I. Communications Nos. 241 and 242/1987, F. Birindwa ci Birhashwirwa and E. Tshisekedi wa Mulumba v. Zaire (views adopted on 2 November 1989, at the thirty-seventh session)

Submitted by:	F. Birindwa ci Birhashwirwa E. Tshisekedi wa Mulumba
Alleged victims:	The authors
State party concerned:	Zaire
Date of communications:	25 and 31 August 1987 (date of initial letters)
Date of decision on admissibility:	4 April 1988

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

Meeting on 2 November 1989,

Having concluded its consideration of communications Nos. 241 and 242/1987, submitted to the Committee by F. Birindwa ci Birhashwirwa and E. Tshisekedi wa Mulumba for consideration 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 communications and by the State party,

Adopts the following:

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

1. The authors of the communications (initial submissions dated 25 and 31 August 1987, respectively, and subsequent correspondence) are Faustin Birindwa ci Birhashwirwa and Etienne Tshisekedi wa Mulumba, two Zairian citizens and founding members of the Union pour la Démocratie et le Progrès Social ("U.D.P.S."; Union for Democracy and Social Progress), an opposition group in Zaire. They claim to be the victims of violations by Zaire of articles 9, paragraph 1; 10, paragraph 1; 12, paragraph 1; and 17 of the International Covenant on Civil and Political Rights. Mr. Tshisekedi is represented by counsel. The authors were among the co-authors of communication No. 138/1983 concerning themselves and 11 other Zairian parliamentarians. The Committee adopted its views on communication No. 138/1983 at its twenty-seventh session on 26 March 1986.

2.1 In the above-mentioned views, the Committee had observed that the facts disclosed violations of articles 9, paragraph 1; 10, paragraph 1; 12, paragraph 1, 16, paragraph 1; 19 and 25 of the Covenant and concluded that Zaire was under an obligation to take effective measures to remedy the violations that the authors had suffered, to grant them compensation, to conduct an inquiry into the circumstances of their ill-treatment, to take appropriate action thereon and to ensure that similar violations did not occur in the future.

2.2 The authors state that as a consequence of the Committee's views of 26 March 1986, the Zairian authorities, far from granting them compensation or investigating their ill-treatment, decided to impose another term of banishment on them and some of the other authors of communication No. 138/1983. In the case of Mr. Birindwa and Mr. Tshisekedi, this second period of internal exile is said to have lasted from mid-June 1986 to the end of June 1987. While Mr. Birindwa was confined to his native village in the province of Kivu (close to the border of Rwanda), Mr. Tshisekedi was kept under surveillance in his native village in the province of Kasai-Oriental. The relatives of both authors were also subjected to surveillance by the Zairian authorities. Mr. Tshisekedi was released from banishment on 27 June 1987, and Mr. Birindwa on 1 July 1987, following a presidential amnesty promulgated in the context of the Zairian elections of August 1987.

2.3 With regard to the requirement of exhaustion of domestic remedies, the authors refer to the procedures engaged by the counsel to the authors of communication No. 138/1983 before Zairian courts and to the ineffectiveness of appeals to Zairian courts. In that respect, they allege that explicit order has been given to the registrars of the courts in Kinshasa not to make available to members of the political opposition or to their legal counsel any court orders or decisions in cases affecting them. They further allege that the pursuit of domestic remedies is obstructed in Zaire by the fact that any person in possession of official documents of the Human Rights Committee is deemed to be in possession of "subversive" documents and subject to arrest.

3. By decision of 2 November 1987, the Human Rights Committee transmitted communications Nos. 241/1987 and 242/1987 to the State party, requesting information and observations relevant to the question of the admissibility of their communications. The State party was requested, in particular, to provide the Committee with information concerning all the measures taken by its authorities vis-à-vis the victims referred to in communication No. 138/1983, following the transmittal to the State party of the Committee's views in that case.

4.1 In its submission under rule 91, dated 28 January 1988, jointly relating to communications Nos. 241/1987 and 242/1987, the State party provides information concerning the authors' cases. This information relates exclusively to their situation after their release in mid-1987.

