunisian Assembly headquarters in the capital Tunis on 26 January 2021. FETHI BELAID/AFP

TUN-06 – Abir Moussi

Case TUN-06

Tunisia: Parliament affiliated to the IPU

Victim: Female opposition member of parliament

Qualified complainant(s): Section I.1 (a) of the Committee Procedure (Annex I)

Submission of complaint: October 2020

Recent IPU decision: November 2021

Recent IPU mission(s): - - -

Recent Committee hearing: Hearing with the complainant at the IPU's 143rd Assembly (November 2021)

Recent follow-up:
- Communications from the authorities: Letter from the executive authorities (January 2022 and June 2022)
- Communication from the complainant: October 2022
- Communication to the authorities: Letter to the President of the Republic (September 2022)
- Communication to the complainant: October 2022

Alleged human rights violations

✓ Threats, acts of intimidation
✓ Impunity
✓ Other violations

A. Summary of the case

A member of the Assembly of People's Representatives elected in 2019, Ms. Abir Moussi, was the victim of acts of verbal and physical violence and sexist, degrading insults directly linked to the exercise of her parliamentary mandate. The abuse suffered by Ms. Moussi is allegedly based, on the one hand, on the fact that she is the leader of an opposition political party and, on the other hand, on her gender. Ms. Moussi has also received death threats, which she has taken seriously and reported to the police, who are providing her with security.

The complainant's allegations were supported by videos and excerpts from social media posts that helped identify the alleged perpetrators, including two members of the majority party in the Assembly elected in 2019, Mr. Seifeddine Makhlouf and Mr. Sahbi Smara. The latter physically assaulted the member of parliament during Assembly proceedings on 30 June 2021. The two parliamentarians were apparently not punished, as before the suspension of the Tunisian parliament on 25 July 2021 no disciplinary measures had been taken by the parliamentary authorities against them or against other members of the same political party accused of harassing and intimidating Ms. Moussi in order to remove her from political life.

In their letters of November 2020 and April and May 2021, the parliamentary authorities pointed out that they had strongly condemned the actions of Mr. Makhlouf, as had the parliamentary committee set up by the Speaker of Parliament elected in 2019 for this purpose. In their letter dated 14 April 2021, the parliamentary authorities stated that an initiative to create a code of parliamentary ethics and conduct as a

mechanism to eliminate violence in parliament is under discussion. The authorities also expressed their willingness to cooperate with the Inter-Parliamentary Union in order to restore a climate of peace and eliminate all forms of violence in parliament. In their letter of May 2021, the parliamentary authorities nevertheless pointed out that Ms. Moussi had allegedly caused disturbances and verbally abused other members of the Assembly elected in 2019, allegations which were refuted by the complainant.

At the hearing with the IPU Committee on the Human Rights of Parliamentarians on 26 November 2021, during the 143rd IPU Assembly (November 2021) in Madrid, the complainant explained that Ms. Moussi had been the victim of serious harassment and threats for several years, which justified the police protection provided by the Ministry of the Interior that she had enjoyed long before she became a member of parliament. However, the threats against her reportedly intensified when she became a member of parliament in 2019. According to the complainant, the police protection provided to her is ineffective given the recent assaults she suffered. The complainant added that the parliamentary authorities had no mechanism to review disputes between members of parliament. However, the acts of violence suffered by Ms. Moussi were, rather, offences punishable by law, meaning that the parliamentary authorities should have forwarded her complaints to the Public Prosecutor, which was not done.

In their letter of 28 January 2022, the executive authorities stated that a security escort was provided by the Ministry of the Interior to Ms. Moussi (when travelling to and from work). The authorities stated that the acts of violence to which Ms. Moussi had been subject on the Assembly premises in June 2021 were due to the decision of the Bureau of the Assembly to prohibit access to the security escort inside the Assembly. In their letter of 28 January 2022, the Tunisian authorities added that the failure of the Bureau of the Assembly to take measures to prevent the assaults against Ms. Moussi was evidence of the deterioration and paralysis of the National Assembly. Finally, the authorities confirmed that Ms. Moussi had filed two complaints against the Speaker of the Assembly elected in 2019, which were reportedly forwarded to the judicial police. Similarly, four complaints were also filed against her by the Speaker of the Assembly elected in 2019 and the State General Counsel, accusing her of disrupting Assembly sittings and contempt of the complainants.

After months of prolonged political crisis in the country, President Kaïs Saïed suspended parliament on 25 July 2021, invoking Article 80 of the Constitution. President Saïed also lifted the parliamentary immunity of all members of parliament, dismissed the Prime Minister and his government and granted himself all state powers. After renewing the exceptional measures in August 2021, President Saïed issued a presidential decree (Decree No. 2021-117) in September 2021 granting him all state powers. The President can thus legislate by means of presidential decrees, which are not subject to judicial review, given the absence of a Constitutional Court. Although their parliamentary immunity has been lifted, none of the members of parliament elected in 2019 who were guilty of the acts of violence have been apprehended to answer for their actions towards Ms. Moussi.

Despite the provisions of Article 80 of the Constitution, according to which parliament is considered to be in a permanent state of assembly during any exceptional measure taken by the President, the suspension of the legislative body led to its effective dissolution on 30 March 2022. The President also announced a road map, which included plans for legislative elections on 17 December 2022 and a constitutional referendum on 25 July 2022, the ratification of a new constitution on 30 June 2022 and the publication of a new electoral law on 15 September 2022. The new constitution would expand the powers of the President and limit the role of parliament, while the new electoral law would reduce the roles of political parties. President Saïed's draft reform has been marked by a lack of inclusive national dialogue and the marginalization of stakeholders involved in the Tunisian political landscape.

On 22 September 2022, the African Court on Human and Peoples' Rights adopted a decision on Tunisia, in which it ruled that the President's power to take exceptional measures was limited by the procedural requirements provided for in Article 80 of the Constitution. The court found that the measures adopted were disproportionate not only to their stated objectives, but also to Tunisian laws.

According to the allegations forwarded by the complainant in October 2022, the presidential decrees are prejudicial to Ms. Moussi and to the members of her political party, who were allegedly prevented from demonstrating peacefully against the holding of the constitutional referendum, the draft constitution, and the new electoral law. They were also allegedly subjected to acts of violence by the police, whose neutrality was called into question by the complainant in view of the violence committed against Ms. Moussi and members of her party.

Regarding the request for an IPU mission, the Tunisian authorities stated in their letter of 20 June 2022 that they could not respond favourably to this request and that it would be examined after the next legislative elections in December 2022.

B. Decision

The Governing Council of the Inter-Parliamentary Union

1. *Thanks* the Tunisian authorities for the information they provided in their letter dated 28 January 2022 on Ms. Abir Moussi's situation;

2. *Regrets*, once more, the lack of specific measures taken by the parliamentary authorities when they were still in office to prevent the assaults committed against Ms. Moussi, especially the assault against her on parliamentary premises on 30 June 2021 by two other members of parliament;

3. *Strongly reaffirms* that the assaults to which Ms. Moussi was subject are a step backwards and represent a danger both to women's political rights and to the proper functioning of parliament; *condemns*, once more, the acts of violence committed against her and all other forms of violence suffered by her, as well as all demeaning practices aimed against female parliamentarians; and *calls on* the competent authorities once more to take appropriate action to hold to account those responsible for the acts of violence against Ms. Moussi;

4. *Expresses its concern* about the fresh attacks suffered by Ms. Moussi, which appear to stem from her openly expressed opposition to the exceptional measures adopted by the President of the Republic; *underlines* that the rights to freedom of opinion, expression and assembly are guaranteed under the International Covenant on Civil and Political Rights to which Tunisia is a party; *affirms*, once again, that Tunisian women should be able to perform their political duties in a respectful environment in which their rights are effectively and seriously defended; *calls on* the competent authorities, to this end, to respect Ms. Moussi's rights and to better ensure her security when she is on the move;

5. *Notes* the recent measures taken by the Tunisian authorities, in particular the adoption of a new electoral law for the organization of future legislative elections in December 2022; *notes* that the new law could marginalize some candidates from the current political parties, since they are the subject of investigations and legal proceedings; *calls on* the Tunisian authorities to ensure that the members of parliament elected in 2019 who decide to take part in the next legislative elections are not prevented from doing so in an arbitrary manner;

6. *Regrets* the refusal of the Tunisian authorities to receive a delegation of the Committee on the Human Rights of Parliamentarians in Tunisia before the legislative elections in December 2022; *considers* that the mission could have fostered constructive and inclusive dialogue and assisted efforts to return the work of the Tunisian Parliament to normal; *hopes,* nevertheless, that this mission can take place in the near future, in order to find a satisfactory solution to Ms. Moussi's case and explore ways to combat intimidation against women in politics;

7. *Requests* the Secretary General to convey this decision to the President of the Republic, the complainant 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.

