

## DEMOCRATIC REPUBLIC OF THE CONGO

- **COD-158 : Chérubin Okende Senga**
- **COD-150** : Jean-Marc Kabund
- **COD-COLL-04** : Three Parliamentarians
- **COD-COLL-03** : Two parliamentarians
- **COD-72** : Dieudonné Bakungu Mythondeke
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# Democratic Republic of the Congo

*Decision adopted by the Committee on the Human Rights of Parliamentarians at its 173rd session (Geneva, 23 January to 7 February 2024)*



Chérubin Okende Senga © Complainant

## COD-158 – Chérubin Okende Senga

### Alleged human rights violations

- ✓ Murder
- ✓ Abduction

#### A. Summary of the case

On 13 July 2023, Mr. Chérubin Okende – opposition member of parliament, former Minister of Transport and spokesperson for the *Ensemble pour la République* (Together for the Republic), a political party led by opposition candidate in the presidential elections Mr. Moïse Katumbi – was found murdered in his vehicle, shot in the head. The vehicle was abandoned on a road near Kinshasa city centre. Mr. Okende had reportedly disappeared the day before he was killed.

The same day, the Public Prosecutor's Office at Kinshasa-Gombe High Court, on the instruction of the Prosecutor General at the Court of Cassation, opened a murder investigation against persons unknown. However, the circumstances and possible motives for Mr. Okende's murder have yet to be clarified.

Mr. Chérubin Okende's murder is set within a particularly difficult context for political opponents in the Democratic Republic of the Congo (DRC), where the democratic space is shrinking and violations are committed against those speaking out against the incumbent regime. This crime also raises many questions relating to safety in the DRC, particularly the safety of political opponents.

At a hearing before the Committee on the Human Rights of Parliamentarians at the 147th IPU Assembly in October 2023, the Congolese delegation, chaired by the First Deputy Speaker of the National Assembly, said that the Speaker of the National Assembly had expressed his deep concern at the murder of Mr. Okende, in his speech marking the opening of the autumn session in September 2023. A number of members of parliament, including the First Deputy Speaker, had visited

#### Case COD-158

**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:** July 2023

**Recent IPU decision:** October 2023

**Recent IPU mission(s):** - - -

**Recent Committee hearing:** Hearing with the delegation of the DRC at the 147th IPU Assembly (October 2023)

#### Recent follow-up:

- Communication(s) from the authorities:  
- - -
- Communication from the complainant: July 2023
- Communication to the authorities: Letter to the Speaker of the National Assembly (November 2023)
- Communication to the complainant: September 2023

Mr. Okende's family to support them, and the National Assembly continued to provide financial support to his family and to the group of lawyers in charge of his case.

The First Deputy Speaker also confirmed that the Public Prosecutor had opened a judicial investigation, seeking the assistance of international experts from Belgium, South Africa and the United Nations Organization Stabilization Mission in the DRC, who agreed to collaborate with the Congolese authorities in this case. The delegation said that the report drawn up at the end of this judicial investigation would be published very shortly (the following week) and that the National Assembly would send a copy of the report to the Committee as soon as it was available. Despite the assurances from the Congolese authorities at their hearing, the investigation report has still not been made available to the complainants and the Committee.

With regard to the political climate, the First Deputy Speaker stated that the Democratic Republic of the Congo was preparing to hold presidential elections on 20 December 2023, and asserted that the Congolese authorities were committed to these elections being fair, credible, transparent and inclusive, in accordance with the Congolese Constitution. Nevertheless, the delegation stressed that the Congolese authorities continued to encounter considerable security challenges in the east of the DRC, owing to the serious violations committed by rebel fighters belonging to the M23 (March 23 Movement) armed militia, which had resulted in significant loss of life and the internal displacement of several thousand people. On 31 December 2023, President Félix Antoine Tshisekedi was re-elected for a second term in a disputed election. The opposition described the re-elected President's victory as an electoral "coup d'état".

On 7 November 2023, Mr. Okende's family lodged a complaint in Belgium against Colonel-Major Christian Ndaywell, head of the Congolese military intelligence, whom they suspect of involvement in the death of the member of parliament. The complaint was lodged as a civil party with a Brussels investigating judge on charges of war crimes. As a Belgian national, Mr. Ndaywell is subject to Belgian justice, which can prosecute him under its universal jurisdiction in criminal matters. The case was referred to the Brussels Public Prosecutor's Office, which notified the federal Public Prosecutor's Office on 14 December 2023. The federal Public Prosecutor's Office is currently considering whether the case can be handled at the federal level.

On 22 January 2024, Mr. Okende's family sent a letter to the DRC's Prosecutor General requesting a report within 72 hours on the progress of the case and the findings of the autopsy performed on the member of parliament's remains. Six months after his death, the autopsy report has still not been made available to the complainants, the lawyers or Mr. Okende's family.

