



## International Covenant on Civil and Political Rights

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### Human Rights Committee

#### Communication No. 1759/2008

#### Views adopted by the Committee at its 103rd session, 17 October to 4 November 2011

<i>Submitted by:</i>	Zoumana Sorifing Traoré (represented by the World Organization against Torture, OMCT)
<i>Alleged victim:</i>	The author and his cousins Chalio Traoré and Bakary Traoré
<i>State party:</i>	Côte d'Ivoire
<i>Date of communication:</i>	29 November 2007 (initial submission)
<i>Document references:</i>	Special Rapporteur's rule 97 decision, transmitted to the State party on 26 February 2008 (not issued in document form)
<i>Date of adoption of Views:</i>	31 October 2011
<i>Subject matter:</i>	The arbitrary arrest and detention, torture and holding in inhuman conditions of one person and the enforced disappearance of his cousins who were accused of political dissent
<i>Procedural issues:</i>	Exhaustion of domestic remedies
<i>Substantive issues:</i>	Right to life, prohibition of torture and cruel and inhuman treatment, right to liberty and security of the person, the inherent dignity of the human person, the right to an effective remedy
<i>Articles of the Covenant:</i>	2, para. 3; 6, para. 1; 7; 9; and 10, para. 1
<i>Article of the Optional Protocol:</i>	5, para. 2 (b)

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\* Reissued for technical reasons on 15 February 2012.

## 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 (103rd session)**

concerning

#### **Communication No. 1759/2008\***

*Submitted by:* Zoumana Sorifing Traoré (represented by the World Organization against Torture, OMCT)

*Alleged victim:* The author and his cousins Chalio Traoré and Bakary Traoré

*State party:* Côte d'Ivoire

*Date of communication:* 29 November 2007 (initial submission)

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

*Meeting on 31 October 2011,*

*Having concluded* its consideration of communication No. 1759/2008, submitted to the Human Rights Committee by Zoumana Sorifing Traoré 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 29 November 2007, is Mr. Zoumana Sorifing Traoré, a Côte d'Ivoire national born on 12 November 1977, acting on his own behalf and on behalf of his cousins, Mr. Chalio Traoré and Mr. Bakary Traoré, born, respectively, in 1971 and 1974. He claims to be a victim of a violation by Côte d'Ivoire of articles 2, paragraph 3; 7; 9, paragraphs 1, 2, 3, 4 and 5; and article 10 of the Covenant. He also claims that his cousins were victims of a violation of the same articles and of article 6,

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\* The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Lazhari Bouzid, Ms. Christine Chanet, Mr. Cornelis Flinterman, Mr. Yuji Iwasawa, Mr. Rajsoomer Lallah, Ms. Zonke Zanele Majodina, Ms. Iulia Antoanella Motoc, Mr. Gerald L. Neuman, Mr. Rafael Rivas Posada, Mr. Fabián Omar Salvioli, Mr. Krister Thelin and Ms. Margo Waterval.

The text of the dissenting opinion of Committee members Mr. Krister Thelin and Mr. Michael O'Flaherty is appended to the present document.

paragraph 1, of the Covenant. The author is represented by the World Organization against Torture (OMCT).<sup>1</sup>

### **The facts as submitted by the author**

2.1 In September 2002, the author, then aged 25, was a student living in a rented room at a university residence in Williamsville (Abidjan). He was a member of the Rassemblement des Républicains (RDR) and of the committee of the organization's youth wing, the Rassemblement des Jeunes Républicains (RJR), at his campus, but he was only a sympathizer, not a militant activist. To finance his studies, he also worked as a day labourer in the company GESTOCI. His cousin, Bakary Traoré, had found him the job.

2.2 Bakary Traoré, who was born in 1974, worked as an electrician at GESTOCI. Bakary had a brother, Chalió Traoré, born in 1971, who repaired sewing machines at the large market in the Adjamé neighbourhood. Bakary Traoré was also a member of RDR and had been one for several years. He had also once been the President of RJR. Chalió Traoré was no more than an RDR sympathizer.

2.3 On 18 September 2002, fighting broke out in Abidjan and spread to other towns across the country as three armed opposition groups clashed with Government forces (the army and the security forces). At about 11 o'clock on the morning of 19 September, after a night of fighting, the author received a visit from his cousin Bakary Traoré. Caught by the curfew later that day, they decided he should spend the night at the author's residence. At 8 o'clock the following morning, Bakary Traoré returned to his own home.