CL/210/14(c)-R.1
Kigali, 15 October 2022

Tunisia

Decision adopted unanimously by the IPU Governing Council at its 210th session (Kigali, 15 October 2022)

Tunisian security forces guard the entrance to the country's parliament in Tunis, Tunisia, on 1 October 2021 © Anadolu Agency/AF

TUN-07 - Seifedine Makhlouf
TUN-08 - Maher Zid
TUN-09 - Maher Medhioub
TUN-10 - Yosri Dali
TUN-11 - Fethi Ayadi
TUN-12 - Awatef Ftirch (Ms.)
TUN-13 - Omar Ghribi
TUN-14 - Faiza Bouhlel (Ms.)
TUN-15 - Samira Smii (Ms.)
TUN-16 - Mahbouba Ben Dhifallah (Ms.)
TUN-17 - Mohamed Zrig
TUN-18 - Issam Bargougui
TUN-19 - Samira Chaouachi (Ms.)
TUN-20 - Belgacem Hassan
TUN-21 - Kenza Ajela (Ms.)
TUN-22 - Emna Ben Hmayed (Ms.)
TUN-23 - Bechr Chebbi
TUN-24 - Monjia Boughanmi (Ms.)
TUN-25 - Wafa Attia (Ms.)
TUN-26 - Jamila Jouini (Ms.)
TUN-27 - Mohamed Lazher Rama
TUN-28 - Nidhal Saoudi
TUN-29 - Neji Jmal
TUN-30 - Zeinab Brahmi (Ms.)
TUN-31 - Mohamed Al Azhar
TUN-32 - Noureddine Bhiri
TUN-33 - Rached Ghannouchi
TUN-34 - Tarek Fetiti
TUN-35 - Imed Khemiri
TUN-36 - Walid Jalled
TUN-37 - Safi Said
TUN-38 - Iyadh Elloumi
TUN-39 - Noomane El Euch
TUN-40 - Abdelhamid Marzouki
TUN-41 - Ayachi Zammal
TUN-42 - Samir Dilou
TUN-43 - Habib Ben Sid'hom
TUN-44 - Mabrouk Khachnaoui
TUN-45 - Bechir Khelifi
TUN-46 - Nouha Aissaoui (Ms.)
TUN-47 - Latifa Habachi (Ms.)
TUN-48 - Ferida Laabidi (Ms.)
TUN-49 - Mohamed Affas
TUN-50 - Abdellatif Aloui
TUN-51 - Mehdi Ben Gharbia
TUN-52 - Rached Khiari
TUN-53 - Lilia Bellil (Ms.)
TUN-54 - Moussa Ben Ahmed
TUN-55 - Oussama Khlifi
TUN-56 - Ghazi Karoui
TUN-57 - Mohamed Fateh Khlifi
TUN-58 - Ziad El Hachemi
TUN-59 - Sofiane Makhloufi
TUN-60 - Majdi Karbai
TUN-61 - Anouar Ben Chahed
TUN-62 - Yassine Ayari

Alleged human rights violations

- ✓ Threats, acts of intimidation
- ✓ Arbitrary arrest and detention
- ✓ Lack of due process at the investigation stage and lack of fair trial proceedings
- ✓ Violation of freedom of opinion and expression
- ✓ Violation of freedom of assembly and association
- ✓ Violation of freedom of movement
- ✓ Abusive revocation or suspension of the parliamentary mandate
- ✓ Failure to respect parliamentary immunity
- ✓ Other acts obstructing the exercise of the parliamentary mandate

Case TUN-COLL-01

Tunisia: Parliament affiliated to the IPU

Victim: 56 members of the opposition (43 men and 13 women)

Qualified complainant(s): Section I.1 (a) and (b) of the Committee Procedure (Annex I)

Submission of complaints: August, September and October 2021

Recent IPU decision: February 2022

IPU mission(s): - - -

Recent Committee hearing: Hearing of the complainants at the 143rd IPU Assembly (November 2021)

Recent follow-up:
- Communications from the authorities: Letters from the executive authorities (June and October 2022)
- Communication from the complainants: September 2022
- Communication to the authorities: Letter to the President of the Republic (September 2022)
- Communication to the complainants: September 2022

A. Summary of the case[8]

The present case concerns 56 members of the Assembly of People's Representatives of Tunisia elected in 2019 who, according to the complainants, are victims of arbitrary prosecutions after having expressed their opposition to the exceptional measures adopted by President Kaïs Saïed since 25 July 2021.

More generally, the suspension of parliament on 25 July 2021 by President Saïed had an impact on the 217 members of the Assembly of People's Representatives elected in 2019, who were deprived of their parliamentary immunity, allowances, medical coverage and freedom of movement, including for the purposes of medical treatment.

On 30 March 2022, 120 members of parliament elected in 2019 took part in an online plenary session to discuss the presidential decrees. A few hours after the plenary session, President Saïed officially dissolved parliament and the public prosecutor opened an investigation into the members of parliament for an attempted coup d'état and conspiracy against justice. For fear of reprisals, only nine of the 120 members of parliament concerned, including the Speaker of the National Assembly, Rached Ghannouchi, submitted a complaint to the Committee. Mr. Ghannouchi was questioned at great length on 1 April 2022 about this case.

Moreover, the dissolution of parliament would have had, according to the complainants, additional consequences for some members of parliament elected in 2019 from the Ennahda and Al Karama blocs, who were directly targeted because of their opposition to President Saïed. Mr. Seifedine Makhlouf and Mr. Nidhal Saoudi were imprisoned for several months before being released in January 2022, while three other individuals were placed under house arrest until early October 2021. Cases concerning members of parliament are examined by military courts under Tunisian law. On 31 December 2021, Mr. Noureddine Bhiri was arrested without warrant or explanation and placed under house arrest as a preventive measure before being released on 8 March 2022. Charged in connection with a number of cases, Mr. Rached Khiari has been detained since 3 August 2022 in connection with a case where he is accused by the Ministry of Education of defamation on social media networks. Similarly, Mr. Mehdi Ben Gharbia has been held in pretrial detention since 20 October 2021, accused of money laundering. Mr. Mehdi Ben Gharbi is allegedly still being held in pretrial detention, despite that detention exceeding the legal six-month limit. As for Mr. Rached Ghannouchi, he is allegedly the target of politically motivated persecution, as he has been charged in several cases that are, according to the complainants, politically motivated.

Although this case includes individual situations, some of which relate to events prior to the dissolution of parliament, the violations suffered by all the members of parliament concerned, belonging to the Assembly of People's Representatives elected in 2019, are part of the exceptional measures taken by

8 For the purposes of this report, the term "opposition" relates to members of parliament from political groups or parties whose decision-making power is limited and who are opposed to the ruling power.

President Saïed since 25 July 2021. President Saïed invoked Article 80 of the Constitution to suspend and dissolve parliament, lift the parliamentary immunity of members of parliament, dismiss the Prime Minister and his government and assume executive power after months of prolonged political crisis in the country. After renewing the exceptional measures in August 2021, President Saïed issued a presidential decree (Decree No. 2021-117) in September 2021 that gives him all state powers. The President can thus legislate by means of presidential decrees, which are not subject to judicial review in the absence of the Constitutional Court.

Despite the provisions of Article 80 of the Constitution, according to which parliament is considered to be in a permanent state of assembly during any exceptional measure taken by the President, the suspension of the legislative body was replaced by its effective dissolution on 30 March 2022. The road map announced by the President provided for the organization of parliamentary elections on 17 December 2022, a constitutional referendum to be held on 25 July 2022, a new Constitution ratified on 30 June 2022 and a new electoral law published on 15 September 2022. The new Constitution reportedly extends the powers of the President and limits the role of parliament, while the new electoral law reportedly reduces the roles of the political parties. President Said's reform plan was marked by the absence of an inclusive national dialogue and the marginalization of relevant actors in the Tunisian political landscape.

In their letter of 28 January 2022, the executive authorities stated that all members of parliament, whose functions had been frozen, enjoyed freedom of movement and travel, apart from those covered by a legal decision prohibiting them from leaving the country. In a more recent communication of 11 October 2022, the executive authorities confirmed that the members of parliament who had taken part in the online session of 30 March 2022 were being investigated. As for the situation of Mr. Ben Gharbia, the authorities stated that he was currently the subject of a criminal prosecution; his first hearing of 7 July 2022 had been deferred to 13 October 2022. The requests for him to be freed were refused.

On 22 September 2022, the African Court on Human and Peoples' Rights adopted a decision against Tunisia, finding that the power of the President of the Republic to take exceptional measures was limited by the procedural requirements of Article 80 of the Constitution. The Court concluded that the measures adopted were not only disproportionate to their stated objectives, but also to the laws of Tunisia.

Concerning the request for an IPU mission, the Tunisian authorities indicated in their letter of 20 June that they could not respond favourably to this request and that it would be examined after the next legislative elections in December 2022.

B. Decision

The Governing Council of the Inter-Parliamentary Union

1. *Notes* that the complaint concerning the situation of the members of parliament who are the subject of cases TUN-33 to TUN-62, members of the Assembly of the representatives of the Tunisian people elected in 2019, is admissible, considering that the complaint: (i) was submitted in due form by qualified complainants under section I.1(b) of the Procedure for the examination and treatment of complaints (Annex I of the revised Rules and Practices of the Committee on the Human Rights of Parliamentarians); (ii) concerns incumbent members of parliament at the time that the initial allegations were made; and (iii) concerns allegations of failure to respect parliamentary immunity; violations of freedom of opinion and expression, freedom of movement, and freedom of assembly and association; arbitrary arrest and detention; and threats and acts of intimidation, which are allegations that fall within the Committee's mandate; and *decides* to merge the examination of their situations with the present case;

2. *Thanks* the Tunisian authorities for the information provided in their letter of 11 October 2022; *regrets*, however, the absence of detailed information on the situation of the members of parliament concerned;

3. *Takes note* of the release on bail of Mr. Noureddine Bhiri, who continues to be under investigation, and *wishes* to receive information on the situations of Mr. Rached Khiari and Mr. Ben Gharbia; *calls on* the competent authorities to ensure that their trials are conducted in compliance with relevant applicable national and international standards;

4. *Expresses its concern* at the situation of the 120 members of parliament elected in 2019 who took part in the online plenary session of 30 March 2022 and who are consequently being investigated for attempted conspiracy and endangering state security; *stresses* that the members of parliament at the online meeting appear to have discussed the presidential decrees adopted since 25 July 2021 in order to examine their constitutionality, in the exercise of their parliamentary duties; *is deeply concerned* that the plenary session led to the dissolution of parliament by the President of the Republic; *affirms* that, despite the suspension of parliament by the President, and bearing in mind the general political situation, the meeting of those members of parliament should not lead to legal proceedings and criminal sanctions against them; and *calls on* the authorities to abandon the proceedings against them;

5. *Is very concerned* at the situation of all members of the Assembly of People's Representatives elected in 2019 and the restrictions to which they have been subjected, including lifting of immunity, travel ban, withdrawal of allowances and, in particular, health-care cover, which constitutes a major obstacle for some members of parliament who need expensive medical care; and *calls on* the authorities to lift this restriction and allow those members of parliament requiring medical care abroad to travel;

6. *Notes* the recent measures taken by the Tunisian authorities, in particular the adoption of a new electoral law for the organization of future legislative elections in December 2022; *notes* that the new law could marginalize some candidates from the current political parties, since they are the subject of investigations and legal proceedings; and *calls on* the Tunisian authorities to ensure that the members of parliament elected in 2019 who decide to take part in the next legislative elections are not prevented from doing so in an arbitrary manner;

7. *Regrets* the refusal of the Tunisian authorities to receive a delegation of the Committee on the Human Rights of Parliamentarians in Tunisia before the legislative elections in December 2022; *considers* that the mission could have fostered constructive and inclusive dialogue and assisted efforts to return the work of the Tunisian Parliament to normal; *hopes*, nevertheless, that this mission can take place in the near future, so that satisfactory solutions can be found to the cases at hand, and discussions can take place on the assistance that the Inter-Parliamentary Union could provide to the Tunisian Parliament;

8. *Requests* the Secretary General to convey this decision to the President of the Republic, the complainants and any third party likely to be in a position to supply relevant information;

9. *Requests* the Committee to continue examining this case and to report back to it in due course.