4.2 The State party indicates that in June 1987, President Mobutu declared an amnesty for members of the U.D.P.S., some of whose leaders returned to the Mouvement Populaire de la Révolution (M.P.R.), the National Party of Zaire. Senior officials of the U.D.P.S. were appointed to important posts in the hierarchy of the M.P.R. Others were appointed to responsible positions at the head of certain State enterprises.

4.3 With respect to the fate of the authors of these communications, it is stated that they also benefited from the Presidential amnesty. With respect to Mr. Tshisekedi, the State party explains that he was able to travel extensively throughout Europe and the United States, that he returned to Zaire towards the middle of January 1988, where he sought to organise a public demonstration in Kinshasa on 17 January 1988, without prior authorisation. The State party explains that under its laws, every demonstration must be notified to the authorities and meet certain requirements before it is approved. It adds that Mr. Tshisekedi

none the less decided to proceed and that the police was forced to intervene. The author and other demonstrators were arrested and transferred to Makala prison in Kinshasa. The State party submits that as the author displayed "signs of mental disturbance, the judicial authorities decided that he should undergo a psychiatric examination, both in the interests of his health and to ensure a fair trial." With respect to Mr. Birindwa, the State party merely observes that he has remained abroad, and that no administrative or legal measures have been taken against him.

4.4 The State party's submission of 28 January 1988 does not provide any information on the remedies that would have been open to the authors with respect to the treatment allegedly suffered by them between mid-June 1986 and the time of their release at the end of June 1987.

5.1 In her comments on the State party's submission, dated 25 March 1988, Mr. Tshisekedi's counsel affirms that an authorization had been requested for the demonstration led by the author on 17 January 1988 but that it was denied. Allegedly, every request for authorization of a demonstration is refused in Zaire, since demonstrations are prohibited under the country's constitution. In these circumstances, the author decided to defy the authorities. Counsel further claims that the security forces who intervened allegedly caused the death of several demonstrators, although the manifestation is said to have been peaceful.

5.2 Counsel provides further information about Mr. Tshisekedi's situation. Following his arrest and transfer to Makala prison, he was kept detained until 11 March 1988, when he was released. On 16 March 1988, he was, however, again placed under house arrest and military surveillance at his home in Gombe-Kinshasa. On 18 March 1988, the military allegedly began to harass the visitors to the author's home, and on 19 March, violent incidents occurred outside the home and in the neighbourhood, in the course of which numerous arrests are said to have occurred and several individuals who found themselves on the grounds of the author's home were maltreated. As to the reported "mental disturbance" of the author, counsel states that following concerted international pressure, the State party's authorities abandoned their idea of interning him in a psychiatric institution, all while continuing to disseminate information about his allegedly disturbed mental state.

6.1 Before considering any claims contained in a communication, the Human Rights Committee must, in accordance with rule 87 of its rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

6.2 The Committee ascertained, as it is required to do under article 5, paragraph 2 (a), of the Optional Protocol, that the matters complained of by the authors had not been submitted to another procedure of international investigation or settlement. As to the question of exhaustion of domestic remedies, the Committee noted the authors' statement that appeals to the State party's courts with respect to events occurring prior to the presidential amnesty of June 1987 are ineffective. It observed that these allegations had remained uncontested and that the State party had not provided any information about remedies that would have been available to the authors. As to the State party's statements on the situation of Mr. Tshisekedi, the Committee considered that they related to issues of substance and that they should, accordingly, be examined on the merits.

7.1 On 4 April 1988, the Human Rights Committee therefore decided that the communications were admissible.

7.2 The Committee also decided, pursuant to rule 88, paragraph 2, of its rules of procedure, to deal jointly with the communications of Messrs. Birindwa and Tshisekedi.

8. In a submission dated 4 May 1988, Mr. Tshisekedi's counsel indicates that on 8 April 1988, Mr. Tshisekedi was placed under arrest and taken to the State Security Court, where he was interrogated until midnight. The arrest is said to have been linked to his call for a boycott of the partial elections held in Kinshasa on 10 April 1988. During the night of 8 April he was handed over to General Bolosi, Commander of the city of Kinshasa. He is said to have subsequently been transferred back and forth between various camps located in Upper Zaire and on the border between Zaire and Sudan, where frequent fighting between guerrilla forces is said to occur. Counsel points out that Mr. Tshisekedi suffers from various ailments, that he is without medical attention at the places of his detention, and that the climatic conditions in these places adversely affect his health. By letter of 18 August 1988, counsel supplements this information with excerpts from statements expressing concern about Mr. Tshisekedi's situation made in the international and in particular the Belgian press.