2.4 Given the worsening security situation, the author decided not to leave his room. During the night of 22–23 September, armed men in military fatigues burst into his room. Without giving a reason or producing a warrant for the search, they asked him his name and went through everything in his room. When they did not find anything, they beat him savagely. The author was then arrested and driven to the headquarters of the security agency, the Republican Security Company (CRS), one street away from his university residence. The CRS agents called him a "belligerent" and threatened to kill him. They burned him with their cigarettes, beat him with their fists and their truncheons, kicked him, and shot water into his eyes using a high-powered jet. The author received such a heavy blow to his left eye that it was severely and permanently damaged. The condition of his eye has worsened over time and the injury is now irreparable.

2.5 Shortly after his arrest, the author was interrogated. One of the agents asked him if he knew Bakary Traoré. The author replied that Bakary Traoré was his cousin. The agent then asked what Bakary Traoré did for a living, and the author replied that he was an electrician at GESTOCI. The agent asked the same questions about Chalió Traoré. The author said that he knew Chalió Traoré as well since he was Bakary Traoré's brother and therefore also his cousin. He told the agents that Chalió Traoré repaired sewing machines at the main market in Adjamé. That was when the agents shouted out, "That's them! You are all belligerents! You'll see!" The CRS agents then told him that his cousins, Bakary Traoré and Chalió Traoré, had been arrested, together with Bakary Traoré's girlfriend, Charlotte Balma. The authorities suspected Chalió Traoré of being an accomplice to the rebels. According to some, he was supposed to have helped belligerents who had been injured in the fighting. According to others, he had participated in the fighting himself and had been reported to the police by the doctor who had tended his wounds. During the interrogation, the CRS agents told the author that they had "processed" his cousins and soon it would be

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<sup>1</sup> The Covenant and its Optional Protocol entered into force for Côte d'Ivoire on 26 March 1992 and on 5 March 1997, respectively.

his turn. They then asked him to tell them the names of his accomplices, but he said nothing. It was at that moment that one agent grabbed some pincers and placed the author's second toe of his right foot between the two blades. When he did not get a response from the author, he brutally severed his toe.

2.6 A short time after this incident, the author's cousins and Charlotte Balma were also brought to CRS headquarters. The author saw that all three had been tortured. Chalió Traoré's left arm was "ripped open" and he had a gash in one hand. He was asking the agents to kill him. He had the worst injuries of the group. Bakary Traoré had a huge wound on his back as if he had been dragged over the ground. He also had injuries on his face and could barely stand. On the night of 23 September 2002, all four were transferred to Abidjan police headquarters in the Le Plateau district and then to the facilities of the criminal investigation police, also in Le Plateau. Apart from Ms. Balma, all of them were tortured in the criminal investigation police facilities. During the interrogations, the author was beaten with a truncheon. He was also given electric shocks. Finally he was locked up in a security cell. Bakary and Chalió Traoré underwent the same kinds of interrogations. They ended up confessing to having participated in the attack on the gendarmerie in Agban (Abidjan) and of having been trained for a year by Chief Sergeant Ibrahim Coulibaly. The author supposes that they confessed owing to the intense torture they were put through or in order to protect him. The author received treatment for his severed toe but his cousins did not receive any medical attention whatsoever.

2.7 On the afternoon of 27 September 2002, the author and his relatives were transferred to the facilities of the Investigative Gendarmerie in the Le Plateau district of Abidjan. There they were questioned by gendarmes, who threatened to kill them. They received no food or drink. On that day they were visited by representatives of the International Committee of the Red Cross (ICRC), whose request to attend to Chalió and Bakary Traoré was met with opposition from the gendarmes. That evening, they were transferred with Ms. Balma to the gendarmerie in the Adjamé neighbourhood of Abidjan. The author received a second visit from ICRC representatives on 14 October 2002. On 29 September 2002, in the author's presence, Chalió Traoré was taken away by men wearing the uniform of the presidential security guard, who were acting on the orders of their commander, Colonel Dogbo. They returned the next day, 30 September 2002, to take away Bakary Traoré. The two brothers have been missing ever since. The author believes they have been unlawfully executed. The author was then held for seven months, mainly in the Abidjan Detention and Correction Centre. He never saw or heard from his cousins again.

2.8 On 15 October 2002, while he was still being held at the facilities of the Investigative Gendarmerie in Abidjan, the author was brought before a judge for the first time. The judge informed him that he was being prosecuted for "undermining the authority of the State, membership of an armed gang, possession of weapons of war, criminal association, political assassination, rape, pillage and the destruction of persons and public assets". The author took advantage of the opportunity of appearing before a judge to denounce the torture to which he had been subjected and to report the disappearance of his cousins. The judge replied that it was for the public prosecutor to open an inquiry into complaints of torture.