CL/210/14(c)-R.1
Kigali, 15 October 2022

Türkiye

Decision adopted by consensus by the IPU Governing Council at its 210th session (Kigali, 15 October 2022) [9]

Aysel Tugluk during an interview with AFP in Diyarbakir, 17 July 2007. AFP PHOTO/STR

TUR-69 - Gülser Yildirim (Ms.)
TUR-70 - Selma Irmak (Ms.)
TUR-71 - Faysal Sariyildiz
TUR-73 - Kemal Aktas
TUR-75 - Bedia Özgökçe Ertan (Ms.)
TUR-76 - Besime Konca (Ms.)
TUR-77 - Burcu Çelik Özkan (Ms.)
TUR-78 - Çağlar Demirel (Ms.)
TUR-79 - Dilek Öcalan (Ms.)
TUR-80 - Dilan Dirayet Taşdemir (Ms.)
TUR-81 - Feleknas Uca (Ms.)
TUR-82 - Figen Yüksekdağ (Ms.)
TUR-83 - Filiz Kerestecioğlu (Ms.)
TUR-84 - Hüda Kaya (Ms.)
TUR-85 - Leyla Birlik (Ms.)
TUR-86 - Leyla Zana (Ms.)
TUR-87 - Meral Daniş Beştaş (Ms.)
TUR-88 - Mizgin Irgat (Ms.)
TUR-89 - Nursel Aydoğan (Ms.)
TUR-90 - Pervin Buldan (Ms.)
TUR-91 - Saadet Becerikli (Ms.)
TUR-92 - Sibel Yiğitalp (Ms.)
TUR-93 - Tuğba Hezer Öztürk (Ms.)
TUR-94 - Abdullah Zeydan
TUR-95 - Adem Geveri
TUR-96 - Ahmet Yildirim
TUR-97 - Ali Atalan
TUR-98 - Alican Önlü
TUR-99 - Altan Tan
TUR-107 - Ferhat Encü
TUR-108 - Hişyar Özsoy
TUR-109 - Idris Baluken
TUR-110 - Imam Taşçier
TUR-111 - Kadri Yildirim
TUR-112 - Lezgin Botan
TUR-113 - Mehmet Ali Aslan
TUR-114 - Mehmet Emin Adiyaman
TUR-115 - Nadir Yildirim
TUR-116 - Nihat Akdoğan
TUR-118 - Osman Baydemir
TUR-119 - Selahattin Demirtaş
TUR-120 - Sirri Süreyya Önder
TUR-121 - Ziya Pir
TUR-122 - Mithat Sancar
TUR-123 - Mahmut Toğrul
TUR-124 - Aycan Irmez (Ms.)
TUR-125 - Ayşe Acar Başaran (Ms.)
TUR-126 - Garo Paylan
TUR-128 - Aysel Tugluk (Ms.)
TUR-129 - Sebahat Tuncel (Ms.)
TUR-130 - Leyla Guven (Ms.)
TUR-131 - Ayşe Sürücü (Ms.)
TUR-132 - Musa Farisogullari
TUR-133 - Emine Ayna (Ms.)
TUR-134 - Nazmi Gür
TUR-135 - Ayla Akat Ata (Ms.)
TUR-136 – Beyza Ustün (Ms.)
TUR-137 - Remziye Tosun (Ms.)

9 The leader of the Turkish delegation expressed her reservations regarding the decision.

TUR-100 - Ayhan Bilgen
TUR-101 - Behçet Yildirim
TUR-102 - Berdan Öztürk
TUR-105 - Erol Dora
TUR-106 - Ertuğrul Kürkcü
TUR-138 - Kemal Bulbul
TUR-140 - Gültan Kışanak (Ms.)
TUR-141 - Semra Güzel (Ms.)
TUR-142 - Saliha Aydemir (Ms.)

Alleged human rights violations

- ✓ Failure to respect parliamentary immunity
- ✓ Lack of due process at the investigation stage
- ✓ Lack of fair trial proceedings and excessive delays
- ✓ Violation of freedom of opinion and expression
- ✓ Violation of freedom of assembly and association
- ✓ Arbitrary arrest and detention
- ✓ Ill-treatment
- ✓ Abusive revocation or suspension of the parliamentary mandate

Case TUR-COLL-02

Türkiye: Parliament affiliated to the IPU

Victims: 67 opposition members of parliament (33 men and 34 women)

Qualified complainant(s): Section I.(1)(c) of the Committee Procedure (Annex I)

Submission of complaint: June 2016

Recent IPU decision: February 2022

IPU mission: June 2019

Recent Committee hearings: Hearings with the Turkish delegation and the complainant at the 141st IPU Assembly (October 2019)

Recent follow-up:
- Communications from the authorities: Responses from the President of the Turkish IPU Group (September 2022)
- Communication from the complainant: September 2022
- Communication to the authorities: Letter to the President of the IPU Group (September 2022)
- Communication to the complainant: September 2022

A. Summary of the case

Over 600 criminal and terrorism charges have been brought against the members of parliament of the People's Democratic Party (HDP) since 20 May 2016, when the Constitution was amended to authorize the wholesale lifting of parliamentary immunity. They are being tried on terrorism-related charges and charges of defamation of the President, Government or State of Türkiye. Some of them also face older charges in relation to the Kurdistan Communities Union (*Koma Civakên Kurdistan* – KCK) first-instance trial that has been ongoing since 2011, while others face more recent charges. In these cases, their parliamentary immunity was allegedly not lifted.

Since 2018, over 30 parliamentarians have been sentenced to terms of imprisonment. Since 4 November 2016, scores of parliamentarians have been detained and others have gone into exile. Eleven current and former parliamentarians are in prison, namely the former HDP co-chairs, Mr. Selahattin Demirtaş and Ms. Figen Yüksekdağ, as well as Ms. Gülser Yildirim, Mr. Idris Baluken, Ms. Leyla Güven, Ms. Semra Güzel, Ms. Gültan Kışanak, Mr. Sebahat Tuncel, Ms. Aysel Tuğluk, Ms. Ayla Akat Ata and Mr. Nazmi Gur. Some of them were arrested in September 2020, although the accusations against them relate to the events in the distant past that unfolded soon after the siege of Kobane in Syria in 2014. Thirteen HDP members of parliament have lost their parliamentary mandates in recent years, largely due to the fact that their prison sentences became final. According to the complainant, Ms. Aysel Tuğluk is suffering from dementia and her health is getting worse by the day. She was sentenced in 2018 to 10 years in prison for "belonging to a terrorist organization". The Constitutional Court rejected a plea for her release but ordered that she receive regular neurological and psychiatric treatment in hospital. In another case against her, the Constitutional Court ruled in a case against her that her right to a fair trial had been violated and ordered a retrial.

According to the complainant, the charges against HDP members of parliament are groundless and violate their rights to freedom of opinion and expression, and freedom of assembly and association. The complainant claims that the evidence adduced to support the charges against the members of parliament relates to public statements, rallies and other peaceful political activities carried out in furtherance of their parliamentary duties and political party programme. Such activities include mediating between the Kurdistan Workers' Party (*Partîya Karkerên Kurdistanê* – PKK) and the Turkish Government as part of the peace process between 2013 and 2015, publicly advocating political autonomy and criticizing the policies of President Erdoğan in relation to the current conflict in south-eastern Türkiye and at the border with Syria (including denouncing the alleged crimes committed by the Turkish security forces in that context). The complainant alleges that such statements, rallies and activities do not constitute any offence, and that they fall under the clear scope and protection of the fundamental rights of members of parliament.

An IPU trial observer concluded in 2018 that the prospects for Ms. Yüksekdağ and Mr. Demirtaş receiving fair trials were remote and that the political nature of both prosecutions was evident. It should be noted that, on 17 July 2022, the Constitutional Court ruled in one of the cases against Ms. Yüksekdağ that her rights to freedom of thought and expression, as well as to be elected, were violated when she was stripped of her parliamentary immunity in 2016.

A 2018 IPU review of 12 court decisions issued against HDP members reached similar conclusions. It concluded, *inter alia*, that the judiciary in Türkiye, from the first-instance courts to the Constitutional Court, completely disregarded the case law of the European Court of Human Rights and the main judgment of the Turkish Constitutional Court in relation to freedom of expression when evaluating whether an expression constituted incitement to violence or one of the other offences with which the members of parliament were charged.

On 22 December 2020, the Grand Chamber of the European Court of Human Rights delivered its judgment in the case of *Demirtaş v. Türkiye* (No. 2) (Application No. 14305/17), and held that there had been violations of his rights to freedom of expression, to freedom and security, to a speedy decision on the lawfulness of detention and to free elections. The Court also found that Mr. Demirtaş' detention, especially during two crucial campaigns relating to the referendum of 16 April 2017 and the presidential elections of 24 June 2018, had pursued the ulterior motive of stifling pluralism and limiting freedom of political debate, which was at the very core of the concept of a democratic society. The Court held that the respondent state was to take all necessary measures to secure his immediate release. Since then, European parliamentary and executive institutions have called on the Turkish authorities to implement the judgment without delay. On 7 January 2021, the Ankara 22nd Assizes Court accepted a 3,500-page indictment against Mr. Demirtaş and 107 other defendants, issued by the Ankara public prosecutor on 30 December 2020, regarding the same protests that took place in October 2014, this time charging Mr. Demirtaş with 30 new offences. Since then, Mr. Demirtaş has been sentenced to prison terms in other criminal cases, reportedly most recently on 24 January 2022 with regard to public criticism voiced in February 2016 against the then Prime Minister, Mr. Ahmet Davutoğlu, during a rally held in Mersin. The Turkish authorities have stated that the ruling of the European Court of Human Rights could not be implemented, given that Mr. Demirtaş' ongoing detention was related to new evidence that is substantially different from that examined by the Court.