9. On 1 September 1988, the Secretariat was informed by the representative of the U.D.P.S. in Geneva, Mr. G. Wodia Mutombo, that Mr. Tshisekedi was under detention at the military camp of Kota Koli, and that Mr. Birindwa had been released from detention on 27 July 1988 and was reported to be in his home province of Kivu.

10.1 In a submission dated 21 September 1988, the State party informs the Committee "that the administrative measures of banishment taken against citizen Tshisekedi following the events of 17 January 1988 have been lifted with effect from 16 September 1988 by decision of ... the President of the Republic". It adds that the author has returned to his family and "enjoys complete freedom of movement"; as a result, the State party suggests that the "file concerning what has been called the Tshisekedi case may be regarded as definitely closed". As to the fate of those who were arrested at the same time as Mr. Tshisekedi, the State party indicates that many have already been released, and that the rest would be freed shortly. It points out that the procedures initiated against those guilty of other offences would be conducted "with complete legality".

10.2 In another submission dated 2 November 1988, the State party reaffirms that "the situation of citizens Birindwa ci Birhashwirwa and Tshisekedi wa Mulumba is perfectly clear as regards both their place of residence and their freedom of movement". Furthermore, the State party refers to its oral statement made in the Commission on Human Rights on 1 March 1988, concerning the availability of domestic remedies in Zaire.

10.3 In its oral statement to the Commission on Human Rights, made under the procedure governed by ECOSOC resolution 1503 (XLVIII), the State party had pointed out that the "recourse procedure" of complaints to the Department of Citizens' Rights and Freedoms (Département des Droits et Libertés du Citoyen) constitutes an effective domestic remedy and the ultimate recourse in cases of alleged human rights violations, and that the authors of communications submitted to the Commission on Human Rights or to the Human Rights Committee, in their quasi totality, had not resorted to the remedy in question. The State party added that the procedure before the Department of Citizens' Rights and Freedoms is governed by Departmental Decrees No. 0005/CAB/CE/DLC/MAWU/87 of 2 February 1987 and

No. 0027/CAB/DLC/CE/BI/87 of 29 June 1987, and that all complaints about alleged human rights violations after 1 January 1980 may be examined under it.

11.1 In comments, dated 9 January 1989, on the State party's submissions, counsel reaffirms that Mr. Tshisekedi suffered serious violations of his rights under articles 19, paragraph 2; 21, 22 and 25 of the Covenant between the period of 17 January and 16 September 1988 and that he continues to be subjected to serious restrictions on his freedom, since the State party's authorities do not allow him to speak out freely.

11.2 In his own comments, dated 21 February 1989, Mr. Tshisekedi confirms and supplements much of the information contained in paragraphs 5.1, 5.2 and 8 above, reiterating that the State party violated his fundamental human rights in the period from 17 January to 19 September 1988. With respect to the availability of domestic remedies, he claims that the laws and the Constitution of Zaire, in their daily application, render any efforts to exhaust domestic remedies futile. In this context, he submits that Zairian institutions act with the sole purpose of carrying out the ideas, words and acts of President Mobutu; in particular, the country's security services, which act independently of each other and are directly controlled by the President, allegedly engage frequently in human rights violations. If citizens complain about the practices of the security services, they are either accused of apostasy or considered to be mentally unstable. The author therefore asserts that the Département des Droits et Libertés du Citoyen is no more than an instrument of the State destined to conceal the daily occurrence of human rights violations.

11.3 As to the events subsequent to 17 January 1988, Mr. Tshisekedi states that in the evening of that day he was due to deliver an address at the Place du Pont Kasa-Vubu in Kinshasa. Upon addressing the large crowd which had gathered in the square, he was seized by armed agents of the political police, while others attacked the crowd and violently suppressed the manifestation. The author was then taken into custody and brought to a secret place, where he was locked in a high security cell and deprived of food and drink for four days. It is submitted that during his detention, i.e. from 17 January to 11 March 1988, he was never visited or questioned by any examining magistrate.