## B. Decision

The Committee on the Human Rights of Parliamentarians

1. *Strongly deplores* the murder of opposition member of parliament Mr. Chérubin Okende, an unprecedented act of violence in the Democratic Republic of the Congo that occurred during an electoral period fraught with political tension; and *considers* that all necessary steps should be taken to identify and punish the perpetrators of this heinous act;
2. *Notes with concern* that since Mr. Okende's murder in July 2023, the hearing and the assurances given by the Congolese parliamentary authorities in October 2023, they have still not provided the investigation report, nor have they provided any information on the progress made in the investigation into Mr. Okende's murder, or on any serious steps taken to identify the perpetrators in this case;
3. *Urges* the Congolese authorities to make the autopsy report and the investigation report available to the complainants and to Mr. Okende's lawyers as soon as possible; *urges* the competent authorities to intensify their efforts to make progress in the investigation into the murder of Mr. Okende without further delay and to ensure the transparency of the judicial investigation; *calls on* the National Assembly, as the guardian of the human rights of parliamentarians, to closely monitor the investigation and to demand clear answers from the government authorities as to its progress and the likely identity of the perpetrators; and *wishes* to receive information in this regard;

4. *Reaffirms* that the abduction and murder of Mr. Okende, a member of parliament, constitute a serious threat not only to parliamentarians but also to those they represent and an attack on parliament as a whole; and *reaffirms*, also, that offences of this nature, particularly if they go unpunished, against opposition parliamentarians send a worrying signal to other critical voices in society and that such impunity can only serve as an incentive to commit further serious human rights violations;
5. *Calls on* the Congolese authorities to take all necessary steps to guarantee the physical integrity and fundamental rights of all members of parliament, former and current, irrespective of their political affiliation, in order to ensure that a similar crime never occurs again;
6. *Reiterates the wish* for a delegation from the Committee on the Human Rights of Parliamentarians to visit the DRC in the near future to meet with the Congolese authorities, in particular the Speaker of the National Assembly, the Public Prosecutor and the Minister of Justice, in order to contribute to and support the search for justice in the case at hand; *considers* it essential that the delegation also meets with Mr. Okende's family and lawyers and relevant third parties; and *hopes* to receive a positive response from and the support of the National Assembly to ensure the mission is conducted in the best possible conditions;
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. *Decides* to continue examining this case.



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# Democratic Republic of the Congo

*Decision adopted unanimously by the IPU Governing Council at its 212th session (Luanda, 27 October 2023)*



Jean Marc Kabund © Twitter

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 Deputy Speaker of the National Assembly, was arrested and prosecuted for 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 of which Mr. Kabund is accused 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 – *l'Alliance pour le changement* (the Alliance for

### 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:** February 2023

**Recent IPU mission(s):** - - -

**Recent Committee hearing(s):** Hearing with the delegation of the DRC at the 147th IPU Assembly (October 2023)

#### Recent follow-up:

- Communication from the authorities: Letter from the First Deputy Speaker of the Senate (September 2022)
- Communication from the complainant: September 2023
- Communications to the authorities: letters to the Speaker of the National Assembly (July and September 2023)
- Communication to the complainant: September 2023

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 was never implemented. 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.

At the hearing on 14 November 2022, Mr. Kabund's lawyers raised an objection of unconstitutionality concerning the number of offences brought against him. While the National Assembly reportedly authorized proceedings against the member of parliament for only five offences, the Public Prosecutor prosecuted Mr. Kabund for 12 violations. Following the rejection of this objection by the Court of Cassation, Mr. Kabund's lawyers filed a complaint with the Constitutional Court. The proceedings were therefore suspended until 27 April 2023, when the Constitutional Court rejected Mr. Kabund's complaint on the grounds that it was admissible but unfounded and referred the case back to the Court of Cassation.

On 13 September 2023, the Court of Cassation sentenced Mr. Kabund to seven years' imprisonment for "defamation against the Head of State" and "spreading false rumours". Mr. Kabund's lawyers stressed that this sentence was unjust and excessive, adding that they had no other means of appeal due to the lack of any reform with respect to judicial proceedings applicable to members of parliament allowing the possibility of appeal.

At a hearing with the Committee on the Human Rights of Parliamentarians at the 147th IPU Assembly in October 2023, the Congolese delegation led by the First Deputy Speaker of the National Assembly stated that the National Assembly had followed the required procedure to protect the member of parliament's rights of defence, enabling him to continue to enjoy his immunities during the judicial investigation phase. At the end of this investigation, the Public Prosecutor's Office found that the offences committed by Mr. Kabund were sufficiently serious to require the lifting of his parliamentary immunity in order to prosecute him. However, before lifting his immunity, the Bureau of the National Assembly reportedly invited Mr. Kabund to meet with its members in the presence of a lawyer, an invitation he allegedly declined on two occasions. Instead, Mr. Kabund is said to have asked the Bureau to stay the proceedings against him, which the Bureau was unable to accommodate, considering that this request fell outside its remit. The President of the Bureau of the National Assembly therefore referred the matter to the plenary, which decided to lift Mr. Kabund's parliamentary immunity.

Asked about the severity of the sentence handed down against Mr. Kabund simply for making remarks, the First Deputy Speaker pointed out that, under Congolese law, judges have the discretionary power to impose sentences ranging from one to 10 years' imprisonment for similar offences. Thus, although the sentence handed down against Mr. Kabund appears severe, it remains within the limits of the law. Furthermore, the delegation pointed out that the National Assembly could not interfere with the Congolese justice system, in accordance with Article 149 of the Constitution, which enshrines the independence of the judiciary. The Congolese authorities nevertheless stressed the importance they attach to the right to freedom of expression, which should not be used to infringe the Constitution.