On 1 February 2022, the European Court of Human Rights ruled that the lifting of the parliamentary immunity of 40 Peoples' Democratic Party (HDP) lawmakers, who had brought their case to the European Court following the constitutional amendment in May 2016, had violated their right to freedom of expression. In so doing, the Court responded to their assertion that the lifting of their immunity came in response to their political opinions and drew for its conclusions on this point on its rulings in the cases of *Demirtaş v. Türkiye and Demir v. Türkiye*.

On 19 October 2021, in the landmark decision *Vedat Şorli v. Turkey*, the European Court of Human Rights found that Article 299 of the Turkish Criminal Code, which criminalizes insulting the President, was incompatible with the right to freedom of expression, and urged the Government to align legislation with Article 10 of the European Convention on Human Rights.

The Turkish authorities have provided extensive information on the legal status of the criminal proceedings against the HDP parliamentarians, without, however, providing information on the precise facts to support the charges or convictions. According to the official information note dated 21 September 2022, provided by the President of the Turkish IPU Group, with regard to the 531 criminal files against 51 HDP parliamentarians (out of the 66 that are the subject of the present case 33 rulings were issued concluding that there was no room for prosecution and 126 merger/ postponement/administrative sanction decisions were made. According to the official information note dated 21 September 2022, provided by the President of the Turkish IPU Group, with regard to the 531 criminal files against 51 HDP parliamentarians (out of the 66 that are the subject of the present case) 33 rulings were issued concluding that there was no room for prosecution and 126 merger/ postponement/administrative sanction decisions were made. Moreover, legal proceedings were launched in 349 files, 51 of which are still pending, while convictions have been handed down in 79 files against 38 HDP parliamentarians. Moreover, 230 files, closed through resolutions, indicate that there is no room for acquittal/punishment/postponement of the prosecution. The note specifies in this regard that 23 files were sent to parliament with a decision to stop after the relevant person was

elected as a member of parliament while the trial was still ongoing, and after these files were returned to their place; that a conviction decision was given for three members of parliament in three files; that, with regard to 11 files, there is no room for acquittal/punishment/postponement of prosecution and that they were closed through resolutions; and that nine files are still pending/ongoing.

The Turkish authorities have repeatedly justified the legality of the measures taken against the HDP parliamentarians, and invoked the independence of the judiciary, the need to respond to security and terrorism threats and legislation adopted under the state of emergency. The authorities have provided detailed information on parliament's May 2016 "provisional constitutional amendment" on parliamentary immunity, which has been used to prosecute parliamentarians from all parties. They have asserted that there is no "HDP witch-hunt" in Türkiye; that women parliamentarians are not being specifically targeted; that there is no Kurdish issue in Türkiye and no current conflict in south-eastern Türkiye; that Türkiye is facing a terrorism issue at multiple levels involving the PKK and its "extensions"; that the HDP has never publicly denounced the violent activities of the PKK; that HDP members, including members of parliament, have made many statements in support of the PKK and their "extensions"; that HDP members have attended funerals of PKK suicide bombers and called for people to take to the streets, which has resulted in violent incidents with civilian casualties; that this does not fall within the acceptable limits of freedom of expression; that the Constitutional Court has reached such conclusions in several cases and, in other cases, domestic remedies have not yet been exhausted; and that the independence of the judiciary and the rule of law in Türkiye must be respected.

On 17 March 2021, the chief prosecutor of the Turkish Court of Cassation referred a request for the dissolution of the HDP to the Constitutional Court, accusing the HDP of terrorist activities. On 21 June 2022, the Constitutional Court accepted the indictment presented by the chief prosecutor. On 20 September 2022, the Constitutional Court rejected the defence's request for the recusal of a judge in the case, who had reportedly previously taken part as a prosecutor in investigations against at least 47 of the HDP members who were facing a ban from politics in the same "HDP closure" case. It appears that the prosecution is drawing heavily on the ongoing proceedings against several HDP politicians in the 2014 Kobane case referred to earlier, which is ongoing.

The complainant affirms that 1,231 summary proceedings have been brought and are currently pending against HDP parliamentarians. In this regard, it points out that the parliamentary immunity of Ms. Saliha Aydemir is expected to be lifted soon in connection with her participation in the Gemlik demonstration on 12 June 2022.

In January 2022, the complainant stated that photos that had been leaked of current HDP parliamentarian Ms. Semra Güzel, showing her together with PKK fighter Mr. Volkan Bora, whom she had known from their time at Harran University, were being used to criminalize her and to strengthen the push for the closure of the HDP. The complainant asserts that the photos were taken in 2014 during the peace process when the HDP was interacting directly with the PKK on behalf of the Turkish Government. Ms. Güzel was not involved with the HDP at that time. According to the complainant, at the time the Government also actively encouraged Kurdish families to meet their children in the mountains as part of an effort to convince them to contribute to a peaceful settlement and to return home. According to the complainant, even though the photos showing Ms. Güzel were reportedly found by the authorities in 2017, she was never investigated or questioned until these photos were leaked to the press in late 2021. According to the official information note dated 21 September 2022, provided by the President of the Turkish IPU Group, the prosecution has found significant evidence showing Ms. Güzel mingling with the PKK/KCK fighters at their camps and wearing their organization's uniform; the prosecution affirms that Ms. Güzel has been involved in the women's organization of the KCK, the umbrella organization of the PKK, and subsequently the DTK, and that the KCK administration suggested that she run for parliament to further the aims of the organization. On 1 March 2022, the Turkish Parliament lifted her parliamentary immunity.

B. Decision

The Governing Council of the Inter-Parliamentary Union

1. *Thanks* the President of the Turkish IPU Group for her latest communication and for her continuous cooperation and spirit of dialogue;

2. *Remains deeply alarmed* at the continued prospect of the dissolution of the HDP party, also bearing in mind that its predecessors were dissolved by court order; *considers* that this step shows once again that the authorities continue to view, wrongly, the PKK and the HDP as one and the same entity; *recalls* in this regard that, while recognizing that the two organizations rely largely on the same support base and pursue similar objectives, the HDP is a legal political party that does not in any way advocate violence to achieve its goals; *is concerned* that its dissolution will deprive not only HDP parliamentarians of their right to participate in public life, but also their electorate of their right to representation in the Turkish parliament; *underlines* that the European Court of Human Rights has ruled that the dissolution or ban of a party is an extreme measure only justified as a last resort, in very exceptional circumstances, and that it has already handed down several rulings, notably against Türkiye, in which the ban on a political party had been considered a human rights violation; and *urges* the Turkish authorities, therefore, to do their utmost to comply with its obligations under the European Convention on Human Rights in this area;

3. *Notes with concern* in this regard, also, that the European Court of Human Rights' rulings in cases affecting several of the HDP parliamentarians underscore that the legal steps to which they have been subjected come in direct response to the exercise of their freedom of expression and, as determined in the case of Mr. Demirtaş, were aimed at stifling the opposition;

4. *Reaffirms its long-standing view* that, in their legitimate fight against terrorism, the Turkish authorities need to take more decisive action to ensure that current national legislation and its application are in line with international and regional standards on freedom of opinion and expression, assembly and association;

5. *Remains deeply concerned* in this regard that 11 current and former parliamentarians continue to languish in prison; *considers*, once more, that the latest extensive information provided by the Turkish Parliament does nothing to dispel the doubts that the HDP parliamentarians have been targeted in connection with the legitimate exercise of their political rights; *urges*, therefore, the Turkish authorities to review their situation and, where possible, release them and terminate the criminal proceedings; and *sincerely hopes* that the authorities will release Ms. Aysel Tuğluk forthwith in light of her poor health;

6. *Remains concerned* that new legal proceedings could be prepared and brought against current HDP parliamentarians; *calls on* the Turkish Parliament to ensure that their parliamentary immunity is scrupulously protected, that any requests made for the lifting of immunity is carefully analysed with regard to each parliamentarian concerned and only lifted if the legal proceedings are founded in law and do not run counter to basic human rights; and *wishes* to receive detailed information from the authorities on these points;

7. *Requests* the Secretary General to convey this decision to the relevant authorities, the complainant and any third party likely to be in a position to supply relevant information, and to undertake efforts to organize a Committee mission to Türkiye that would enable the delegation to discuss directly the issues at hand with all the relevant authorities and other stakeholders;

8. *Requests* the Committee to continue examining this case and to report back to it in due course.

Uganda

Decision adopted unanimously by the IPU Governing Council at its 210th session (Kigali, 15 October 2022)

© National Unity Platform

UGA-24 - Allan Aloizious Ssewanyana
UGA-25 - Muhammad Ssegirinya

Case UGA-Coll-02

Uganda: Parliament affiliated to the IPU

Victims: Two male opposition members of parliament

Qualified complainant(s): Section I.1.(a) of the Committee Procedure (Annex I)

Submission of complaint: January 2022

Recent IPU decision: March 2022

IPU mission(s): - - -

Recent Committee hearing: Hearing with the Ugandan delegation to the 145th IPU Assembly (October 2022)

Recent follow-up:
- Communication(s) from the authorities: - - -
- Communication from the complainant: September 2022
- Communication to the authorities: Letter to the Speaker of the National Assembly (September 2022)
- Communication to the complainant: September 2022

Alleged human rights violations

- ✓ Abduction
- ✓ Torture, ill-treatment and other acts of violence
- ✓ Arbitrary arrest and detention
- ✓ Inhumane conditions of detention
- ✓ Lack of due process at the investigation stage
- ✓ Lack of fair trial proceedings
- ✓ Failure to respect parliamentary immunity

A. Summary of the case

The case concerns allegations of human rights violations, including, *inter alia*, arbitrary detention, torture, inhumane conditions of detention and lack of fair trial proceedings, affecting two opposition members of parliament in Uganda. According to the complainant, the two members of parliament have been targeted because of their political opinions and their work as opposition parliamentarians.