2.9 After the hearing, the judge issued a detention order for the author and instructed that he be taken that same day to the Abidjan Detention and Correction Centre. He was therefore transferred to the Centre on 15 October 2002, at the same time as Ms. Balma. He was placed in building C, the Centre's high security wing, which contains the punishment cells reserved for dangerous criminals. The cells measure about five square metres and are divided into two rooms. They contain a toilet, a 20-litre water container and a concrete bed. A hole in the ceiling covered by iron bars is the only source of ventilation, and the daylight it lets in is the only source of light. During the time that the author was there, prisoners

were kept naked, 10–12 to a cell. They slept on the floor, received no medical attention whatsoever, and were allowed only one shower a week, without soap. There was one meal a day, which consisted of a beaker of cooked white rice without any kind of sauce. Detainees were not allowed to receive visits from family members. All that relatives were allowed to do was bring them food every Wednesday, but often they would be bullied by ordinary prisoners into handing over their food to them instead.

2.10 While held at the Abidjan Detention and Correction Centre, the author's eye was examined for the first time by a doctor. The doctor said that a thorough ophthalmologic examination was necessary but he was not able to obtain authorization for a medical visit. During his time at the Centre, the author was brought before the judge on three more occasions. Each time he denounced the treatment he was receiving there, and each time the judge referred to the public prosecutor's competence in the matter. On 18 April 2003, after seven months in detention, the author was released by order of the judge in compliance with the Linas-Marcoussis Agreement.<sup>2</sup> After leaving prison, he was threatened by certain security agents. The author claims that he is being sought by the police unit responsible for the disappearance of his cousins because he has managed to identify one of the men in military fatigues who participated in their disappearance. On more than one occasion, he was close to being arrested by agents from the unit in question.

2.11 In the face of relentless pressure, the author eventually fled Côte d'Ivoire on 7 October 2006 for Morocco. Upon arrival, he contacted the Office of the United Nations High Commissioner for Refugees (UNHCR) in Morocco. He was granted refugee status there on 24 April 2007, but his health deteriorated, and UNHCR decided to transfer him to another country for urgent medical treatment. He was therefore sent to Norway on 29 June 2007 to receive the medical attention he needed. He has been living there ever since.

2.12 As regards the exhaustion of domestic remedies, the author has tried to lodge an appeal with various authorities. While still in custody, he denounced the acts of torture to which he was subjected to the judge. The judge each time refused to rule on the matter and never gave him any information on the appropriate course of action to take. The author also asked the judge on each occasion if he knew where the author's cousins were. The judge never answered. After leaving prison on 18 April 2003, the author tried to learn from his relatives what had become of his cousins, but he discovered that nobody had dared take any action for fear of reprisals.

2.13 In May 2003, the author contacted two lawyers, who advised against lodging a complaint on account of the situation in the country at the time. He consulted the United Nations Operation in Côte d'Ivoire (UNOCI), but nothing was done to help him. In 2004, he approached the United Nations International Commission of Inquiry for help, but none was forthcoming. On 20 April 2006, given the impossibility of seeking an effective legal remedy, the author turned to the Ministry of Solidarity and War Victims to claim compensation for damages suffered during his detention, under Act No. 2003-309, which granted amnesty for the acts perpetrated in Côte d'Ivoire as of 19 September 2002. He also mentioned his cousins' disappearance. The author had still not received a response to that claim when he submitted his communication to the Human Rights Committee. On 14 May 2007, the author took steps to find his cousins through ICRC. ICRC had to end the investigation, however, because there was insufficient information on which to proceed.

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<sup>2</sup> Agreement approved by the United Nations, the European Union and the African Union, which provides for the release of all persons detained for "threatening State security" and an amnesty for all soldiers prosecuted on those grounds.

### The complaint

3.1 The author maintains that the State party violated his rights under articles 2, paragraph 3; 7; 9, paragraphs 1, 2, 3, 4 and 5; and 10, paragraph 1, of the Covenant; and that it violated the rights of his cousins Chalio and Bakary Traoré under articles 2, paragraph 3; 6, paragraph 1; 7; 9, paragraphs 1, 2, 3, 4 and 5; and 10, paragraph 1, of the Covenant. The author asks the Committee to recognize these violations and to recommend that the State party should guarantee the launch of a thorough, independent and impartial investigation to identify those responsible, bring them before an independent, competent and impartial court and punish them as provided for by law.

