



**International covenant
on civil and
political rights**

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HUMAN RIGHTS COMMITTEE
Eighty-sixth session
13-31 March 2006

VIEWS

Communication No. 1177/2003

<i>Submitted by:</i>	Willy Wenga Ilombe and Nsii Luanda Shandwe (represented by counsel)
<i>Alleged victims:</i>	The authors
<i>State party:</i>	Democratic Republic of the Congo
<i>Date of communication:</i>	10 April 2003 (initial submission)
<i>Document references:</i>	Special Rapporteur's rule 97 decision, transmitted to the State party on 14 February 2003 (not issued in document form)
<i>Date of adoption of Views:</i>	17 March 2006
<i>Subject matter:</i>	Arbitrary detention - right to be brought promptly before a judge - compensation for arbitrary detention

* Made public by decision of the Human Rights Committee.

<i>Procedural issues:</i>	State party's failure to cooperate
<i>Substantive issues:</i>	Arrest and detention of two human rights defenders
<i>Articles of the Covenant:</i>	9, paragraphs 1 to 5; 14
<i>Articles of the Optional Protocol:</i>	2 and 4, paragraph 2

On 17 March 2006, the Human Rights Committee adopted the annexed draft as the Committee's Views, under article 5, paragraph 4, of the Optional Protocol in respect of communication No. 1177/2003. The text of the Views is appended to the present document.

[ANNEX]

Annex

**VIEWS OF THE HUMAN RIGHTS COMMITTEE UNDER ARTICLE 5,
PARAGRAPH 4, OF THE OPTIONAL PROTOCOL TO THE
INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS**

Eighty-sixth session

concerning

Communication No. 1177/2003*

Submitted by: Willy Wenga Ilombe and Nsii Luanda Shandwe
(represented by counsel)

Alleged victims: The authors

State party: Democratic Republic of the Congo

Date of communication: 10 April 2003 (initial submission)

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 17 March 2006,

Having concluded its consideration of communication No. 1177/2003, submitted to the Human Rights Committee by Willy Wenga Ilombe and Nsii Luanda Shandwe under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the authors of the communication and the State party,

Adopts the following:

Views under article 5, paragraph 4, of the Optional Protocol

1. The authors of the communication are Willy Wenga Ilombe and Nsii Luanda Shandwe, citizens of the Democratic Republic of the Congo. They claim to be victims of violations by the Democratic Republic of the Congo of paragraphs 2 to 5 of article 9, and of article 14 of the

* The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Nisuke Ando, Mr. Prafullachandra Natwarlal Bhagwati, Ms. Christine Chanut, Mr. Maurice Glèlè Ahanhanzo, Mr. Edwin Johnson, Mr. Walter Kälin, Mr. Ahmed Tawfik Khalil, Mr. Rajsoomer Lallah, Mr. Michael O'Flaherty, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Ivan Shearer, Mr. Hipólito Solari-Yrigoyen, Ms. Ruth Wedgwood and Mr. Roman Wieruszewski.

International Covenant on Civil and Political Rights. The case also appears to raise issues under article 9, paragraph 1, of the Covenant. The authors are represented by counsel. The Optional Protocol came into force for the Democratic Republic of the Congo on 1 November 1976.

Factual background

2.1 On 20 February 2002, Willy Wenga Ilombe, a lawyer and member of the African Centre for Peace, Democracy and Human Rights (ACPD), a human rights non-governmental organization, was arrested. He was taken to the Office of the Public Prosecutor of the Military Court (Parquet Général près la Cour d'Ordre Militaire). After 48 hours in detention, he was informed that he had been arrested for breach of State security. According to the Office of the Public Prosecutor, he had been in constant contact with Major Bora Uzima Kamwanya in January 2001. Major Bora is suspected to have taken part in the assassination of the former President of the Democratic Republic of the Congo, Laurent-Désiré Kabila, on 16 January 2001. It was claimed that the Major's telephone number appeared twice on the telephone bill of Willy Wenga Ilombe.