With regard to the political climate, the First Deputy Speaker stated that the Democratic Republic of the Congo was preparing to hold presidential elections on 20 December 2023, and asserted that the Congolese authorities were committed to these elections being fair, credible, transparent and inclusive, in accordance with the Congolese Constitution. Nevertheless, the delegation stressed that the Congolese authorities continued to encounter considerable security challenges in the east of the DRC, owing to the serious violations committed by rebel fighters belonging to the M23 (March 23 Movement) armed militia, which had resulted in significant loss of life and the internal displacement of several thousand people.

## B. Decision

The Governing Council of the Inter-Parliamentary Union

1. *Thanks* the Congolese delegation, in particular the First Deputy Speaker of the National Assembly, for the information provided at the 147th IPU Assembly;
2. *Is concerned* at the severity of Mr. Kabund's sentence of seven years' imprisonment for making critical remarks against the Head of State and government policy; *considers* that, even if these remarks were provocative in nature, they were part of the exercise of his fundamental right to freedom of expression and were in no way accompanied by hostile acts aimed at disrupting public order;
3. *Reaffirms* that, despite the measures taken by the National Assembly to guarantee Mr. Kabund's rights of defence, his right to freedom of expression as a national member of parliament has not been sufficiently protected by the parliamentary authorities, who condemned his remarks without conducting an independent investigation into what he said; *calls on* the National Assembly, once again, to protect its members' right to freedom of expression, regardless of their political affiliation, by taking all necessary measures to strengthen protection of this fundamental right, including by repealing Ordinance Law No. 300 of 16 December 1963 on offences constituting defamation against the Head of State or by bringing it 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;
4. *Deeply regrets* the absence of the possibility of appeal in legal proceedings against members of parliament of the Democratic Republic of the Congo; *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;
5. *Encourages* the Congolese authorities in this election year, when tensions may lead to new violations against certain members of the National Assembly, to take all necessary steps to guarantee the fundamental rights of all parliamentarians, in particular the right to freedom of expression, in order to ensure that political debate reflects all opinions, including those critical of the Head of State and government policy;
6. *Expresses the wish* for a delegation from the Committee on the Human Rights of Parliamentarians to visit the DRC after the elections to meet the relevant Congolese authorities, in particular the Speaker of the National Assembly, the Prosecutor General and the Minister of Justice, as well as Mr. Kabund and relevant third parties, in order to promote a satisfactory settlement of Mr. Kabund's case; and *hopes* to receive a positive response and the National Assembly's support to this end, to enable the mission to take place under the best possible conditions;
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.



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# Democratic Republic of the Congo

*Decision adopted unanimously by the IPU Governing Council at its 212th session  
(Luanda, 27 October 2023)*



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© Henri Mova Sakanyi



© Marie-Ange Mushobekwa Likulia

COD-151 – Papy Niango Iziamay Munshemvula

COD-152 – Henri Mova Sakanyi

COD-153 – Marie-Ange Mushobekwa Likulia

## Alleged human rights violations

- ✓ Threats, acts of intimidation
- ✓ Lack of due process in proceedings against parliamentarians
- ✓ Lack of due process at the investigation stage
- ✓ No right of appeal
- ✓ Violation of freedom of opinion and expression
- ✓ Undue invalidation, suspension, revocation or other acts obstructing the exercise of the parliamentary mandate
- ✓ Abusive revocation or suspension of the parliamentary mandate
- ✓ Abusive application of parliamentary sanctions
- ✓ Other violations

### A. Summary of the case

On 15 June 2022, the mandates of Mr. Papy Niango Iziamay Munshemvula (Mr. Niango), Mr. Henri Mova Sakanyi and Ms. Marie Ange Mushobekwa, then opposition members of parliament, were invalidated for absenteeism following a report issued by an *ad hoc* special committee created on 28 April 2022 and tasked with examining reports of unauthorized and unjustified absences at National Assembly plenary sittings by several members of parliament, including the three individuals.

The National Assembly reportedly adopted the conclusions of the special committee at a closed plenary sitting held on 15 June 2022, at the end of which it invalidated the parliamentary mandates of the three individuals, despite them having submitted proof of absence for medical reasons. The plenary sitting allegedly ignored this proof and considered that their absence from two consecutive sittings justified the invalidation of their mandates. Furthermore,

### Case COD-COLL-04

**Democratic Republic of the Congo:**  
Parliament affiliated to the IPU

**Victims:** Three opposition members of parliament (two male and one female)

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

**Submission of the complaints:** October 2022 and January 2023

**Recent IPU decision:** March 2023  
(concerns Mr. Niango alone)

**Recent IPU mission(s):** - - -

**Recent Committee hearing(s):** Hearing with the delegation of the DRC at the 147th IPU Assembly (October 2023)

#### Recent follow-up:

- Communication from the authorities:  
- - -
- Communication from the complainant:  
August 2023
- Communications to the authorities:  
July and September 2023
- Communication to the complainant:  
August 2023

the invalidation decision was taken in violation of Articles 19(3) and 61 of the Constitution, which guarantee the right of defence, since the National Assembly adopted the conclusions of the special committee's report without having first heard the three individuals concerned in plenary sitting when the report was adopted on 15 June 2022. It is to be noted that the three individuals were heard by the committee.