3.2 With regard to his own case, the author draws attention first and foremost to the impossibility of filing a complaint in the judicial system and the silence of the competent authorities on the subject of compensation for war victims, which constitute a violation of article 2, paragraph 3, of the Covenant. In this regard, the author cites the six periodic reports of UNOCI and the reports prepared by non-governmental organizations on the period 2002–2007, which state that no effective remedies are available in Côte d'Ivoire to the victims of torture or other human rights violations.<sup>3</sup> The author also stresses the threats he would face if he pursued a legal remedy, since he is being sought by the police unit responsible for the disappearance of his cousins.

3.3 Moreover, pursuant to the Linas-Marcoussis Agreement, Act No. 2003-309 (the Amnesty Act), which grants amnesty for the acts that took place after 19 September 2002, was passed into law on 8 August 2003. The Amnesty Act was intended to promote national reconciliation by granting full amnesty to the perpetrators, joint perpetrators and accomplices involved in violations of State security and national defence, regardless of the nature of those violations or the penalties they incurred or might incur. At the same time, the Act provided for victim compensation inasmuch as it stated that the modalities for granting indemnity and reparation and arranging rehabilitation were to be determined by law. Those modalities have never been defined, however. It was therefore impossible at the time of the events in question for victims' relatives to obtain reparation under the Amnesty Act. The author stresses that he was not in a position to claim his rights in Côte d'Ivoire since domestic remedies were neither available nor effective, in fact or in law.

3.4 From his arrest, on 22 September 2002, until his transfer to the Abidjan Detention and Correction Centre, on 15 October 2002, the author was detained without any member of his family being told where he was. At no time was he able to contact his relatives. Nor was he able to get in touch with any family members during the six months he was held at the Abidjan Detention and Correction Centre. During the first weeks of his detention at the Centre, he suffered severe torture, and holding conditions failed to meet the United Nations Standard Minimum Rules for the Treatment of Prisoners.<sup>4</sup> He also received death threats

<sup>3</sup> The author cites six periodic reports prepared by the Human Rights Division of UNOCI on the human rights situation in Côte d'Ivoire during the period January 2005–December 2006. The author also cites the reports of Human Rights Watch and Amnesty International, particularly Human Rights Watch's report "Côte d'Ivoire: le Coût de l'Impasse Politique pour les Droits Humains" (Côte d'Ivoire: The costs of the political impasse for human rights), of 21 December 2005, p. 27. The author also cites the report of the International Commission of Inquiry into allegations of human rights violations in Côte d'Ivoire, entitled "Rapport sur la situation des droits de l'homme en République de Côte d'Ivoire depuis le 19 septembre 2002 jusqu'au 15 octobre 2004, conformément aux dispositions de l'Annexe VI de l'Accord de Linas-Marcoussis" (Report on the human rights situation in Côte d'Ivoire between 19 September 2002 and 15 October 2004, in accordance with the annex VI provisions of the Linas-Marcoussis Agreement) and the Statement by the President of the Security Council of 25 May 2004 (S/PRST/2004/17).

<sup>4</sup> According to the conclusions of the Report of the International Commission of Inquiry (op. cit.) and

and endured considerable suffering upon seeing his cousins tortured. He is still suffering today on account of his cousins' disappearance and the psychological impact of the torture he himself underwent. All the treatment described above constitutes torture, in violation of article 7, read in conjunction with article 10, paragraph 1, of the Covenant.

3.5 The author was not informed of the reasons for his arrest until 23 days after it had taken place. At no point during his detention did he have the opportunity to challenge the legality of his arrest or his detention before any kind of authority. Consequently, all the paragraphs of article 9 of the Covenant were violated in his case.

3.6 As regards Chalio and Bakary Traoré, the author cites article 7, paragraph 2 (i), of the Rome Statute of the International Criminal Court. The Ivorian authorities have made no attempt to investigate the two men's disappearance and have not given their families any information regarding their fate. Nobody from a government agency has been prosecuted for their disappearance, and no compensation has been given to their relatives. If they have died, then the State party has violated their relatives' right to be informed of the circumstances of their deaths and the location of their remains. The State party has thus violated the right to an effective remedy guaranteed in article 2, paragraph 3, of the Covenant.

