



**International Covenant on
Civil and Political Rights**

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Eighty-first session
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VIEWS

Communication No. 962/2001

Submitted by: Marcel Mulezi (not represented by counsel)

Alleged victims: The author and his wife

State party: Democratic Republic of the Congo

Date of communication: 6 May 2000 (initial submission)

Documentation references: Special Rapporteur's rule 91 decision, transmitted to the State party on 8 January 2001 (not issued in document form)

Date of adoption of Views: 8 July 2004

On 8 July 2004, 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. 962/2001. The text of the Views is appended to the present document.

[ANNEX]

* Made public by decision of the Human Rights Committee.

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-first session

concerning

Communication No. 962/2001**

Submitted by: Marcel Mulezi (not represented by counsel)

Alleged victims: The author and his wife

State party: Democratic Republic of the Congo

Date of communication: 6 May 2000 (initial submission)

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

Meeting on 8 July 2004,

Having concluded its consideration of communication No. 962/2001 submitted to the Committee on behalf of Mr. Marcel Mulezi and his wife 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:

** The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Prafullachandra Natwarlal Bhagwati, Mr. Franco Depasquale, Mr. Maurice Glèlè Ahanhanzo, Mr. Walter Kälin, Mr. Ahmed Tawfik Khalil, Mr. Rajsoomer Lallah, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Martin Scheinin, Mr. Ivan Shearer, Mr. Hipólito Solari Yrigoyen, Ms. Ruth Wedgwood and Mr. Roman Wieruszewski.

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

1. The author of the communication is Marcel Mulezi, a national of the Democratic Republic of the Congo resident in Geneva. The author claims that he and his wife are victims of violations by the Democratic Republic of the Congo of articles 6, paragraph 1; 7; 9, paragraphs 1, 2, 4 and 5; 10, paragraph 1; 14, paragraph 3; and 15, paragraph 1, of the International Covenant on Civil and Political Rights. He is not represented by counsel.

The facts as submitted by the author

2.1 In July 1997, under pressure from one Commander Mortos (commander of the Gemena Infantry Battalion in the north-west area of the Democratic Republic of the Congo), the author, a businessman specializing in coffee and transport, lent the army one of his trucks. The vehicle was not returned and the author decided never again to agree to the military authorities' requests.

2.2 At around 5 a.m. on 27 December 1997, members of a military intelligence service of the Congolese Armed Forces – known as “Détection Militaire des Activités Antipatrie” or DEMIAP associated with the regime of Congolese President Laurent Désiré Kabila- called on the author at his home to tell him that his services were required by Commander Mortos. The author was taken to the Gemena military camp, where he was immediately placed in detention. At 9 a.m. he was subjected to an interrogation directed by Commander Mortos concerning his alleged collaboration with the former President of the Congo, General Joseph Désiré Mobutu, and his associates.

2.3 At around 9.30 a.m., the author was confronted with one of his employees, known as Mario, who, the author claims, had been tortured (a broken jaw and other injuries prevented him from speaking or even standing upright) and forced, during his interrogation, to accuse Mr. Mulezi of collusion with Mobutu's faction.

2.4 When he contested these accusations, the author was brutally beaten up by at least six soldiers. In addition to injuries to the nose and mouth, his fingers were broken. He was tortured again the following day, when he was tied up and beaten all over his body until he lost consciousness. In the course of some two weeks of detention in Gemena, the author was tortured four or five times every day: hung upside down; lacerated; the nail of his right forefinger pulled out with pincers; cigarette burns; both legs broken by blows to the knees and ankles with metal tubing; two fingers broken by blows with rifle butts. Despite his condition, and in particular his loss of mobility, he was not allowed to see a doctor. Like his fellow-detainees, the author was unable to leave his cell even for a shower or a walk. He states that he was in a cell measuring 3 metres by 3, which he shared at first with 8 and, eventually, 15 other detainees. Furthermore, since he was being held incommunicado, he was not getting enough food, unlike the other prisoners, who were brought food by their families.

2.5 After about two weeks, the author was transferred by air to the Mbandaka military camp, where he was held for 16 months. Again, he was unable to see a doctor, despite his physical condition, notably loss of mobility. He was never informed of any charge against

him; he was never brought before a judge; and he was not allowed access to a lawyer. He states that he was held with 20 others in a cockroach-ridden cell measuring roughly 5 metres by 3, with no sanitation, no windows and no mattresses. His food rations consisted of manioc leaves or stalks. Two showers a week were permitted and the soldiers occasionally put the author out in the yard as he could not move by himself. The author states that he eventually obtained some medicines when *Médecins Sans Frontières* (Doctors without Borders) visited the camp.

2.6 In late December 1998, the author's brother-in-law, Mr. Mungala, managed to locate Mr. Mulezi through an army acquaintance, and paid him a brief visit. It was then that the author learned that, the day after his arrest, soldiers had searched his house and beaten up his wife. Commander Mortos had refused Mrs. Mulezi's request to travel to the city of Bangui in the Central African Republic in order to receive medical attention, and she died three days later.

2.7 On 11 February 1999, when seeing what an appalling condition the author was in, a soldier took him to hospital on his own initiative, but the military police intervened, producing a summons from the Military Tribunal. In actual fact the author was immediately put back in detention in the military camp without being brought before a judge; the soldier who had helped him was given a month's imprisonment.

2.8 On 25 May 1999, the author bribed some soldiers to take him to the harbour next to the military camp, and a boat owner agreed to help him to leave Mbandaka. The author then managed to escape from Africa to Switzerland. According to a medical certificate from the Geneva University Hospital, the author was hospitalized as soon as he arrived in Switzerland in December 1999, for physical and psychological sequelae of the violence he had been subjected to in his country of origin. After intensive medical care, the author has recovered partial mobility, but he requires further treatment if he is to regain his independence to any satisfactory degree.