Furthermore, the National Assembly reportedly decided to submit the invalidation of the three individuals' mandates to voting by a show of hands, in disregard of rule 93(3) of the Standing Orders, which stipulates that "in the event of deliberations concerning individuals, the vote shall be by secret ballot". The three individuals lodged an application for reconsideration by the National Assembly against the invalidation of their mandates. No action was taken in response to the applications.

According to the complainant, the invalidation procedure and the creation of the special committee to examine the unjustified absences of the three individuals are an attempt to silence the opposition.

At a hearing with the Committee on the Human Rights of Parliamentarians at the 147th IPU Assembly, in October 2023, the Congolese delegation, led by the First Deputy Speaker of the National Assembly, said that in view of the many cases of absenteeism at the National Assembly, the Assembly had decided to establish a special committee responsible for examining the unjustified absences of over 100 members of parliament. When the Committee had completed its work, the mandates of only 10 members of parliament had been invalidated under Article 110(6) of the Congolese Constitution, according to which "a member of parliament's mandate shall end in the case of his unjustified and unauthorized absence from more than a quarter of the meetings of a session". Those members of parliament, including the three covered by the present decision, had reached the total number of unauthorized absences and thus had their mandates invalidated in accordance with this article.

According to the First Deputy Speaker, the committee noted that the members of parliament whose mandates were invalidated had submitted fake medical supporting documents and fake invitations to receive medical care abroad. In the same way as Mr. Niango, Mr. Sakanyi and Ms. Mushobekwa had the opportunity, according to the delegation, to express their views to the special committee and to present their defence. As regards the plenary decision to vote on the invalidation of their mandates by show of hands rather than by secret ballot, the First Deputy Speaker said that the plenary had the discretionary power to decide on the appropriate voting method.

With regard to the political climate, the First Deputy Speaker stated that the Democratic Republic of the Congo was preparing to hold presidential elections on 20 December 2023, and asserted that the Congolese authorities were committed to the elections being fair, credible, transparent and inclusive, in accordance with the Congolese Constitution. Nevertheless, the delegation stressed that the Congolese authorities continued to encounter considerable security challenges in the east of the DRC, owing to the serious violations committed by rebel fighters belonging to the M23 (March 23 Movement) armed militia, which had resulted in significant loss of life and the internal displacement of several thousand people.

## **B. Decision**

The Governing Council of the Inter-Parliamentary Union

1. *Thanks* the Congolese delegation, in particular the First Deputy Speaker of the National Assembly, for the information provided at the 147th IPU Assembly;
2. *Notes* that the complaints in the cases relating to Mr. Henri Mova Sakanyi (Mr. Sakanyi) and Ms. Marie-Ange Mushobekwa Likulia (Ms. Mushobekwa) are admissible, considering that the complaints: (i) were 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) concern two incumbent members of parliament at the time of the initial allegations; and (iii) that the complaint concerns threats, acts of intimidation; lack of due process in proceedings against parliamentarians; lack of due process at the investigation stage; lack of right of appeal; violation of freedom of opinion and expression; undue invalidation, suspension, revocation or other acts obstructing the exercise of the parliamentary mandate; abusive revocation or

suspension of the parliamentary mandate; and abusive application of parliamentary sanctions, which are allegations falling under the Committee's mandate; and *notes* that the Committee decided to merge its consideration of the situation of these two individuals with the case relating to Mr. Niango, given the similar nature of the alleged violations and the proceedings taken out against them;

3. *Remains concerned* at the fact that a copy of the report by the special committee responsible for examining cases of unauthorized and unjustified absences was not given to Mr. Niango, Mr. Sakanyi or Ms. Mushobekwa, thus depriving them of their right to know the exact reason why the committee decided to recommend to the National Assembly that their mandates be invalidated; *regrets* that the National Assembly did not respond to the requests of the two parliamentarians to be given a copy of the said report, in violation of the adversarial principle, according to which all parties have the right to know the material and legal arguments and evidence on the basis of which they shall be judged; therefore *calls on* the authorities to provide the complainants and the Committee with a copy of the said report, in order to understand the exact reasons why their mandates were invalidated;
4. *Notes with concern* that the situation of Mr. Niango, Mr. Sakanyi and Ms. Mushobekwa is not an isolated case, since cases of invalidation for various reasons have previously been submitted to it, and remain under examination; *also notes* that their cases are set in a political context that is hostile to dissident opposition voices; and *reiterates* that invalidation of a member of parliament's parliamentary mandate must follow a clear procedure that complies with the provisions of the National Assembly's standing orders and the principles of the Constitution;
5. *Calls on* the parliamentary authorities to consider the applications for reconsideration submitted by Mr. Niango, Mr. Sakanyi and Mushobekwa as soon as possible and to grant them the required reparation if the alleged violations are borne out; and *encourages* the Congolese authorities, in this election year where tensions could lead to new violations against members of the opposition, to take all necessary measures to guarantee the fundamental rights of all members of the National Assembly, former or current, regardless of their political affiliation, in order to guarantee that invalidation of the parliamentary mandate is not used to remove members of parliament because of their political ideas;
6. *Reiterates* its deep concern at the lack of possibility of appeal in the judicial proceedings relating to members of parliament in the Democratic Republic of the Congo and recalls that the existence of the possibility of appeal is one of the main safeguards of a fair trial; therefore *calls again on* the Congolese Parliament to establish the possibility of appeal so that a member of parliament's right to a defence in judicial proceedings is protected in the same way as that of other Congolese citizens;
7. *Expresses the wish* for a delegation from the Committee on the Human Rights of Parliamentarians to visit the DRC after the elections to meet with the competent Congolese authorities, in particular the Speaker of the National Assembly, the Public Prosecutor and the Minister of Justice, as well as Mr. Niango, Mr. Sakanyi and Ms. Mushobekwa, and relevant third parties, to help settle these cases in a satisfactory manner; and *hopes* to receive a positive response and support from the National Assembly to this end, to ensure the mission is conducted in the best possible conditions;
8. *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;
9. *Requests* the Committee to continue examining this case and to report back to it in due course.