3.7 According to the author, all the facts point to Chalio and Bakary Traoré having probably been extrajudicially executed. If this is the case, their killing could not have been motivated by the need to protect lives or prevent an escape. The Ivorian authorities thus arbitrarily deprived the victims of their lives, in violation of article 6, paragraph 1, of the Covenant. Their secret detention, ill-treatment and the appalling conditions in which they were detained together and separately constitute a violation of articles 7 and 10 of the Covenant.

3.8 Lastly, the author refers to the Committee's jurisprudence, which has concluded that cases of enforced disappearance, arbitrary arrest, prolonged secret detention and presumed death entail multiple violations of article 9 of the Covenant.

#### **State party's observations on admissibility and the merits**

4.1 On 8 May 2009, the State party challenged the admissibility of the communication on the grounds that the author had not exhausted domestic remedies.

4.2 The State party maintains that the author has not provided evidence of the efforts made to exhaust domestic remedies. In the case of serious offences such as torture, extrajudicial executions and ill-treatment, the Ivorian Criminal Code allows all persons to file complaints of violations of which they are aware with the public prosecutor under articles 40–43 and 46 of the Criminal Code. The author, the relatives of the two disappeared men and human rights organizations could therefore petition the Ivorian criminal courts to open a judicial inquiry into the matter. The author himself could have filed a complaint with the police, since he alleges that he was taken away together with his cousins.

4.3 The State party further notes that according to settled jurisprudence, appearing before a judge (in this case the judge he had asked for news of his cousins) does not constitute seizure of the matter by the competent legal authority. The State party deduces that the author has not brought the matter to the attention of the competent courts, since it would be easy to prove if he had done so: copies of the court register, the prosecution service register or even the police report would show that the matter had been duly referred

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the Statement by the President of the Security Council of 25 May 2004 (S/PRST/2004/17).

to the Ivorian judicial authorities. Since no such evidence exists, the author cannot claim that the Ivorian courts have been lax in their handling of the case.

4.4 Lastly, the State party notes that Ivorian law (the Criminal Code and the Code of Criminal Procedure) protects citizens from violations as serious as those alleged in this case. That is why the Amnesty Act implemented in 2003 is not applicable to serious violations of human rights and international humanitarian law. The State party maintains, therefore, that the requirement to exhaust all domestic remedies, in accordance with article 5, paragraph 2 (b), of the Covenant, has not been met.

4.5 On 7 September 2010, the State party added in a separate letter that the preceding observations regarding the allegations made by the author, on his own behalf and on behalf of his cousins, referred to both the admissibility and the merits of the case.

#### **Author's comments on the State party's observations on admissibility and the merits**

5.1 On 17 February 2011, the author submitted his comments on the State party's observations, noting first of all the considerable delay with which the State had submitted those observations. Also, the State party had not made any comment on the merits of the case. The lack of diligence on the part of the State party had considerably delayed the processing of the complaint, which had caused additional suffering to the author.

5.2 Given that only matters associated with the admissibility of the complaint had been raised by the State party, the author limits his comments to admissibility as well, on the grounds that the merits of the case are not being challenged. The author refers first to the initial submission in which he described in full the efforts made to exhaust domestic remedies. The Amnesty Act, as amended in 2007, makes it impossible to instigate criminal proceedings for acts of torture, which violates the author's right to an effective remedy. The author also argues that remedy proceedings have been unreasonably prolonged and their use constitutes an additional and real risk for the author. He maintains that no effective remedy is available to him in Côte d'Ivoire.

5.3 The author recalls that during his detention he appeared before a judge on four occasions and each time denounced the torture and ill-treatment he had suffered, as well as his cousins' disappearance. At each of the hearings held in the Palais de Justice of Abidjan, first on 15 October 2002 and then on three other occasions between then and 18 April 2003, the judge refused to consider the author's allegations. The judge merely referred to the public prosecutor's competence in such matters, saying that only the public prosecutor was empowered to open an enquiry and he (the judge) therefore had no part in the case. The author recalls the approach made to the Mouvement Ivoirien des Droits de l'Homme (Ivorian Human Rights Movement) (MIDH), which had steered him towards two lawyers who had dissuaded him from filing a complaint since "no lawyer or judge would risk assuming his defence in the current circumstances in the country". Unable to seek justice through the legal system, the author had turned to the Ministry of Solidarity and War Victims in an attempt to obtain reparation for the damages suffered and have an inquiry opened into his cousins' disappearance, but it was all in vain. Thus, despite the risks involved, the author had attempted to claim his rights through the courts and through administrative bodies, but his case had not been taken up in either instance.