On 7 September 2021, the Hon. Muhammad Ssegirinya was arrested together with the Hon. Allan Aloizious Ssewanyana by the Ugandan police on allegations that the two parliamentarians were involved in the murder of two individuals and the attempted murder of a third person. They were charged with the offences of murder, terrorism, aiding and abetting terrorism and attempted murder. All these crimes were purportedly committed on 23 August 2021 in Masaka District. The two members of parliament were subsequently remanded in custody and held in Kigo Government Prison. On 21 September 2021, both members of parliament were granted bail by the High Court of Uganda sitting in Masaka.

The complainant states that, on 24 September 2021, after having paid bail, Mr. Ssewanyana was released from Kigo Government Prison but was immediately attacked at the prison gate, manhandled and abducted by gun-wielding men in plain clothes, who whisked him away to an unknown destination. On 27 September 2021, Mr. Ssegirinya was also released from Kigo Government Prison, but he too was immediately abducted at the prison gate by similarly dressed men wielding heavy weapons and whisked away to an unknown destination.

On 30 September 2021, after days of detention at unknown detention facilities, the two members of parliament were summoned to the Chief Magistrate's Court in Masaka and read additional charges. According to the complainant, they appeared frail and informed the court that they had been brutally tortured through physical beatings while in detention. On the occasions the members of parliament re-appeared in court to hear their cases, they showed physical, festering wounds and complained of torture and humiliation while in detention. The complainant also states that the members of parliament informed the presiding judge that they had been prevented from receiving medical attention by a doctor of their choice and that they had been banned from receiving any visitors, including family members, while in prison.

At the hearing held during the 145th IPU Assembly, the Ugandan delegation stated that the two members of parliament had been arrested on the basis of section 21(1)(h) and (i) of the Police Act, Chapter 303, of the Laws of Uganda, which both obliges and empowers the police to “detect and bring offenders to justice” and to “apprehend all persons whom he or she is legally authorised to apprehend and for whose apprehension sufficient grounds exist”. The delegation also informed the IPU Committee on the Human Rights of Parliamentarians that the privileges and immunities of members of parliament as provided for in Ugandan legislation do not grant immunity from criminal proceedings. Regarding action taken by parliament, the delegation reported that on several occasions the Human Rights Committee of the Parliament of Uganda visited the two members of parliament in Kigo Prison and Mulago National Referral Hospital in the presence of their legal representatives, and in the case of Mr. Ssegirinya in the presence of his private doctor. The parliamentary committee also interviewed the prison authorities, the two parliamentarians concerned and other stakeholders. The matter of the incarceration of the two members of parliament had been discussed 10 times on the floor of parliament since their arrest and the Government has updated the House on the situation of both members of parliament. On 7 September 2022, in her communication to the House, the Speaker of Parliament called for the expeditious trial of Mr. Ssewanyana and Mr. Ssegirinya. The delegation also provided the Committee with copies of excerpts from the House proceedings in this regard.

According to the complainant, the two members of parliament have remained in detention since 7 September 2021 and all efforts to secure their release on bail have been unsuccessful to date. They also need specialized medical treatment, which they cannot access at the Kigo Prison facilities. Mr. Ssegirinya’s health condition is particularly unstable as he has an underlying condition requiring urgent medical attention, while Mr. Ssewanyana has an injured leg. In September 2022, the complainant informed the Committee that proceedings were still ongoing, that the health of the members of parliament had continued to deteriorate, that other co-accused prisoners in the same case had informed the court that they had been tortured to implicate the two members of parliament and that the Prosecution had recently applied for the identity of witnesses to be shielded. The complainant also reported that the defence lawyers of the two members of parliament challenged in court the Prosecution’s application to protect witnesses’ identity and that the court decision on this matter was still pending.

B. Decision

The Governing Council of the Inter-Parliamentary Union

1. *Thanks* the delegation of Uganda for the information provided and for meeting with the Committee on the Human Rights of Parliamentarians during the 145th IPU Assembly to discuss the cases and concerns at hand;

2. *Takes note with appreciation* of steps taken by the Parliament of Uganda to monitor the situation of Mr. Ssewanyana and Mr. Ssegirinya, which include regularly discussing their situation on the floor of the House and asking the Government to report on the situation of the

two members of parliament; *commends* in particular the efforts made by the Human Rights Committee of the Parliament of Uganda to visit Mr. Ssewanyana and Mr. Ssegirinya in prison; *calls on* parliament to continue using its powers effectively to ensure that the allegations of torture against the two parliamentarians are fully investigated, followed by whatever steps are warranted as a result to ensure accountability; and *wishes* to be kept informed of progress made in this regard and to receive copies of the relevant reports prepared by the Human Rights Committee of Parliament following its visits to prison;

3. *Regrets* that, despite the assurances of support that the Ugandan delegation to the 144th IPU Assembly gave on this matter, the requested mission to Uganda by the Committee on the Human Rights of Parliamentarians has still not received official endorsement from the Ugandan authorities; *is confident* that, in light of the renewed assurances of support provided by the Ugandan delegation that met the Committee during the 145th IPU Assembly, a Committee delegation can soon travel to Uganda to meet with all relevant authorities exercising legislative, executive or judicial powers, the prison authorities and any other institution, civil society organization or individual in a position to provide relevant information regarding the situation of Mr. Ssewanyana and Mr. Ssegirinya, as well as to visit them in prison; and *hopes* that the competent national authorities will cooperate fully and that the mission will help to find swift satisfactory solutions to this case in accordance with applicable national and international human rights standards and to obtain first-hand information on the status of implementation of the recommendations made by the IPU after the Committee mission to Uganda in 2020;

4. *Remains deeply concerned* about the continued detention of the members of parliament, in view of the allegations concerning their conditions of detention and mistreatment while in custody and the alleged deterioration in their state of health; *urges* the national authorities to take all necessary steps to ensure Mr. Ssewanyana's and Mr. Ssegirinya's full enjoyment of their rights, in particular their right to life, to physical integrity and to access to judicial guarantees, and that they receive the necessary medical care; and *requests* once again the authorities to provide official and detailed information on the facts justifying each of the charges brought against the two members of parliament, on further steps taken to investigate the alleged acts of torture reported by the complainant and on progress made in the identification and punishment, if any, of those responsible;

5. *Is concerned* about the allegation that other co-accused prisoners in the same case have been apparently tortured to implicate the two members of parliament; *recalls* that, according to article 15 of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, to which the State of Uganda is a party, the State "shall ensure that any statement that is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made"; *is also concerned* that the Prosecution had recently applied for the identity of witnesses for the prosecution to be shielded in the proceedings against Mr. Ssewanyana and Mr. Ssegirinya; in this regard, *wishes* to receive additional official information on the reasons invoked by the Prosecution to justify its request and on how the possible protection of witnesses' identity would fully respect the procedural guarantees provided for in Ugandan laws and strictly comply with the fundamental right of defence of the two parliamentarians; *decides* to mandate a trial observer to monitor the upcoming court proceedings; and *wishes* to be kept informed of the dates of the trial when available and of any other relevant judicial developments in the case;

6. *Requests* the Secretary General to convey this decision to the Speaker of the National Assembly, the complainant and any third party likely to be in a position to supply relevant information;

7. *Requests* the Committee to continue examining this case and to report back to it in due course.

Venezuela

Decision adopted unanimously by the IPU Governing Council at its 210th session (Kigali, 15 October 2022)

Venezuelan opposition deputy Juan Requesens, elected in 2015, argues with National Guard personnel during a protest in front of the Supreme Court in Caracas on 30 March 2017. JUAN BARRETO/AFP

VEN-10 – Biagio Pilieri
VEN-11 – José Sánchez Montiel
VEN-12 – Hernán Claret Alemán
VEN-13 – Richard Blanco
VEN-16 – Julio Borges
VEN-19 – Nora Bracho (Ms.)
VEN-20 – Ismael Garcia
VEN-22 – Williams Dávila
VEN-24 – Nirma Guarulla (Ms.)
VEN-25 – Julio Ygarza
VEN-26 – Romel Guzamana
VEN-27 – Rosmit Mantilla
VEN-28 – Renzo Prieto
VEN-29 – Gilberto Sojo
VEN-30 – Gilber Caro
VEN-31 – Luis Florido
VEN-32 – Eudoro González
VEN-33 – Jorge Millán
VEN-34 – Armando Armas
VEN-35 – Américo De Grazia
VEN-36 – Luis Padilla
VEN-37 – José Regnault
VEN-38 – Dennis Fernández (Ms.)
VEN-39 – Olivia Lozano (Ms.)
VEN-40 – Delsa Solórzano (Ms.)
VEN-41 – Robert Alcalá
VEN-42 – Gaby Arellano (Ms.)
VEN-43 – Carlos Bastardo
VEN-44 - Marialbert Barrios (Ms.)
VEN-45 – Amelia Belisario (Ms.)
VEN-46 – Marco Bozo
VEN-48 – Yanet Fermin (Ms.)
VEN-49 – Dinorah Figuera (Ms.)
VEN-85 – Franco Casella
VEN-86 – Edgar Zambrano
VEN-87 – Juan Pablo García
VEN-88 – Cesar Cadenas
VEN-89 – Ramón Flores Carrillo
VEN-91 – María Beatriz Martínez (Ms.)
VEN-92 – María C. Mulino de Saavedra (Ms.)
VEN-93 – José Trujillo
VEN-94 – Marianela Fernández (Ms.)
VEN-95 – Juan Pablo Guanipa
VEN-96 – Luis Silva
VEN-97 – Eliezer Sirit
VEN-98 – Rosa Petit (Ms.)
VEN-99 – Alfonso Marquina
VEN-100 – Rachid Yasbek
VEN-101 – Oneida Guaipe (Ms.)
VEN-102 – Jony Rahal
VEN-103 – Ylidio Abreu
VEN-104 – Emilio Fajardo
VEN-106 – Angel Alvarez
VEN-108 – Gilmar Marquez
VEN-109 – José Simón Calzadilla
VEN-110 – José Gregorio Graterol
VEN-111 – José Gregorio Hernández
VEN-112 – Mauligmer Baloa (Ms.)
VEN-113 – Arnoldo Benítez
VEN-114 – Alexis Paparoni
VEN-115 – Adriana Pichardo (Ms.)
VEN-116 – Teodoro Campos
VEN-117 – Milagros Sánchez Eulate (Ms.)
VEN-118 – Denncis Pazos
VEN-119 – Karim Vera (Ms.)
VEN-120 – Ramón López