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# Democratic Republic of the Congo

*Decision adopted unanimously by the IPU Governing Council at its 211<sup>th</sup> session  
(Manama, 15 March 2023)*



Crispin Ngbundu Malengo



Martin Kabuya Mulamba-Kabitanga

COD-152 – Martin Kabuya Mulamba-Kabitanga

COD-153 – Crispin Ngbundu Malengo

## Alleged human rights violations

- ✓ Excessive delays
- ✓ Violation of freedom of opinion and expression
- ✓ Violation of freedom of assembly and association
- ✓ Other acts obstructing the exercise of the parliamentary mandate

## A. Summary of the case

Mr. Martin Kabuya Mulamba-Kabitanga and Mr. Crispin Ngbundu Malengo were elected in the legislative elections held in December 2018. Upon accepting positions as provincial governors, deemed incompatible with their parliamentary mandates, they were reportedly suspended in April 2019 and replaced by their alternates.

In June and December 2020, Mr. Malengo and Mr. Kabuya were stripped of their governorship. Believing that the motions of impeachment against them were unfounded, the two governors filed a complaint with the Constitutional Court. In January and March 2021, the Constitutional Court dismissed Mr. Kabuya and Mr. Malengo who, having officially lost their governorships, initiated a procedure to be reinstated in their parliamentary functions. To this end, on 13 July 2021, legal counsel for the former members of parliament lodged a submission with the Constitutional Court requesting it to interpret the meaning and scope of paragraphs 1, 2 and 3 of Article 110 of the Constitution of 18 February 2006, amended by Law No. 11/002 of 20 January 2011, which list situations requiring the suspension of a parliamentary mandate, the acceptance of a political function that is incompatible with the exercise of a parliamentary mandate being one such situation.

## Case COD-COLL-03

**Democratic Republic of the Congo:**  
Parliament affiliated to the IPU

**Victims:** Two majority members of parliament

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

**Submission of the complaint:** October 2022

**Recent IPU decision(s):** - - -

**Recent IPU mission(s):** - - -

**Recent Committee hearing(s):** - - -

### Recent follow-up:

- Communication(s) from the authorities: - - -
- Communication from the complainant: February 2023
- Communication to the authorities: Letter to the Speaker of the National Assembly (February 2023)
- Communication to the complainant: February 2023

On 1 March 2022, the Constitutional Court issued its ruling No. 1606 in which it clarified its position on the suspension of mandates saying that the latter “applies to any acceptance of an incompatible political office, whether elective or nominative, as envisaged under the Constitution amended on 20 January 2011. In this case, therefore, the parliamentarian whose mandate had been suspended can be reinstated immediately and rightfully in parliament, provided that during this same legislature, as provided in paragraph 6 of the interpreted article, the said parliamentarian or alternate has not deliberately left the political party on behalf of which they had obtained their mandate”. Thus, in its ruling No. 1606 of 1 March 2022, the Constitutional Court definitively ruled on the right of the two members of parliament to resume their parliamentary mandates stating that “the members of parliament whose mandates have been suspended must take up their place in parliament”. The complainants pointed out that, according to Article 168(1) of the Constitution, “The judgments of the Constitutional Court are not subject to appeal and are immediately enforceable. They are binding on the public authorities, on all administrative and judicial, civil and military authorities and on private individuals”. Reportedly, however, the parliamentary authorities have not enforced the Constitutional Court’s ruling No. 1606.

According to the documents submitted by the complainants, in a letter dated 14 March 2022 addressed to Mr. Kabuya, the Speaker of the National Assembly acknowledges the Constitutional Court’s ruling. However, although the parliamentary authorities had taken note of the Constitutional Court’s ruling on the right to resume their parliamentary mandates, the two former members of parliament were reportedly unable to sit in the National Assembly and did not receive their allowances.

Following the legislative elections in the Democratic Republic of the Congo in July 2022, Mr. Kabuya and Mr. Ngbundu are no longer members of parliament.