5.4 The author maintains that the exception established in article 5, paragraph 2 (b), of the Optional Protocol, regarding the effectiveness and efficiency of domestic remedies and on the requirement that they are not unreasonably prolonged, should apply in his case. He refers to the Committee's jurisprudence in the case of *Phillip v. Trinidad and Tobago* in which it was decided that the author did not have to exhaust domestic remedies if it would

be dangerous to do so.<sup>5</sup> Also in the case of *Pratt and Morgan v. Jamaica*, the Committee ruled that the authors did not have to exhaust domestic remedies since, objectively, they had no chance of succeeding.<sup>6</sup>

5.5 After the troubles that the country has been through, the State party has not shown any political will to bring those responsible for serious human rights violations to justice. The judicial system has proven to be ineffective and subject to pressure from the executive and from outside influences. The author refers the Committee to the United Nations International Commission of Inquiry, which found that Côte d'Ivoire sorely lacks a neutral, impartial and independent body that is sufficiently effective to enable the peaceful settlement of conflicts.<sup>7</sup> Apart from the patent lack of judicial independence, the constant lack of security has made it impossible for private individuals to seek legal remedies. To file suit is tantamount to pointing oneself out to the authorities and therefore to placing one's life in danger. It is in that extremely worrying context that the author has in vain attempted to obtain justice. Under such circumstances, it is impossible for the author to claim his rights effectively and efficiently.

5.6 The author recalls that he fled Côte d'Ivoire and obtained refugee status in Morocco on account of the constant threats he was receiving in his own country. UNHCR recognized his refugee status on the basis of the serious physical abuse he had suffered during the interrogations he was subjected to and during which he had been forced to confess to acts he had not committed, bearing in mind that he had also been intimidated and threatened with death and that such treatment constituted torture. The author recalls that, after his release, he continued to receive direct threats from certain members of the security forces. The threats aimed to dissuade him from taking legal action. The author had nevertheless taken the risk of filing a complaint with a national administrative body (the Ministry of Solidarity and War Victims), which, considering the dangers involved, was beyond what could be expected of him.

5.7 The author notes that the Act granting amnesty for the acts that took place between 17 September 2000 and 19 September 2002, which was passed into law on 8 August 2003, served only to ensure impunity for the perpetrators of serious human rights abuses even though the text excludes "serious violations of human rights and international humanitarian law". The Act provides for the opening of inquiries into all such violations and compensation for victims. In practice, however, not a single inquiry has been conducted and no compensation has been awarded. A new Amnesty Act came into force under Ordinance No. 2007-457 of 12 April 2007. In content, it is practically identical to the previous one but covers a different period: it covers acts committed between 17 September 2000 and 12 April 2007. The new Act also removes the explicit exclusion of serious violations of human rights and humanitarian law from the amnesty. Given that these are the only substantial changes made to the 2003 Act, the author submits that the State party wishes to avoid any legal action being taken in regard to serious violations of human rights and international humanitarian law committed during the conflict in Côte d'Ivoire. Moreover, no enforcement measures have been implemented, rendering victims without any means to claim their rights.

5.8 As to the merits of the case, the author recalls his claims regarding articles 2, paragraph 3; 7, read in conjunction with article 10, paragraph 1; and 9 of the Covenant; as

<sup>5</sup> Communication No. 594/1992, *Phillip v. Trinidad and Tobago*, Views adopted on 20 October 1998, para. 6.4.

<sup>6</sup> Communication No. 210/1986 and communication No. 225/1987, *Earl Pratt and Ivan Morgan v. Jamaica*, Views adopted on 6 April 1989, para. 12.3.

<sup>7</sup> Report of the International Commission of Inquiry, op. cit.

well as his claims regarding his cousins, in accordance with the same provisions and article 6, paragraph 1, of the Covenant.

### **Issues and proceedings before the Committee**

#### *Consideration of admissibility*

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

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

6.3 The Committee notes the State party's objection that the author has not exhausted domestic remedies as he is required to do under article 5, paragraph 2 (b), of the Optional Protocol. The Committee also notes that, according to the State party, in the case of serious offences such as torture, extrajudicial executions and ill-treatment, the Ivorian Criminal Code states that any person may denounce violations to the public prosecutor under articles 40–43 and 46 of the Code, and that the author could have taken his complaint to the police himself. The Committee further notes that, according to the State party, the author has not referred the case to the competent legal authorities because raising a matter during a hearing before a judge does not represent seizure of that matter by the competent judicial authority.