VEN-50 – Winston Flores
VEN-51 – Omar González
VEN-52 – Stalin González
VEN-53 – Juan Guaidó
VEN-54 – Tomás Guanipa
VEN-55 – José Guerra
VEN-56 – Freddy Guevara
VEN-57 – Rafael Guzmán
VEN-58 – María G. Hernández (Ms.)
VEN-59 – Piero Maroun
VEN-60 – Juan A. Mejía
VEN-61 – Julio Montoya
VEN-62 – José M. Olivares
VEN-63 – Carlos Paparoni
VEN-64 – Miguel Pizarro
VEN-65 – Henry Ramos Allup
VEN-66 – Juan Requesens
VEN-67 – Luis E. Rondón
VEN-68 – Bolivia Suárez (Ms.)
VEN-69 – Carlos Valero
VEN-70 – Milagro Valero (Ms.)
VEN-71 – German Ferrer
VEN-72 – Adriana d'Elia (Ms.)
VEN-73 – Luis Lippa
VEN-74 – Carlos Berrizbeitia
VEN-75 – Manuela Bolívar (Ms.)
VEN-76 – Sergio Vergara
VEN-78 – Oscar Ronderos
VEN-79 – Mariela Magallanes (Ms.)
VEN-80 – Héctor Cordero
VEN-81 – José Mendoza
VEN-82 – Angel Caridad
VEN-83 – Larissa González (Ms.)
VEN-84 – Fernando Orozco
VEN-121 – Freddy Superlano
VEN-122 – Sandra Flores-Garzón (Ms.)
VEN-123 – Armando López
VEN-124 – Elimar Díaz (Ms.)
VEN-125 – Yajaira Forero (Ms.)
VEN-126 – Maribel Guedez (Ms.)
VEN-127 – Karin Salanova (Ms.)
VEN-128 – Antonio Geara
VEN-129 – Joaquín Aguilar
VEN-130 – Juan Carlos Velasco
VEN-131 – Carmen María Sivoli (Ms.)
VEN-132 – Milagros Paz (Ms.)
VEN-133 – Jesus Yanez
VEN-134 – Desiree Barboza (Ms.)
VEN-135 – Sonia A. Medina G. (Ms.)
VEN-136 – Héctor Vargas
VEN-137 – Carlos A. Lozano Parra
VEN-138 – Luis Stefanelli
VEN-139 – William Barrientos
VEN-140 – Antonio Aranguren
VEN-141 – Ana Salas (Ms.)
VEN-142 – Ismael León
VEN-143 – Julio César Reyes
VEN-144 – Ángel Torres
VEN-145 – Tamara Adrián (Ms.)
VEN-146 – Deyalitza Aray (Ms.)
VEN-147 – Yolanda Tortolero (Ms.)
VEN-148 – Carlos Prosperi
VEN-149 – Addy Valero (Ms.)
VEN-150 – Zandra Castillo (Ms)
VEN-151 – Marco Aurelio Quiñones
VEN-152 – Carlos Andrés González
VEN-153 – Carlos Michelangeli
VEN-154 – César Alonso

Alleged human rights violations

- ✓ Torture, ill-treatment and other acts of violence
- ✓ Threats, acts of intimidation
- ✓ Arbitrary arrest and detention
- ✓ Lack of due process at the investigation stage
- ✓ Excessive delays
- ✓ Violation of freedom of opinion and expression
- ✓ Violation of freedom of assembly and association
- ✓ Violation of freedom of movement
- ✓ Abusive revocation or suspension of the parliamentary mandate
- ✓ Failure to respect parliamentary immunity
- ✓ Other acts obstructing the exercise of the parliamentary mandate
- ✓ Impunity
- ✓ Other violations: right to privacy

A. Summary of the case[10]

Case VEN-COLL-06

Venezuela: Parliament affiliated to the IPU

Victims: 134 opposition members of parliament (93 men and 41 women)

Qualified complainant(s): Section I.(1)(c) of the Committee Procedure (Annex I)

Submission of complaint: March 2017

Recent IPU decision: March 2022

IPU mission: August 2021

Recent Committee hearings: Hearings with members of the governing and opposition parties at the 141st IPU Assembly (October 2019)

Recent follow-up:
- Communication from the National Assembly 2020 (November 2021)
- Communication from the complainant: August 2022
- Communications to the authorities: Letters to the Speakers of the National Assembly of 2015 and 2020 (February 2022); letter to the executive authorities: August 2022
- Communication to the complainant: September 2022

The case concerns allegations of human rights violations affecting 134 parliamentarians[11] from the coalition of the *Mesa de la Unidad Democrática* (Democratic Unity Roundtable – MUD), against the backdrop of continuous efforts by Venezuela's executive and judicial authorities to undermine the functioning of the National Assembly elected in 2015. At the time, the MUD coalition was opposed to President Nicolas Maduro's government and obtained a majority of seats in the National Assembly in the parliamentary elections of 6 December 2015.

According to the complainant, almost all parliamentarians listed in the present case have been attacked or otherwise intimidated with impunity by law enforcement officers and/or pro-government officials and supporters during demonstrations, inside parliament and/or at their homes. At least 11 National Assembly members were arrested and subsequently released, reportedly due to politically motivated legal proceedings against them. All were detained without due respect for the constitutional provisions on parliamentary immunity. There are also serious concerns regarding respect for due process and their treatment in detention. People associated with opposition parliamentarians have also been detained and harassed. At least 36 parliamentarians are in exile, six have recently returned to Venezuela, 23 are engaged in court proceedings, and many of them have been barred from holding public office. The passports of at least 13 parliamentarians have been confiscated, not been renewed, or cancelled by the authorities, reportedly as a way to exert pressure and to prevent them from travelling abroad to report what is happening in Venezuela.

On 31 August 2020, President Nicolas Maduro pardoned 110 members of the political opposition who had been accused of committing criminal acts. The decision meant the closure of ongoing criminal proceedings against 26 parliamentarians listed in the present case and the release of four of them.

A joint mission, composed of members of both the IPU Committee on the Human Rights of Parliamentarians (CHRP) and the IPU Executive Committee, went to Venezuela from 23 to 27 August 2021. The delegation was able to meet with a large variety of state authorities and stakeholders as well as with more than 60 of the 134 parliamentarians elected in 2015 with cases under examination by the CHRP, thereby obtaining first-hand information on their individual situations.

At the beginning of 2022, the complainant stated that acts of persecution, harassment and intimidation against opposition parliamentarians elected in 2015 have increased, and that these parliamentarians all fear for their freedom and physical integrity. In August 2022, the complainant informed the Committee that, on 4 August 2022, Mr. Juan Requesens, a parliamentarian elected in 2015, was sentenced to eight years in prison for his alleged involvement in what the Venezuelan authorities define as a failed assassination attempt involving drones carrying explosives against President Maduro in Caracas in 2018. During the same proceedings, the judge issued an arrest warrant and an extradition request against Mr. Julio Borges, former Speaker of the National Assembly, who is currently living abroad.

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10 For the purposes of this decision, the term "opposition" relates to members of parliament from political groups or parties that have limited decision-making power and are opposed to the ruling power.

11 In this decision, the use of the term "parliamentarian" should be construed as referring to both women and men elected in 2015 as members of the National Assembly.

B. Decision

The Governing Council of the Inter-Parliamentary Union

1. *Is deeply concerned* that Mr. Juan Requesens has been sentenced to eight years in prison in a trial that, according to the complainant, failed to meet national and international standards of due process, an allegation that seems credible if considered in the light of information received during the IPU mission to Venezuela in August 2021 about recurrent obstructions faced by defence lawyers in performing their role in criminal proceedings; *is also concerned* that, during the same proceedings, the judge reportedly issued an arrest warrant and an extradition request against Mr. Julio Borges*; considers* that Mr. Requesens' continued deprivation of liberty since August 2018, first in "El Helicoide", a detention centre operated by the Bolivarian National Intelligence Service and then under house arrest since August 2020, as well as the prosecution of both opposition parliamentarians elected in 2015, not only run counter to their basic human rights, but should also be seen as reprisals for their political activities and positions as members of the National Assembly elected in 2015; *considers* also that the above-mentioned court decisions, if executed, may put both parliamentarians in a serious situation presenting a risk of irreparable harm to their rights; *wishes* to receive official and detailed information on the facts justifying each of the charges brought against them as well as copies of the relevant court decisions; and *urges* the national authorities to take all necessary steps to ensure that the rights of Mr. Requesens and Mr. Borges are fully respected;

2. *Reaffirms* its long-standing position that the harassment of opposition parliamentarians elected in 2015 is a direct consequence of the prominent role they played as outspoken opponents of President Maduro's government and as members of the opposition-led National Assembly elected in 2015; *urges* the authorities, once again, to put an immediate end to all forms of persecution against the opposition parliamentarians elected in 2015, to ensure that all relevant state authorities respect their human rights, and to thoroughly investigate and establish accountability for reported violations of their rights; and *calls on* the Venezuelan authorities to provide official information on any steps taken to this end*;*

3. *Reiterates* that the issues involved in the present case are part of the broader complex situation in Venezuela, which can only be resolved through inclusive political dialogue and by the Venezuelans themselves; *firmly hopes* that the talks between government and opposition representatives will be resumed soon and will allow the various national stakeholders to work together to bring about a new social pact through participatory and non-violent means, without foreign interference and in compliance with the State's international human rights commitments, as well as to create the necessary conditions to conduct future elections accepted by all parties; *reaffirms* the IPU's readiness to provide support for any effort to strengthen democracy in Venezuela; and *calls on* the relevant authorities to provide further information on how best to provide such assistance;

4. *Remains deeply concerned* about the findings of the successive mission reports of the United Nations Human Rights Council Independent International Fact-Finding mission on Venezuela, in particular relating to the detailed information contained in its report issued in September 2022 illustrating how real and perceived dissidents and government opponents have been targeted for detention and reprisals by state intelligence services in recent years, which give further weight to the accusations of political repression and the responsibility of the State at the highest level; and *expresses the firm hope*, once again, that the State of Venezuela, with the support of the international community, will be able to address the violations and crimes documented in these reports;

5. *Renews* its call on all IPU Member Parliaments, IPU permanent observers and relevant human rights organizations to take concrete actions, within their respective mandates, in support of the urgent resolution of the individual cases at hand in a manner consistent with democratic and human rights values;

6. *Requests* the Secretary General to convey this decision to the relevant Venezuelan institutions, the complainant and any third party likely to be in a position to supply relevant information;

7. *Requests* the Committee to continue examining this case and to report back to it in due course.