The complaint

3.1 The author claims that he and his wife are the victims of violations by the Democratic Republic of the Congo of articles 6, paragraph 1; 7; 9, paragraphs 1, 2, 4 and 5; 10, paragraph 1; 14, paragraph 3; and 15, paragraph 1, of the International Covenant on Civil and Political Rights.

3.2 On the question of the exhaustion of domestic remedies, the author claims that such remedies were inaccessible and ineffective, insofar as (a) he was unable to apply to a court while he was arbitrarily detained and (b) he is alive only because he managed to escape from the Mbandaka military camp and flee to Switzerland.

3.3 Despite the request and reminders sent by the Committee to the State party asking for a reply to the author's allegations (notes verbales of 8 January 2001, 17 October 2001 and 28 October 2003), the Committee has received no response.

Committee's decision on admissibility

4.1 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 the communication is admissible under the Optional Protocol to the Covenant.

4.2 In accordance with article 5, paragraph 2 (a), of the Optional Protocol, the Committee has ascertained that the same question is not being examined under another procedure of international investigation or settlement.

4.3 In the light of the author's arguments concerning the exhaustion of domestic remedies and the complete lack of cooperation from the State party, the Committee considers that the provisions of article 5, paragraph 2 (b), of the Optional Protocol are not an impediment to examination of the communication.

4.4 The Committee considers that the author's complaint that the facts as submitted constitute a violation of articles 14, paragraph 3; and 15, paragraph 1, of the Covenant has not been sufficiently substantiated for the purposes of admissibility. This part of the communication is therefore inadmissible under article 2 of the Optional Protocol.

4.5 The Committee considers that, in the absence of any information from the State party, the complaints submitted by the author may raise issues under articles 6, paragraph 1, 7; 9, paragraphs 1, 2, 4 and 5; 10, paragraph 1, and 23, paragraph 1 and should therefore be examined as to the merits.

Examination of the merits

5.1 The Human Rights Committee has considered the present communication in the light of all the information made available to it by the parties, as required under article 5, paragraph 1, of the Optional Protocol. It notes that the State party has not, despite the reminders sent to it, provided any replies on either the admissibility or the merits of the communication. The Committee notes that, under article 4, paragraph 2, of the Optional Protocol, a State party is under an obligation to cooperate by submitting to it written explanations or statements clarifying the matter and indicating the measures, if any, that may have been taken to remedy the situation. As the State party has failed to cooperate in that regard, the Committee had no choice but to give the author's allegations their full weight insofar as they have been substantiated.

5.2 With regard to the complaint of a violation of article 9, paragraphs 1, 2 and 4, of the Covenant, the Committee notes the author's statement that no warrant was issued for his arrest and that he was taken to the Gemena military camp under false pretences. Mr. Mulezi also maintains that he was arbitrarily detained without charge from 27 December 1997 onwards, first at Gemena, for two weeks, and then at the Mbandaka military camp, for 16 months. It is clear from the author's statements that he was unable to appeal to a court for a prompt determination of the lawfulness of his detention. The Committee considers that these statements, which the State party has not contested and which the author has sufficiently substantiated, warrant the finding that there has been a violation of

article 9, paragraphs 1, 2 and 4, of the Covenant. On the same basis, the Committee concludes, however, that there has been no violation of article 9, paragraph 5, as it does not appear that the author has in fact claimed compensation for unlawful arrest or detention.

5.3 As to the complaint of a violation of articles 7 and 10, paragraph 1, of the Covenant, the Committee notes that the author has given a detailed account of the treatment he was subjected to during his detention, including acts of torture or ill-treatment and, subsequently, the deliberate denial of proper medical attention despite his loss of mobility. Indeed, he has provided a medical certificate attesting to the sequelae of such treatment. Under the circumstances, and in the absence of any counter-argument from the State party, the Committee finds that the author was a victim of multiple violations of article 7 of the Covenant, prohibiting torture and cruel, inhuman and degrading treatment. The Committee considers that the conditions of detention described in detail by the author also constitute a violation of article 10, paragraph 1, of the Covenant.

5.4 With regard to alleged violations of articles 6, paragraph 1 and 23, paragraph 1, of the Covenant, the Committee notes the author's statement that his wife was beaten by soldiers, that Commander Mortos refused her request to travel to Bangui to receive medical attention, and that she died three days later. The Committee considers that these statements, which the State party has not contested although it had the opportunity to do so, and which the author has sufficiently substantiated, warrant the finding that there have been violations of articles 6, paragraph 1 and 23, paragraph 1, of the Covenant as to the author and his wife.

6. 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 Democratic Republic of the Congo of articles 6, paragraph 1; 7; 9, paragraphs 1, 2 and 4; 10, paragraph 1; and 23, paragraph 1, of the Covenant.

7. Under article 2, paragraph 3 (a), of the Covenant, the State party has an obligation to ensure that the author has an effective remedy available. The Committee therefore urges the State party (a) to conduct a thorough investigation of the unlawful arrest, detention and mistreatment of the author and the killing of his wife; (b) to bring to justice those responsible for these violations; and (c) to grant Mr. Mulezi appropriate compensation for the violations. The State party is also under an obligation to take effective measures to ensure that similar violations do not occur in future.

8. The Committee recalls that, by becoming a State party to the Optional Protocol, the Democratic Republic of the Congo recognized the competence of the Committee to determine whether there has been a violation of the Covenant or not and that, under article 2 of the Covenant, the 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 the event that a violation is established. Consequently, the Committee wishes to receive from the State party, within 90 days of the

transmission of these findings, information about the measures taken to give effect to its views. The State party is also requested to make these findings public.

[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.]