## **B Decision**

The Governing Council of the Inter-Parliamentary Union

1. *Notes* that the complaint concerning the situation of Mr. Martin Kabuya Mulamba-Kabitanga and Mr. Crispin Ngbundu Malengo 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 and treatment of complaints (Annex I of the Revised Rules and Practices of the Committee on the Human Rights of Parliamentarians); (ii) concerns two incumbent members of parliament at the time of the alleged facts; (iii) concerns excessive delays, violation of freedom of opinion and expression, violation of freedom of assembly and association, and other acts obstructing the exercise of the parliamentary mandate, allegations which fall under the Committee’s mandate;
2. *Regrets* the lack of response from the parliamentary authorities concerning the cases of Mr. Kabuya and Mr. Ngbundu; and *invites* the authorities to provide their observations in these cases;
3. *Takes note* of Constitutional Court Ruling N° 1606 of 1 March 2022, which ruled in favour of the reinstatement of former members of parliament in their parliamentary functions insofar as the political function they held had indeed ended while their parliamentary mandate was still valid; and *notes with concern* that the said ruling has not been executed despite the fact that the parliamentary authorities were allegedly notified thereof by the complainants and despite the immediate enforceability of Constitutional Court’s rulings;
4. *Wishes* to receive information on the reasons that have prevented the parliamentary authorities from implementing the Constitutional Court’s ruling by terminating the suspension of the two former members of parliament and paying them their exit allowances; and *calls on* the parliamentary authorities to ensure that Mr. Kabuya and Mr. Ngbundu obtain redress for the damage suffered;
5. *Notes* that Mr. Kabuya’s and Mr. Ngbundu’s situation are not isolated cases insofar as cases of invalidation for various reasons have already been submitted to the Committee in the past and continue to be examined by it; *also notes* that their cases are part of a hostile political context that is hostile *vis-à-vis* opposition voices; and *encourages* the Congolese authorities in this

election year, when tensions may lead to further violations against certain members of the National Assembly, to take all necessary measures to guarantee the fundamental rights of all its members, former and current, irrespective of their political affiliation, in order to ensure that the invalidation of the parliamentary mandate is not used to dismiss members of parliament for their political ideas;

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

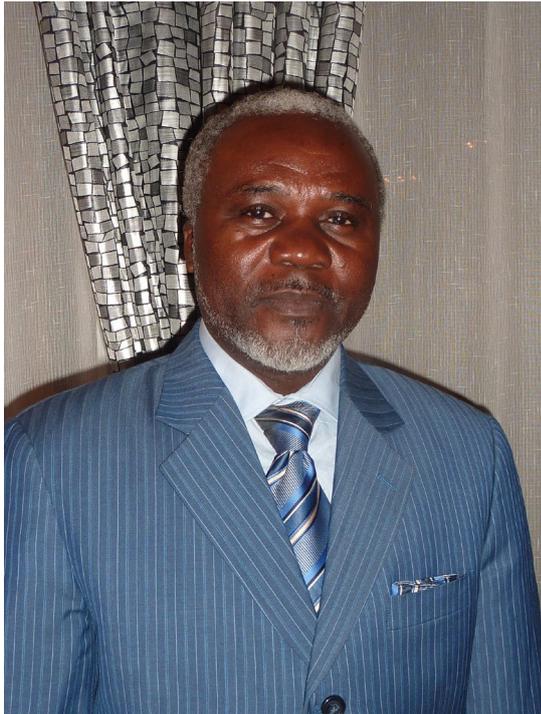


Inter-Parliamentary Union

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# Democratic Republic of the Congo

*Decision adopted by the Committee on the Human Rights of Parliamentarians at its 167<sup>th</sup> session (virtual session, 30 January to 11 February 2022)*



Mr. Mythondeke © IPU June 2013

COD-72 – Dieudonné Bakungu Mythondeke

## Alleged human rights violations

- ✓ Threats, acts of intimidation
- ✓ Violation of freedom of movement

### A. Summary of the case

Mr. Mythondeke was arrested, together with his family and bodyguards, in disputed circumstances, in February 2012. Charged with rebellion and breaches of state security, he was acquitted of all charges brought against him, but was sentenced in first and final instance by the Supreme Court on 25 February 2012 to 12 months' imprisonment for incitement to hatred. The judicial proceedings were characterized by irregularities, which were largely upheld in the Supreme Court decision. Mr. Mythondeke was released on 28 January 2013 after serving his sentence. Mr. Mythondeke won a civil claims case against the Congolese State in 2015. However, according to the complainants, the State has not paid the amount ordered by the court. Consequently, Mr. Mythondeke lodged an appeal for review with the High Court in Goma which, in its decision of 18 March 2021, ordered the Congolese State to pay the amount due to Mr. Mythondeke for damages sustained during the attack on his home in 2012.

### Case COD-72

**Democratic Republic of the Congo:**  
Parliament affiliated to the IPU

**Victim:** A member of parliament for the majority, having joined the opposition at the time of the facts of the case

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

**Submission of complaints:** August 2012 and May 2014

**Recent IPU decision:** March 2016

**IPU mission:** June 2013

**Recent Committee hearing:** Hearing with the delegation of the DRC at the 152nd session (January 2017)

### Recent follow-up:

- Communication from the authorities:  
Letter from the Speaker of the National Assembly making no reference to the case (January 2020)
- Communication from the complainant:  
February 2022
- Communications to the authorities:  
Letter to the President of the Republic and the Speaker of the National Assembly (March and December 2021)
- Communication to the complainant:  
February 2022

Given the concerns for their safety and the absence of any measures by the Democratic Republic of the Congo (DRC) authorities to ensure the protection of Mr. Mythondeke and his family and put an end to the threats, they took refuge abroad in early 2014. Even so, they continue to receive regular threats while in exile and, according to the complainant, their relatives who remained in the DRC are being subjected to intimidation. This is why Mr. Mythondeke cannot return to the DRC at this time without fearing for his life and why he was unable to stand as a candidate in the legislative elections held in December 2018. According to the complainant, Mr. Mythondeke wishes to relocate to another country but has not obtained any assistance in regard to relocation because, according to United Nations reports, he provided substantial financial and political support to an armed group before his arrest. Mr. Mythondeke denies those accusations and invokes the presumption of innocence.