CL/210/14(c)-R.1
Kigali, 15 October 2022

Zimbabwe

Decision adopted unanimously by the IPU Governing Council at its 210th session (Kigali, 15 October 2022)

Joanah Mamombe © Women's Academy for Leadership and Political Excellence (WALPE)

ZWE-45 – Joanah Mamombe

Case ZWE-45

Zimbabwe: Parliament affiliated to the IPU

Victim: Female opposition member of parliament

Qualified complainants: Section I.1(d) of the Committee Procedure (Annex I)

Submission of complaints: May 2020 and April 2021

Recent IPU decision: May 2021

Recent IPU Mission(s): - - -

Recent Committee hearing: Hearing with the Speaker of the National Assembly at the 145th IPU Assembly (October 2022)

Recent follow-up:
- Communication from the authorities: Letter from the Speaker of the National Assembly (February 2021)
- Communication from the complainants: September 2022
- Communication to the authorities: Letter to the Speaker of the National Assembly (September 2022)
- Communication to the complainants: September 2022

Alleged human rights violations

- ✓ Abduction
- ✓ Torture, ill-treatment and other acts of violence
- ✓ Threats, acts of intimidation
- ✓ Arbitrary arrest and detention
- ✓ Inhumane conditions of detention
- ✓ Lack of due process at the investigation stage
- ✓ Lack of fair trial proceedings
- ✓ Violation of freedom of opinion and expression
- ✓ Violation of freedom of assembly and association
- ✓ Violation of freedom of movement
- ✓ Other acts obstructing the exercise of the parliamentary mandate
- ✓ Impunity
- ✓ Other violations: discrimination

A. Summary of the case

Ms. Joanah Mamombe is the youngest member of the Parliament of Zimbabwe and belongs to the opposition Movement for Democratic Change (MDC Alliance) party. According to the complainants, at around 2 p.m. on Wednesday, 13 May 2020, Ms. Mamombe and two other young women leaders, namely Ms. Cecilia Chimbiri and Ms. Netsai Marova, were abducted, tortured and sexually abused by suspected state security agents.

According to the complainants, after being intercepted at a roadblock by the police for breaking COVID-19 regulations by taking part in a peaceful flash demonstration, Ms. Mamombe and the two other young women leaders were taken to Harare Central Police Station. Then, instead of being fined or formally charged, they were allegedly forced into a minibus and taken to an undisclosed destination, where they were subjected to torture, sexual abuse and degrading treatment by a paramilitary group

known as “the Ferrets”. The complainants report that, upon discovering that they were being abducted, the three women reached out to their family members and colleagues by phone and repeatedly texted them to share their location. After family members and colleagues raised the alarm about their whereabouts, the three women were reportedly dumped near Bindura at around 9 p.m. on Thursday, 14 May 2020. They were finally found and taken to safety at around 2 a.m. on Friday, 15 May 2020, by a team of family members and lawyers. The complainants further report that the three were then taken to hospital for treatment and stressed that medical and psychological reports were made on the spot that proved that the three women had been subjected to torture and abuse during their disappearance.

On 10 June 2020, five United Nations (UN) Special Procedures experts of the UN Human Rights Council issued a statement calling on the authorities of Zimbabwe to “urgently prosecute and punish the perpetrators of this outrageous crime, and to immediately enforce a policy of ‘zero tolerance’ for abductions and torture throughout the country to ensure the effective protection of women against sexual violence, and to bring those responsible to account”. The UN human rights procedures “expressed grave alarm over concerns this was not an isolated instance. In 2019 alone, 49 cases of abductions and torture were reported in Zimbabwe, without investigations leading to perpetrators being held to account”. The experts concluded that “enforced disappearances of women often involve sexual violence, and even forced impregnation, with enormous harm inflicted not only on their physical health and integrity, but also in terms of the resulting psychological damage, social stigma and disruption of family structures”.

According to the complainants, petitions regarding the alleged abuses suffered by Ms. Mamombe and her two colleagues have been submitted to Zimbabwe’s Gender Commission, Human Rights Commission and the National Peace and Reconciliation Commission. The complainants affirm that these petitions have been copied to the Ministry of Justice, Ministry of Home Affairs, Ministry of Women’s Affairs and the Parliament of Zimbabwe. Yet, more than two years since the events of May 2020, these complaints have still not yielded any result. Moreover, the complainants declare that, instead of carrying out an independent investigation into the allegations, the State actually arrested Ms. Mamombe and her two colleagues on 10 June 2020 on the basis of their statements about the treatment they had suffered and charged them with making false statements prejudicial to the State, a criminal offence. The women were later freed on bail after a widespread international campaign had pressured the authorities for their release. However, the complainants contend that Ms. Mamombe and her two colleagues’ rights were severely restricted as part of the conditions of bail, which compromise their freedom of movement and freedom of expression.

Ms. Mamombe has reportedly been arrested four times since then, most recently on 5 March 2021, when she was charged with allegedly breaching COVID-19 regulations after attending a press conference calling on the authorities to respect the right to a fair trial of a fellow opposition member. Since her last arrest, Ms. Mamombe has been held on remand in *Chikurubi* prison, together with convicted criminals, where she allegedly faced inhumane detention conditions. She was briefly taken from remand to hospital and was finally released on bail on 5 May 2021. Since then, the complainants has confirmed that Ms. Mamombe was able to partially recover and take part in several remote parliamentary sessions, although she has to report to the police on a weekly basis and make frequent appearances in court as part of her trial. In addition, her passport has allegedly been confiscated by the authorities to prevent her from going abroad, meaning that she cannot seek medical treatment overseas. In addition, Ms. Mamombe’s lawyers have reported numerous issues with the administration of justice, including the acceptance of falsified evidence meant to incriminate her and the unjustified dismissal of credible evidence in her defence by the courts.

The complainants report that Ms. Mamombe is one of the most prominent young women leaders in Zimbabwe. She has been vocal and outspoken over deteriorating economic conditions in Zimbabwe and their effect on women and girls. According to the complainants, her situation should also be seen in the context of the rising number of cases of human rights abuses against human rights defenders and activists, the shrinking of civic space and widespread harassment of opposition members in recent years in Zimbabwe.

During the 142nd IPU Assembly (May 2021), the Speaker of the National Assembly publicly invited a delegation of the Committee on the Human Rights of Parliamentarians to travel to Zimbabwe to discuss the issues and concerns that had arisen in this case with all the relevant stakeholders. Subsequent letters from the IPU Secretary General to the Speaker regarding the case and mission

dated 30 June 2021, and 27 July and 13 September 2022 have remained unanswered. At the hearing with the Committee on the Human Rights of Parliamentarians at the 145th IPU Assembly, the Speaker stated that he was under the impression that he had replied once in writing to say that contacts were being pursued with the Ministry of Justice to organize the mission, which was still welcome.

B. Decision

The Governing Council of the Inter-Parliamentary Union

1. *Thanks* the Speaker of the National Assembly of Zimbabwe for the information provided at a hearing with the IPU Committee on the Human Rights of Parliamentarians during the 145th Assembly in Kigali, as well as for his renewed assurance that the Committee is welcome to visit Zimbabwe and meet with all relevant parties; *takes note* of the Speaker's ongoing commitment to make arrangements with the Ministry of Justice to facilitate the organization of the mission in Zimbabwe; and *looks forward* to receiving information on the specifics of a mission soon;

2. *Regrets*, once again, that none of the other authorities that were contacted by the IPU have provided any response that might facilitate the resolution of the specific concerns that have arisen in this case; and *expresses the firm hope* that a response is given to all questions raised by the Committee in its letters to relevant executive and independent institutions, as was previously assured;

3. *Reiterates its profound concern* about the allegations that Ms. Mamombe and two of her young female colleagues were arbitrarily detained and subject to torture and mistreatment on 13 May 2020; *considers* that such allegations have to be taken extremely seriously given numerous reports of the use of abductions and torture to silence the opposition in Zimbabwe, the prevalence of gender-based violence in the country and the gravity of the allegations; *is dismayed to learn* that, instead of carrying out an independent investigation into the allegations, the authorities proceeded to arrest Ms. Mamombe on 10 June 2020 on the basis of her statement of complaint and charged her with making false statements prejudicial to the State, as defined in Section 31(a)(ii) of the Criminal Law [Codification and Reform] Act, Chapter 9:23; *believes* that this provision is not in conformity with Zimbabwe's human rights obligations, including the right to freedom of expression and the right to an effective remedy; *recalls* in that regard that the reform of the Criminal Law Act was the subject of recommendations made by United Nations (UN) human rights bodies, most recently during Zimbabwe's third cycle of the Universal Periodic Review; and *calls on* parliament to fulfil its legislative responsibility by reviewing and reforming the Criminal Law Act in order to avoid the recurrence of such situations;

