



**International covenant
on civil and
political rights**

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HUMAN RIGHTS COMMITTEE
Ninety-sixth session
13-31 July 2009

VIEWS

Communication No. 1483/2006

Submitted by: Mr. Philémon Basongo Bondonga (represented by counsel,
Mr. Dieudonné Diku)

Alleged victim: Mr. Baudouin Basongo Kibaya (father of the author)

State party: Democratic Republic of the Congo

Date of communication: 10 March 2004 (initial submission)

Document reference: Special Rapporteur's rule 97 decision, transmitted to the State
party on 18 July 2006 (not issued in document form)

Date of adoption of Views: 30 July 2009

Subject matter: Torture by members of the Armed Forces

Procedural issues: Exhaustion of domestic remedies

* Made public by decision of the Human Rights Committee.

Substantive issues: Prohibition of torture and cruel, inhuman or degrading punishment or treatment

Articles of the Covenant: 7 and 2, paragraph 3 (c)

Articles of the Optional Protocol: 2; 4, paragraph 2; and 5, paragraph 2 (b)

On 30 July 2009, the Human Rights Committee adopted the annexed text as the Committee's Views under article 5, paragraph 4, of the Optional Protocol in respect of communication No. 1483/2006.

[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**

Ninety-sixth session

concerning

Communication No. 1483/2006*

Submitted by: Mr. Philémon Basongo Bondonga (represented by counsel,
Mr. Dieudonné Diku)

Alleged victim: Mr. Baudouin Basongo Kibaya

State party: Democratic Republic of the Congo

Date of communication: 10 March 2004 (initial submission)

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

Meeting on 30 July 2009,

Having concluded its consideration of communication No. 1483/2006, submitted to the Human Rights Committee by Mr. Philémon Basongo Bondonga 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 author of the communication and the State party,

Adopts the following:

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

1. The author of the communication, dated 10 March 2004, is Mr. Philémon Basongo Bondonga, a citizen of the Democratic Republic of the Congo, born in Kinshasa

* The following members of the Committee participated in the consideration of this communication: Mr. Mohammed Ayat, Mr. Prafullachandra Natwarlal Bhagwati, Ms. Christine Chanet, Mr. Ahmad Amin Fathalla, Mr. Yuji Iwasawa, Mr. Rajsoomer Lallah, Mr. Lazhari Bouzid, Ms. Zonke Zanele Majodina, Mr. Michael O'Flaherty, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Fabian Omar Salvioli, Mr. Krister Thelin and Ms. Ruth Wedgwood.

on 25 May 1984. He has submitted the communication on behalf of his father, Mr. Baudouin Basongo Kibaya, a citizen of the Democratic Republic of the Congo, born in Kisangani on 15 May 1954, who died on 7 March 2004 of causes unrelated to the events described below. The author claims that his father was a victim of violations by the Democratic Republic of the Congo of article 7 and article 2, paragraph 3 (c), of the International Covenant on Civil and Political Rights. The Optional Protocol entered into force for the Democratic Republic of the Congo on 1 November 1976.

The facts as submitted by the author

2.1 On 23 April 2001, Lieutenant Basongo Kibaya was forced to hand over his service weapon to Albert Kifwa Mukuna, Commander of the Lukunga District, headquartered in the Lufungula camp. He immediately reported the matter to his superior officers in order to avoid being punished for losing his weapon. After he had done so, Commander Albert Kifwa Mukuna ordered his arrest on 30 April 2001. At approximately 11 p.m. on that same day, the Commander went with his two bodyguards, Joel Betikumesu and John Askari, to Baudouin Basongo Kabaya's cell and ordered that Mr. Basongo be given 400 lashes on the buttocks. As a result of this torture, Mr. Baudouin Basongo Kibaya became sexually impotent.