The Speaker of the National Assembly reported in a letter dated 21 August 2017 that he had asked the executive branch to launch investigations into the reasons why Mr. Mythondeke went into exile and to seek proposals on how to facilitate his return. However, since 2017, the parliamentary authorities have not provided any information on Mr. Mythondeke's situation.

In December 2020, the complainant reported that Mr. Mythondeke had returned to the DRC in deplorable travel conditions. The return was said to have been motivated by the failure of the Office of the United Nations High Commissioner for Refugees (UNHCR) in Brazzaville to take any action.

## **B. Decision**

The Committee on the Human Rights of Parliamentarians

1. *Deplores* the lack of information from the parliamentary authorities regarding the situation of Mr. Mythondeke since 2017, especially since the parliamentary authorities continue to provide updated information on the other DRC cases referred to the Committee;
2. *Recalls* that the Supreme Court's decision of 2012 confirmed that, at the time of his arrest, Mr. Mythondeke's fundamental rights had been violated; that he was convicted for an offence that had not even been listed in the initial charges for which he had been prosecuted; that his parliamentary immunity had been violated; and that the authorities had not taken the necessary measures to ensure his security upon his release from prison in 2013, which caused him to leave the DRC and relocate in another country;
3. *Notes* that Mr. Mythondeke and his family had to return to the DRC as the UNHCR in Brazzaville had not made any progress regarding their request for relocation, reportedly because the relocation appears to have been hampered by information contained in the United Nations' reports, even though Mr. Mythondeke had been acquitted by the DRC courts of all the charges brought against him; *notes*, nevertheless, that Mr. Mythondeke's security situation in the DRC has improved, as he is reportedly no longer under surveillance or subject to acts of intimidation;
4. *Notes*, also, the decision of the High Court in Goma ordering the Congolese State to pay the amount due to Mr. Mythondeke for damages sustained during the attack on his home in 2012; *underlines* that the procedure for indemnification was established in 2015 and, consequently, *appeals* to the competent authorities to execute this court decision so that Mr. Mythondeke and his family can close this chapter and return to decent living conditions in the DRC; *invites* the parliamentary authorities to follow the case and take all necessary measures to finally resolve this case; and, in that regard, *wishes* to be informed of the progress made therein;
5. *Requests* the Secretary General to convey this decision to the competent authorities, the Minister for Justice of the DRC, the complainants, as well as to any third party likely to be in a position to supply relevant information;
6. *Decides* to continue examining this case.



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## Democratic Republic of the Congo

DRC/85 - Martin Fayulu

***Decision adopted unanimously by the IPU Governing Council  
at its 199<sup>th</sup> session (Geneva, 27 October 2016)***

The Governing Council of the Inter-Parliamentary Union,

*Referring* to the case of Mr. Martin Fayulu, a member of the National Assembly of the Democratic Republic of the Congo (DRC), and to the decision it adopted at its 198<sup>th</sup> session (March 2016),

*Referring* to the letters from the Speaker of the National Assembly of 21 April and 3, 13 and 19 October 2016, and information provided by the complainant,

*Considering* that Mr. Fayulu, an opposition member of parliament and leader of the political party *Engagement for Citizenship and Development* (ECIDé), was arrested by intelligence service officers on 14 February 2016 and that the following has been placed on the file regarding the incident:

- According to the complainant, Mr. Fayulu was assaulted, arrested and arbitrarily detained by the aforementioned officers before being released the same evening; his vehicle and personal belongings were confiscated and never returned back to him; Mr. Fayulu filed a complaint against his arbitrary arrest and violation of his rights and parliamentary immunity, but there has been no progress in the legal proceedings to date;
- According to the complainant, this incident was intended to prevent a day of national protest scheduled for 16 February 2016 ("Dead City Day"), which was being jointly organized by opposition parties;
- According to the complainant, the Public Prosecutor had initiated proceedings against Mr. Fayulu (file reference: RMP V/039/PGR/SMM) and requested the National Assembly to lift his parliamentary immunity; Mr. Fayulu had not been informed of the charges laid against him, or of the lifting of his immunity;
- The Speaker of the National Assembly stated that he had intervened immediately to secure Mr. Fayulu's release, referring the matter to the Public Prosecutor to ensure compliance with the Constitution and his parliamentary immunity, and publicly expressing his position in a tweet; he believed that, as the case had been referred to the courts, the National Assembly was no longer responsible for the matter; he recommended that Mr. Fayulu should hire the services of a lawyer and use the procedure provided for in Congolese law (*procédure de prise à partie*), instead of relying on the Bureau of the National Assembly's intervention; he has not confirmed whether legal proceedings were initiated against Mr. Fayulu, or a request submitted for the lifting of his parliamentary immunity;