11.4 One week after his arrest, he had to undergo a medical check-up at the General Hospital. An electro-encephalogram was also carried out on him at the Centre Neuro-Psycho-Pathologique of K hasa. The author was assured by the doctors who examined him, Prof. Mpania and Prof. Loseke, that all tests had produced satisfactory results. Notwithstanding, he was later informed that two days after his check-up, two agents of the political police broke into the office of Prof. Mpania, accused him of being a member of the U.D.P.S., and searched his office. They proceeded to do the same in Prof. Mpania's house: once they had obtained the author's medical file, they ordered it to be destroyed and to have a fake one prepared, which certified that the author was suffering mental disorders. Prof. Loseke was subjected to similar acts of intimidation and even kept in underground detention for some days, as he had attempted to oppose the police action.

11.5 According to the author, five days after his release on 11 March 1988, armed soldiers entered his estate and brutally dispersed the crowd who had gathered to celebrate. The commanding officer informed the author that, as he had been put under judicial supervision ("surveillance judiciaire"), he was not allowed to

receive any visitors. On 11 April 1988, the "surveillance judiciare" changed to internal banishment ("banissement intérieur"), without explanation. As a result, the author was again transferred two thousand kms. to the north of the country, to a camp close to the Sudanese border. Two months later, he was t ansferred to yet another place, located close to the presidential village of Gbadolite, where he was detained until 19 September 1988. The author explains that during the latter period, he had to endure tremendous physical and psychological pressure and had to live in deplorable sanitary conditions, as the place of his banishment was situated in the Equatorial rain forest. Only after he had gone on a hunger strike for 13 days did President Mobutu order him to be released.

12.1 The Human Rights Committee, having considered the present communications in the light of all the information made available to it, as provided in article 5, paragraph 1, of the Optional Protocol, hereby decides to base its views on the following facts, which are not in dispute or which have not been contested by the State party.

12.2 The authors of the communications are two leading members of the Union pour la Démocratie et le Progrès Social (U.D.P.S.), a political party in opposition to the government of President Mobutu. From mid-June 1986 to the end of June 1987, they were subjected to administrative measures of internal banishment, as a result of the views adopted by the Human Rights Committee on 26 March 1986 in communication No. 138/1983. On 27 June and 1 July 1987, respectively, they were released following a presidential amnesty, and decided to travel abroad. Upon his return to Zaire in mid-January 1988, Mr. Tshisekedi sought to organise a manifestation which met with the disapproval of the State authorities. On 17 January 1988 he was arrested and subjected to inhuman treatment, in that he was deprived of food and drink for several days and was placed in a high-security cell. Between 17 January and 11 March 1988, he was kept detained in a prison in Kinshasa; during this time, he was neither informed of the reasons for his arrest or of charges against him nor brought before a judge, while the State party's authorities ordered his psychiatric examination and consistently referred to him in the press as being mentally disturbed. From 16 March to the beginning of April 1988, Mr. Tshisekedi was kept under house arrest at his home in Kinshasa - Gombe, and from 11 April to 19 September 1988, he was intermittently subjected to renewed administrative measures of banishment, which included his internment in several military camps. During his internment, he had to live in unacceptable sanitary conditions.

12.3 The Committee has taken note of the State party's submission of 2 November 1988, contending that the communications should be declared inadmissible, and also of the information contained in its oral statement of 1 March 1988 before the Commission on Human Rights, in which the State party referred to a recourse procedure before the Zairian Department of Citizens' Rights and Freedoms. The State party has not, however, established how the authors could have effectively availed themselves of this remedy in the circumstances of their cases. The Committee reiterates that it is incumbent upon the State party to provide details of the remedies which it submits are available to the authors, together with evidence that there would be a reasonable prospect for such remedies to be successful. In the light of the above, the Committee concludes that there is no reason to review its admissibility decision of 4 April 1988.

12.4 In formulating its views, the Committee observes that the State party, while providing some information about the authors' situation following the presidential

amnesty of June 1987 and their situation between 17 January and September 1988, has not addressed the substance of their allegations, in particular their claim that they were subjected to measures of administrative banishment as a result of the adoption of the Committee's views in communication No. 138/1983 on 26 March 1986. It is implicit in article 4, paragraph 2, of the Optional Protocol that States parties have a duty to investigate in good faith all the allegations of violations of the Covenant made against them and their authorities, and to furnish to the Committee all the information available to them. In the communications under consideration, the information provided by the State party addresses only some aspects of the allegations made by Mr. Tshisekedi and Mr. Birindwa. The Committee takes the opportunity to reiterate that while partial and incomplete information provided by States parties may assist in the examination of communications, it does not satisfy the requirement of article 4, paragraph 2, of the Optional Protocol. In the circumstances, due weight must be given to the authors' allegations.