6.4 The Committee notes that the author denounced the acts of torture to which he and his two cousins had allegedly been subjected, as well as the disappearance of his two cousins, to the judge when he was first brought before him on 15 October 2002, three weeks after his arrest; that the judge replied that it was the responsibility of the public prosecutor to open an inquiry into torture allegations; and that the case was never referred to the public prosecutor. The Committee also notes that these allegations of torture and enforced disappearance were made each time the author appeared before the same judge, that no inquiry was ever opened, and that the judge failed to inform the author of the procedures open to him for filing a complaint about the treatment received. The Committee notes the author's argument that legal remedies in Côte d'Ivoire are in fact not available due to the lack of independence of the judiciary, that he has been personally threatened since he left prison by members of the security forces, that those threats prevented him from taking the matter to court as such action would draw the attention of the authorities and therefore endanger his life, and that the author consequently had to flee to Morocco, where he was granted refugee status.

6.5 The Committee recalls its jurisprudence to the effect that authors must avail themselves of all judicial remedies in order to fulfil the requirement of exhaustion of all available domestic remedies, insofar as such remedies appear to be effective in the given case and are de facto available to the author.<sup>8</sup> In the case under consideration, the author made serious allegations of torture and enforced disappearances to the judge from 15 October 2002 onwards since the judge was the only authority to whom he had access while he was in detention. He was not able to refer the matter to the competent authorities after his release because he received serious threats to his person, which drove him to flee Côte d'Ivoire and obtain refugee status in a third country. The Committee also recalls that the

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<sup>8</sup> Communication No. 1003/2001, *P.L. v. Germany*, decision on admissibility adopted on 22 October 2003, para. 6.5. See also communication No. 433/1990, *A.P.A. v. Spain*, decision on admissibility adopted on 25 March 1994, para. 6.2.

State party has a duty not only to carry out thorough investigations of alleged violations of human rights brought to the authorities' attention, but also to prosecute, try and punish anyone held to be responsible for such violations.<sup>9</sup> On the basis of the information made available to it, the Committee finds that legal remedies have not in fact been open to the author and that insurmountable obstacles prevented him from exhausting all domestic remedies. Hence, the Committee considers that article 5, paragraph 2 (b), of the Optional Protocol does not constitute an impediment to the admissibility of the communication regarding the author and his cousins.

6.6 The Committee finds that the author has sufficiently substantiated, for purposes of admissibility, the allegations made on his own behalf and on behalf of his cousins insofar as they raise issues under articles 6, paragraph 1; 7; 9; 10; and 2, paragraph 3, of the Covenant, and therefore proceeds to consider the communication on the merits.

*Consideration of the merits*

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

7.2 The Committee notes that despite the repeated requests made by the Committee, the State party has provided observations only on the admissibility of the author's allegations, without presenting the required clarification regarding the merits of the case. Furthermore, these observations were submitted more than one year after the communication was brought to the attention of the State party. It recalls that the State party has a duty to investigate in good faith all allegations of violations of the Covenant made against it and its representatives and to furnish to the Committee the information available to it.<sup>10</sup> In cases where the allegations are corroborated by credible evidence submitted by the author and where further clarification depends on information that is solely in the hands of the State party, the Committee may consider an author's allegations to be substantiated in the absence of satisfactory evidence or explanations to the contrary presented by the State party. In the absence of any explanations from the State party in this respect, due weight must be given to the author's allegations.<sup>11</sup>

7.3 The Committee notes the author's allegations that he and his cousins were subjected to torture, including cigarette burns, beatings, severe injury to the author's eye, the amputation of his right toe and electric shocks; the lack of adequate medical attention; and the disappearance of the author's cousins. Given that the State party has not refuted the facts, the Committee concludes that the acts of torture suffered by the author and his cousins, the secret detention of the same and the enforced disappearance of the author's cousins constitute violations of article 7 of the Covenant.<sup>12</sup>

7.4 The Committee notes the allegations regarding the conditions of detention of the author and his cousins at the facilities of the Investigative Gendarmerie in the Le Plateau

<sup>9</sup> Communication No. 1780/2008, *Zarzi v. Algeria*, Views adopted on 22 March 2011, para. 6.3.

<sup>10</sup> See, inter alia, communication No. 1640/2007, *El Abani v. Libyan Arab Jamahiriya*, Views adopted on 26 July 2010, para. 7.3; and communication No. 1780/2008, *Mériem Zarzi v. Algeria*, Views adopted on 22 March 2011, para. 7.3.