*Considering* that, on 19 September 2016, Mr. Fayulu sustained a serious head injury during a protest organized by the opposition in Kinshasa, and that the following allegations and information have been placed on file concerning the incident:

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- The complainant alleges that a police officer deliberately targeted Mr. Fayulu, firing a rubber bullet at him at point-blank range; he stated that six young people surrounding the member of parliament at the protest were themselves hit by live bullets; he criticizes the National Assembly for not denouncing the incident and failing to provide assistance to Mr. Fayulu; the complainant further expresses concern following the announcement by the Public Prosecutor of charges being brought against the organizers of the protest and several members of the opposition following the demonstrations, and of a foreign travel ban being imposed on them; the complainant stated that it was not known whether these measures had been taken against Mr. Fayulu;
- The Speaker of the National Assembly underscored that the 19 September 2016 protest had had "no direct impact" on the authority of Mr. Fayulu as an elected representative, and reiterated that the National Assembly had condemned the acts of violence committed during the public protests of 19 and 20 September 2016; he reported that criminal investigations were under way and that the National Assembly could not interfere in the conduct of the case; he expressed the hope that the investigations would proceed quickly and that the identified perpetrators of these acts of violence would be brought to justice; he reaffirmed his commitment to the protection of human rights and the rights of parliamentarians "provided they also prove themselves to be exemplary models in respecting the rights of others and the laws of the Republic";
- The Speaker of the National Assembly emphasized that he had instructed the 2<sup>nd</sup> Deputy Speaker to enquire about Mr. Fayulu's situation following the protest and to take appropriate measures; he affirmed the Bureau's willingness to provide Mr. Fayulu with support, while recalling that the process to provide medical care was subject to fulfilling certain normal administrative formalities; he pointed out that it was Mr. Fayulu's responsibility to inform the Bureau of the circumstances and place of his hospitalization, so that the assistance mechanism could be activated, as the Bureau did not have the authority to do so on its own,

*Considering* that the complainant alleges that the two incidents that took place in 2016 involving Mr. Fayulu came after a number of previous tactics had been used to impede his political activities and to weaken the opposition; that these tactics were orchestrated against him because of his role in coordinating an opposition platform, his stance in favour of the Head of State stepping down at the end of his term of office, and the announcement of his intention to run in the presidential elections,

*Considering* that these successive incidents occurred at a time of political tension and mounting repression of the opposition because of the elections initially scheduled for the end of 2016, which had been postponed despite objections from the opposition,

*Considering* that the preliminary investigation report published on 20 October 2016 by the United Nations Joint Human Rights Office in the DRC on the acts of violence committed during the protests in Kinshasa from 19 to 21 September 2016 concluded that more than 422 people had been victims of human rights violations by State agents (with at least 48 killed, 75 injured and nearly 300 persons illegally arrested and detained by State agents); that the report states that security forces are responsible for most of the violations committed during the protests and that they used excessive force to prevent the protesters from peacefully exercising their freedom of assembly and protest; the report confirms that the Government announced that charges were being brought against the "organizers of the protest, those involved in the acts of violence and the masterminds" and that a travel ban was being imposed; that the report recommends, in particular, that the Congolese authorities promptly carry out independent, thorough, credible, transparent and impartial investigations into the violations committed by State agents and to bring the alleged perpetrators to justice, regardless of their ranks and positions, and to guarantee the protection of the fundamental rights of the political opponents; that the report further confirms that the protesters are also to blame for several acts of violence, including the death of four police officers and the destruction and looting of numerous public buildings, and also recommends investigations and the imposition of sanctions against those responsible for the violence,

1. *Thanks* the Speaker of the National Assembly for the information provided and his cooperation;

2. *Expresses its concern* about the violence to which Mr. Fayulu was subjected during the 19 September 2016 protest and the inaction of the Congolese courts with respect to the incidents of February 2016, even more so given the worsening political situation in the DRC;
3. *Urges* the relevant authorities to bring the perpetrators to justice as soon as possible following independent, credible, transparent and impartial investigations, and to return the belongings illegally confiscated back to Mr. Fayulu as a matter of urgency;
4. *Recalls* that impunity constitutes a threat both to parliamentarians and to those they represent and therefore assaults against parliamentarians, if they remain unpunished, not only violate the fundamental rights of those concerned, but affect the ability of parliament to fulfill its institutional mission; *stresses* that parliament has an obligation to ensure that no effort is spared in holding the perpetrators accountable; and *urges* the National Assembly to take all appropriate steps as soon as possible and to keep the Committee informed in that regard;
5. *Also wishes to know* whether Mr. Fayulu: (i) is currently subject to legal proceedings, a request to lift his parliamentary immunity and/or a travel ban; (ii) filed a formal complaint following the 19 September 2016 protest; (iii) submitted a formal request for medical assistance to the National Assembly, in accordance with the normal procedure; and (iv) used the *procédure de prise à partie* with respect to the incidents of February 2016;
6. *Requests* the Secretary General to convey this decision to the competent authorities, the Minister of Justice 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.