12.5 The authors have alleged that they suffered retaliatory measures by the Zairian authorities as a direct consequence of their prior communication to the Human Rights Committee, No. 138/1983 (para. 2.2 above) and that any person in possession of official documents of the Human Rights Committee is deemed to be in possession of "subversive" documents and, therefore, subject to arrest (para. 2.3 above). The Committee notes that these serious allegations have not been commented on by the State party. The Committee stresses in this connection that it would be untenable and incompatible with the Covenant and the Optional Protocol if States parties to these instruments were to take exception to anyone's placing a communication before the Committee under the Optional Protocol. Indeed, such allegations, if established as true, would disclose grave violations of a State party's obligations under the Covenant and the Optional Protocol.

The period from mid-June 1986 to June 1987

12.6 Article 12, paragraph 1, of the Covenant stipulates that "Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence." Both Mr. Birindwa and Mr. Tshisekedi were, for a period of over one year, confined to their native villages and thus deprived of their freedom of movement within the State party's territory, in contravention of article 12, paragraph 1. In respect of the other allegations made by the authors for the period of mid-June 1986 to June 1987, the Committee lacks sufficient information to make specific findings.

The period from January to September 1988

12.7 In as much as the authors' situation for the period from 17 January to September 1988 is concerned, the Committee finds it necessary to distinguish between the situation of Mr. Tshisekedi and that of Mr. Birindwa. With respect to Mr. Tshisekedi, it observes that he was kept in detention for close to two months following the break-up of the demonstration of 17 January 1988. The State party has not contested his claim that during this period, he was not brought before a magistrate, contrary to article 9, paragraph 3, of the Covenant. Mr. Tshisekedi further suffered administrative measures of internal banishment for intermittent periods between 11 April and 16 September 1988 as a result of his call for a boycott of the partial elections held in Kinshasa on 10 April 1988. Finally, he was subjected to unlawful attacks on his honour and his reputation, in that the authorities sought to have him declared insane, although medical reports contradicted such diagnosis.

12.8 With respect to Mr. Birindwa, the Committee observes that he has not provided any information about his situation following his return to Zaire. Accordingly, the Committee is not in a position to make any findings in this respect for the period from 17 January to September 1988.

13. 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 of the communications disclose violations of the International Covenant on Civil and Political Rights:

(a) in respect of Faustin Birindwa ci Birhashwirwa:

of article 12, paragraph 1, because he was deprived of his freedom of movement during a period of internal banishment which lasted from mid-June 1986 to 1 July 1987;

(b) in respect of Etienne Tshisekedi wa Mulumba:

of article 7, because he was subjected to inhuman treatment, in that he was deprived of food and drink for four days after his arrest on 17 January 1988 and was subsequently kept interned under unacceptable sanitary conditions;

of article 9, paragraph 2, because he was not informed, upon his arrest, on 17 January 1988, of the reasons for his arrest;

of article 9, paragraph 3, because he was not brought promptly before a judge following his arrest on 17 January 1988;

of article 10, paragraph 1, because he was not treated with humanity during his detention from 17 January to 11 March and from 11 April to 19 September 1988;

of article 12, paragraph 1, because he was deprived of his freedom of movement during periods of internal banishment which lasted from mid-June 1986 to 27 June 1987 and again from 11 April to 19 September 1988;

of article 17, paragraph 1, because he was subjected to unlawful attacks on his honour and reputation.

14. The Committee is therefore of the view that the State party is under an obligation, in accordance with the provisions of article 2 of the Covenant, to take effective measures to remedy the violations suffered by the authors, in particular to ensure that they can effectively challenge these violations before a court of law, to grant appropriate compensation to Mr. Tshisekedi and Mr. Birindwa, and to ensure that similar violations do not occur in the future. The Committee takes this opportunity to indicate that it would welcome information on any relevant measures taken by the State party in respect of the Committee's views.