2.2 On 4 May 2001, Mr. Baudouin Basongo Kibaya lodged a complaint with the Office of the Prosecutor-General of the Military Court against Commander Albert Kifwa Mukuna for arbitrary arrest and physical torture. In October 2002, following several months of investigations, the Military Prosecutor's Office scheduled the case for a hearing by the military court. On 29 January 2003, the military court sentenced Commander Albert Kifwa Mukuna to a term of imprisonment of 12 months and ordered him to pay damages of 250,000 Congolese francs (the equivalent of 400 United States dollars). His two bodyguards were each sentenced to six months of imprisonment.

2.3 The public prosecution service responsible for enforcing sentences left Albert Kifwa Mukuna and his two bodyguards at liberty, despite the fact that the men had been convicted.

Complaint

3.1 The author maintains that there was a violation of article 7 and of article 2, paragraph 3 (c), of the International Covenant on Civil and Political Rights.

3.2 The author considers the sentence which the military court handed down to the torturers to be unusually lenient and claims that he was unable to make use of effective remedies. He further maintains that the sentence was not enforced, even though the enforcement of sentences is one of the functions of the public prosecution service.

3.3 As far as the exhaustion of domestic remedies is concerned, the author argues that it was not possible to file an ordinary appeal against the military court's judgement, as the court heard and decided the case at first and last instance. He refers to Act No. 023/2002 of 18 November 2002 concerning the Military Code of Justice, article 378 of which stipulates that "military court decisions which acquire the force of *res judicata* are not governed by the present

Act". Moreover, this court was abolished in March 2003 and it pronounced only the operative part of its judgements, without issuing an executory copy or any copy thereof. The author furthermore states that, under Congolese law, the grounds for filing an appeal are incompetence and a breach of law, *inter alia*; neither of these two conditions obtains in the particular case before the Committee.

Lack of cooperation by the State party

4. In notes verbales dated 18 July 2006, 8 June 2007, 29 July 2008 and 18 February 2009, the State party was requested to convey information to the Committee on the admissibility and merits of the communication. The Committee notes that it did not receive the requested information. It regrets that the State party did not supply any relevant information on the admissibility or the merits of the author's allegations. It recalls that, under the Optional Protocol, the State concerned is required to submit to the Committee written explanations or statements clarifying the matter and indicating what remedies, if any, may have been taken. In the absence of a reply of any kind from the State party, the Committee must give due weight to the author's allegations insofar as they have been sufficiently 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 decide, in accordance with rule 93 of its rules of procedure, whether or not the communication is admissible under the Optional Protocol to the Covenant.

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

5.3 Having taken note of the author's arguments concerning the exhaustion of domestic remedies and taking into account the lack of cooperation by the State party, the Committee concludes that there is nothing in article 5, paragraph 2 (b), of the Optional Protocol to prevent it from considering the communication. The Committee further concludes that the facts presented by the author have been sufficiently substantiated for the purposes of article 7 and article 2, paragraph 3 (c), of the Covenant. Accordingly, it decides that the communication is admissible and proceeds to consider it on the merits.

Consideration on the merits

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

6.2 With regard to the allegation of a violation of article 7 and of article 2, paragraph 3 (c), of the Covenant, the Committee notes the author's allegation that his father was detained and whipped by Commander Kifwa Mukuna's bodyguards, on the Commander's orders, for

reporting the forcible removal of his weapon. The Committee also notes the author's allegation that the public prosecution service failed to enforce the relatively light sentence handed down by the military court, since the convicted persons never served their prison terms. In the absence of any relevant information from the State party which might contradict the author's allegations, the Committee considers that the facts laid before it reveal a violation of article 7, together with article 2, 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 information before it reveals a violation of article 7, together with article 2, of the Covenant.

8. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the author with an effective remedy, including appropriate compensation. The State party is under an obligation to enforce the ruling of the military court of 29 January 2003. It is also under an obligation to ensure that similar violations do not occur in 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, the State party has undertaken to ensure to all individuals within its territory or subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy in the event that a violation has been established, the Committee wishes to receive from the State party, within 180 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 French 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.]