2.2 On 19 April 2002, Nsii Luanda Shandwe, president of the Committee of Human Rights Observers (CODHO), a human rights non-governmental organization, was also arrested. After seven days in detention at the Office of the Public Prosecutor of the Military Court, he was transferred to the Penitentiary and Re-education Centre of Kinshasa. He was accused of providing accommodation to Michel Bisimwa, a student suspected of spying for Rwanda. As a result, he was accused of breach of State security and spying for a foreign power.

2.3 On 27 January 2003, the authors were released after 9 and 11 months of detention, respectively, without ever being tried by a court.

The complaint

3.1 The authors allege a violation of article 9, paragraph 2, arguing that at the time of their arrest for breach of State security, they were neither informed, nor received notification of the charges made against them. They argue that according to the jurisprudence of the Committee, it is not sufficient to inform the person who is detained that he was arrested on the basis of security measures without any indication of the substance of the complaint against him.¹ Moreover, they suggest that the concept of "national security" should be clearly defined by law, that police and security officers should be required to state in writing why a person has been arrested, and that such information should be made available to the public and should be reviewable by the courts.²

3.2 They also claim a violation of article 9, paragraph 3, because they were not brought before a competent judge, nor tried, during the time of their detention, and were detained for 9 and 11 months, respectively. They invoke a decision of the Committee in which a delay of one week was found to be a breach of article 9, paragraph 3,³ as well as a judgement of the European Court of Human Rights in which a delay of four days and six hours was considered to be excessive.⁴ In the present case, the authors remained in detention until 27 January 2003, without being brought before a judge or being granted bail. Their release was not decided

according to the applicable rules of criminal procedure, as there was no judicial decision acquitting them, nor a decision to grant them bail. Their release appears to have resulted from international and national public pressure. The authors were simply taken from their cells and told to go home. This form of release creates insecurity for the authors, since they can be re-arrested at any time. At the time of their release, the public prosecutor told the authors that the investigation was still under way, that they could thus be called upon at any time and that they should not leave the area.

3.3 The authors claim a violation of article 9, paragraph 4, because they were deprived of the right to take proceedings before a court, in order that the court may decide without delay on the legality of their detention. They refer to the “décret-loi” of 23 August 1997 creating a military court in the Democratic Republic of the Congo (Cour d’Ordre Militaire), and in particular to article 5 which provides that the decisions of this court can neither be opposed, nor appealed against, except in an extraordinary procedure before the President of the Republic by way of a presidential pardon.

3.4 They finally claim a violation of article 14, because they were arrested and detained by the Office of the Public Prosecutor of a special military court (“juridiction militaire d’exception”) created to deal exclusively with crimes committed by the military.

3.5 Since the authors consider themselves victims of arbitrary and unlawful detention, they request the Committee to order compensation for the harm they have suffered.

3.6 With regard to the exhaustion of domestic remedies, the authors argue that there are no remedies available for the violations they claim. They refer to article 200 of the Code of Military Justice, which confers on the Military Prosecutor the power to “decide to extend the detention for one month and then month after month, for as long as required by public interest”. As mentioned above, it is not possible to appeal the decisions of the military court, except in an extraordinary procedure before the President of the Republic. The authors had requested several times to be released on bail or brought before a competent judge.

3.7 The Committee considers that the authors’ allegations also raise issues under article 9, paragraph 1, of the Covenant.

State party’s failure to cooperate

4. On 23 May 2003, 14 January and 23 September 2004, and 16 June 2005, the State party was requested to submit to the Committee information on the admissibility and the merits of the communication. The Committee notes that this information has not been received. The Committee regrets the State party’s failure to provide any information with regard to admissibility or the substance of the authors’ claims. It recalls that under the Optional Protocol, the State party concerned is required to submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that it may have provided. In the absence of a reply from the State party, due weight must be given to the authors’ allegations, to the extent that these have been properly substantiated.

Issues and proceedings before the Committee

Consideration of admissibility

5.1 Before considering any claim contained in a communication, the Human Rights Committee must, in accordance with rule 93 of its rules and procedures, decide whether or not it is admissible under the Optional Protocol to the Covenant.