4. *Is particularly concerned* that the complaints to the relevant authorities have reportedly not set in motion investigations to identify the culprits of Ms. Mamombe's alleged abduction and torture; *fails to understand* why, more than two years after these complaints were sent to the relevant institutions and copied to the Ministry of Justice and the Parliament of Zimbabwe, they have still not yielded any results; *recalls* in this regard that the Republic of Zimbabwe is bound by the provisions of the International Covenant on Civil and Political Rights, to which it is a party, article 2(3) of which enshrines the duty of the State to ensure that any person whose rights are violated should have an effective remedy determined by competent authorities; *urges* the relevant authorities once more to carry out an in-depth investigation into the alleged violations reported by Ms. Mamombe, including by undertaking a full examination of the CCTV footage of what transpired that day at Harare Central Police Station, questioning the police officers on duty that day, inspecting the site and area where Ms. Mamombe was reportedly dumped, which is said to be relatively close to the place where the alleged abuses took place, and by examining the medical and physical reports drawn up at the hospital; and *wishes* to be kept informed as a matter of urgency of progress made in the investigations;

5. *Is deeply concerned* by allegations that Ms. Mamombe continues to face judicial harassment in relation to three cases against her; *is concerned* by allegations made by the complainants that Ms. Mamombe is facing numerous issues of maladministration of justice amounting to a denial

of a fair trial, including the lack of judicial independence, the discriminatory application of the law and the dismissal of evidence of the trauma endured by Ms. Mamombe on 13 May 2020; *considers* that, while mindful of the constitutional arrangements in place in Zimbabwe regarding the separation of powers and the principle of *sub judice*, that parliament can look into allegations that impact the overall administration of justice by virtue of its oversight function, as reflected in Article 119 of the Constitution of Zimbabwe; and *looks forward* to hearing from the parliamentary authorities on this point;

6. *Decides* to send a trial observer to the criminal proceedings with a view to collecting information and reporting on how the fundamental human rights of Ms. Mamombe are being respected in the case at hand;

7. *Is dismayed* by the allegation that Ms. Mamombe was subject to heckling, insults and stigmatization by members of the ruling party when she returned to parliament in November 2020 after a period of convalescence due to the trauma she had endured, forcing her to leave the parliamentary chamber as she no longer felt safe; *deplores* that Ms. Mamombe therefore felt obliged to attend parliamentary sessions remotely; *notes* that the Speaker was unaware of these allegations; and *calls on* Ms. Mamombe and the Speaker to discuss the allegations and to see what measures can be taken to ensure her safe physical return to parliament;

8. *Calls on* the Zimbabwean authorities to do everything possible to ensure that Ms. Mamombe's rights are fully protected; and *hopes* that they will do their utmost to ensure that Ms. Mamombe will no longer be submitted to undue arrests and incarceration;

9. *Requests* the Secretary General to convey this decision to the parliamentary authorities, other relevant national authorities and independent institutions, the complainants and any third party likely to be in a position to supply relevant information;

10. *Requests* the Committee to continue examining this case and to report back to it in due course.

CL/210/14(c)-R.1
Kigali, 15 October 2022

Zimbabwe

Decision adopted unanimously by the IPU Governing Council at its 210th session (Kigali, 15 October 2022)

Job Sikhala © Freddy Michael Masarirevu

ZWE-46 – Job Sikhala

Case ZWE-46

Zimbabwe: Parliament affiliated to the IPU

Victim: Opposition member of parliament

Qualified complainant: Section I.1(d) of the Committee Procedure (Annex I)

Submission of complaint: August and September 2022

Recent IPU decision(s): - - -

Recent IPU Mission: September 2009

Recent Committee hearing: Hearing with the Speaker of the National Assembly at the 145th IPU Assembly (October 2022)

Recent follow-up:
- Communication(s) from the authorities: - - -
- Communication from the complainant: September 2022
- Communication to the authorities: Letter to the Speaker of the National Assembly (September 2022),
- Communication to the complainant: September 2022

Alleged human rights violations

- ✓ Arbitrary arrest and detention
- ✓ Inhumane conditions of detention
- ✓ Lack of due process in proceedings against parliamentarians
- ✓ Lack of due process at the investigation stage
- ✓ Lack of fair trial proceedings
- ✓ Excessive delays
- ✓ Violation of freedom of opinion and expression
- ✓ Violation of freedom of assembly and association
- ✓ Violation of freedom of movement
- ✓ Other acts obstructing the exercise of the parliamentary mandate

A. Summary of the case

Mr. Job Sikhala is a seasoned opposition parliamentarian who was arrested numerous times during his political career, even though he was never found guilty of committing a single offence. In a previous case before the IPU Committee on the Human Rights of Parliamentarians, the Committee concluded that the authorities had committed multiple violations against Mr. Sikhala and other opposition members of parliament, including arbitrary arrest and detention, torture and impunity.

According to the complainant, Mr. Sikhala was arrested on 14 June 2022 in connection with a speech he had made on 13 June at the funeral of Ms. Moreblessing Ali, a murdered opposition activist. The complainant stresses that Mr. Sikhala made the speech in his professional capacity as the grieving family's lawyer. According to the complainant, Mr. Sikhala's arrest and detention followed the posting of parts of the speech on social media, for which he was charged with the offence of incitement to commit public violence. While in prison, Mr. Sikhala was presented with the additional charge of defeating or obstructing the course of justice.

The complainant further alleges that, immediately after the speech, senior politicians and government spokespersons, including the Permanent Secretary of Information, Mr. Ndabaningi Mangwana, made prejudicial statements presuming Mr. Sikhala's guilt and demanding his immediate arrest. According to the complainant, this in itself violated Mr. Sikhala's right to be presumed innocent until proven guilty.

In the following months, Mr. Sikhala remained in pretrial detention in the Chikurubi maximum security prison, as his multiple petitions for bail had been systematically rejected. The complainant claims that Mr. Sikhala's right to a fair trial has been violated, as he is being treated as a convicted criminal, despite being a sitting member of parliament with no prior convictions. Furthermore, the complainant stresses that there is no legal basis to detain Mr. Sikhala and insists that the courts are violating his right to bail as enshrined in the relevant sections of the Constitution and the Code of Criminal Procedure. The complainant also alleges that Mr. Sikhala faces inhumane prison conditions: he is reportedly shackled with leg irons at all times, forced to sleep on the bare floor and has repeatedly been denied medical care.

During the hearing with the Committee on the Human Rights of Parliamentarians at the 145th IPU Assembly, the Speaker of the National Assembly enquired as to why the Committee was not also examining the situation of parliamentarian Mr. Godfrey Sithole, who had been arrested together with Mr. Sikhala, to which the Committee responded that it could not examine cases of its own accord, but only on the basis of a complaint submitted by a qualified complainant, which was not the case in Mr. Sithole's situation.

B. Decision

The Governing Council of the Inter-Parliamentary Union

1. *Notes* that the complaint concerning Mr. Job Sikhala is admissible, considering that the complaint: (i) was submitted in due form by a complainant qualified under Section I.1(d) of the Procedure for the examination and treatment of complaints (Annex I of the Revised Rules and Practices of the Committee on the Human Rights of Parliamentarians); (ii) concerns a member of parliament at the time of the initial allegations; concerns allegations of arbitrary arrest and detention, inhumane conditions of detention, lack of due process in proceedings against parliamentarians, lack of due process at the investigation stage, lack of fair trial proceedings, excessive delays, violation of freedom of opinion and expression, violation of freedom of assembly and association, violation of freedom of movement, and other acts obstructing the exercise of the parliamentary mandate, allegations that fall within the Committee's mandate;

2. *Thanks* the Speaker of the National Assembly of Zimbabwe for the information, including legal documents, provided at a hearing with the IPU Committee on the Human Rights of Parliamentarians during the 145th IPU Assembly in Kigali, and for his assurance that the Committee is welcome to visit Zimbabwe and meet with all relevant parties; *takes note* of the Speaker's ongoing commitment to making arrangements with the Ministry of Justice to facilitate the organization of the mission in Zimbabwe; *looks forward* to receiving information on the specifics of the mission soon;

3. *Is deeply concerned* that Mr. Sikhala has been held in Chikurubi maximum security prison on remand since his arrest on 14 June 2022, his applications for bail having been denied on four occasions; *fails to understand* how his detention in a maximum security prison could possibly be justified; *is alarmed* by allegations that Mr. Sikhala is being held in inhumane conditions, with reports that he is shackled with leg irons at all times and forced to sleep on the bare floor; *fails to see* the legal basis for his prolonged incarceration and the excessive delays in his trial, which is scheduled to begin four months from his initial arrest; *is particularly concerned* by these different allegations, bearing in mind the findings of the Committee on the Human Rights of Parliamentarians, in an earlier case, that he had been subjected to arbitrary arrest and detention and torture; *calls on* the authorities to provisionally release Mr. Sikhala without delay so that he may return to his parliamentary duties without undue obstacles to his parliamentary mandate;

4. *Is concerned* by allegations of the violation of the right to a fair trial and maladministration of justice raised by the complainant, including the allegation that the trial is politically motivated, which would appear to be directly borne out by public statements reportedly made by certain executive authorities; *fails to understand* the factual basis for the arrest of Mr. Sikhala on

charges of inciting public violence and obstruction of justice in relation to a speech he had made in his capacity as the lawyer of a family of a murdered opposition activist; *wishes* to receive further information on this point from the authorities; and *requests* the parliamentary authorities to help make available a comprehensive transcript of the relevant statement(s) made by Mr. Sikhala that underpin the charges;

5. *Stresses* that, notwithstanding considerations of the separation of powers, the parliament of Zimbabwe can look into such allegations by virtue of its oversight function, as reflected in Article 119 of the Constitution of Zimbabwe; *looks forward* to hearing from the parliamentary authorities on this point;

6. *Decides* to send a trial observer to the criminal proceedings, with a view to gathering information and reporting on how the fundamental human rights of Mr. Sikhala are being respected in the case at hand;

7. *Requests* the Secretary General to convey this decision to the parliamentary authorities and other relevant national authorities, the complainant and any interested third party likely to be in a position to supply relevant information to assist the Committee in its work;

8. *Requests* the Committee to continue examining this case and to report back to it in due course.

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