5.2 The Committee has ascertained that the same matter is not being examined under another procedure of international investigation or settlement for the purposes of article 5, paragraph 2 (a), of the Optional Protocol.

5.3 In light of the authors' arguments concerning the exhaustion of domestic remedies and the lack of cooperation from the State party, the Committee considers that the provisions of article 5, paragraph 2 (b), of the Optional Protocol do not preclude the examination of the communication.

5.4 With regard to article 14, the Committee considers that the authors have not sufficiently substantiated for the purposes of admissibility what specific charges, if any, fell to be determined in accordance with paragraph 1 thereof. This part of the communication is therefore inadmissible under article 2 of the Optional Protocol.

5.5 The Committee considers that, in the absence of any information from the State party, the complaints of violations of article 9, paragraphs 2 to 4, as well as issues arising under article 9, paragraph 1, are admissible.

Consideration of the merits

6.1 The Human Rights Committee has considered the present communication in the light of all the information made available to it, as provided for in article 5, paragraph 1, of the Optional Protocol.

6.2 With regard to the alleged violation of article 9, paragraph 2, the Committee takes note of the authors' claim that they were not informed, at the time of arrest, of the reasons for their arrest. It observes that it was not sufficient simply to inform the authors that they were being arrested for breach of State security, without any indication of the substance of the complaint against them.⁵ In the absence of any pertinent information from the State party which would contradict the authors' allegations, the Committee considers that the facts before it reveal a violation of article 9, paragraph 2, of the Covenant.

6.3 As to the alleged violation of article 9, paragraph 3, the Committee takes note of the authors' claim that they were detained for 9 and 11 months, respectively, without ever being brought before a judge. It recalls that article 9, paragraph 3, provides that anyone arrested or detained on a criminal charge has to be brought promptly before a judge or other officer authorized by law to exercise judicial power, and that pursuant to general comment No. 8 (16), such delays must not exceed a few days. In the absence of any reply from the State party which would challenge the authors' allegations, the Committee concludes that the facts as submitted reveal a violation of article 9, paragraph 3, of the Covenant.

6.4 On the alleged violation of article 9, paragraph 4, of the Covenant, the Committee takes note of the authors' claim that they were deprived of the right to challenge the legality of their detention, because decisions of the Military Court can neither be opposed, nor appealed. In the absence of any information from the State party on this issue, the Committee considers that the facts before it reveal a violation of article 9, paragraph 4, of the Covenant.

6.5 In general, the detention of civilians by order of a military court for months on end without possibility of challenge must be characterized as arbitrary detention within the meaning of article 9, paragraph 1, of the Covenant.

7. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts before it reveal violations by the State party of article 9, paragraphs 1 to 4, of the Covenant.

8. In accordance with article 2, paragraph 3, of the Covenant, the State party is under an obligation to provide the authors with an effective remedy, including appropriate compensation. The State party is also under an obligation to take measures to prevent similar violations in the future.

9. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant or not and that, pursuant to article 2 of the Covenant, that State party has undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy in case a violation has been established, the Committee wishes to receive from the State party, within 90 days, information about the measures taken to give effect to the Committee's Views. The State party is also requested to publish the Committee's Views.

[Adopted in English, French and Spanish, the English text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]

Notes

¹ See communication No. 43/1979, *Drescher Caldas v. Uruguay*, Views adopted on 21 July 1983, para. 13.2.

² See concluding observations of the Human Rights Committee: Sudan, CCPR/C/79/Add.85, 19 November 1997, para. 13.

³ See communication No. 702/1996, *McLawrence v. Jamaica*, Views adopted on 18 July 1997, para. 5.6.

⁴ See *Brogan and others v. United Kingdom*, judgement of 29 November 1984, Series A No. 145-B, para. 62.

⁵ See also communication No. 43/1979, *Drescher Caldas v. Uruguay*, Views adopted on 21 July 1983, para. 13.2.