<sup>11</sup> See communication No. 1295/2004, *El Awani v. Libyan Arab Jamahiriya*, Views adopted on 11 July 2006, para. 6.5; communication No. 1422/2005, *El Hassy v. Libyan Arab Jamahiriya*, Views adopted on 24 October 2007, para. 6.2; and communication No. 1761/2008, *Yubraj Giri v. Nepal*, Views adopted on 24 March 2011, para. 7.4.

<sup>12</sup> See communication No. 1761/2008, *Yubraj Giri v. Nepal*, Views adopted on 24 March 2011, para. 7.6.

district of Abidjan and the conditions of detention of the author at Abidjan Detention and Correction Centre. It notes that the State party has not contested the information. The Committee recalls that persons deprived of their liberty may not be subjected to any hardship or constraint other than that resulting from the deprivation of liberty; they must be treated in accordance with, inter alia, the Standard Minimum Rules for the Treatment of Prisoners.<sup>13</sup> It considers that the author's conditions of detention, as described, constitute a violation of the right of all persons to be treated with humanity and with respect for the inherent dignity of the human person and are, therefore, contrary to article 10, paragraph 1, of the Covenant.

7.5 With regard to the author's claim of a violation of article 9 of the Covenant, the Committee notes that the author was detained secretly at the premises of the Republican Security Company (CRS) and did not appear before a judge to be informed of the charges against him until three weeks after his arrest. In the absence of any pertinent explanations from the State party concerning the matter, the Committee concludes that there was a violation of article 9 of the Covenant.<sup>14</sup>

7.6 The author also invokes article 2, paragraph 3, of the Covenant, under which States parties are required to ensure access to effective remedies for all individuals whose rights, as recognized in the Covenant, have been violated. The Committee reiterates the importance which it attaches to States parties' establishment of appropriate judicial and administrative mechanisms for addressing alleged violations of rights, even during a state of emergency.<sup>15</sup> The Committee further recalls that failure by a State party to investigate allegations of violations could in and of itself give rise to a separate breach of the Covenant.<sup>16</sup> In the present case, the information before the Committee indicates that the author did not have access to an effective remedy owing to the failure of the judicial authorities to duly investigate the allegations made by the author from 15 October 2002 onwards and the threats made against him to prevent him from pursuing the matter in the courts. With regard to the Amnesty Act of 2003, which was subsequently amended in 2007, the Committee notes the author's argument that the 2007 amendments exclude any possibility of criminal prosecution for serious violations of human rights or international humanitarian law. The Committee notes that the State party has referred only to the initial 2003 text of the Act and not to the amended version. The Committee therefore concludes that the facts before it reveal a violation of article 2, paragraph 3, read in conjunction with article 7, article 9, and article 10, paragraph 1, of the Covenant, with regard to the author.

7.7 With regard to the enforced disappearance and probable extrajudicial execution of the author's cousins, the Committee notes that on 29 September 2002, Chalió Traoré was, in the author's presence, taken away by men wearing the uniform of the presidential security guard acting on the order of their commander, Colonel Dogbo; that the men returned the next day, 30 September 2002, to take away Bakary Traoré; that since that date the two men have disappeared and the author thinks they have been extrajudicially executed; that the author first reported his cousins' disappearance to the judicial authorities on 15 October 2002, the date of his first appearance before a judge; and that his allegations were never investigated. The Committee also notes that the allegations have not been

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<sup>13</sup> General comment No. 21 [44] on article 10, paras. 3 and 5; communication No. 1134/2002, *Fongum Gorji-Dinka v. Cameroon*, Views adopted on 17 March 2005, para. 5.2; and communication No. 1813/2008, *Ebenezer Derek Mbongo Akwanga v. Cameroon*, Views adopted on 22 March 2011, para. 7.3.

<sup>14</sup> See communication No. 1297/2004, *Medjnoune v. Algeria*, Views adopted on 14 July 2006, para. 8.5; and communication No. 1469/2006, *Sharma v. Nepal*, Views adopted on 28 October 2008, para. 7.3.

<sup>15</sup> General comment No. 29 on article 4, A/56/40 (vol. I), annex VI, para. 14.

<sup>16</sup> General comment No. 31 on article 2, A/59/40 (vol. I), annex III, para. 15.

contradicted by the State party, which has not taken any steps to shed light on the fate of Mr. Chalio Traoré and Mr. Bakary Traoré. In accordance with the information made available to it, the Committee therefore concludes that there was a violation of articles 6, paragraph 1; 7; and 9, alone and read in conjunction with article 2, paragraph 3, of the Covenant.

7.8 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 discloses a violation of articles 7; 9; and 10, paragraph 1; and article 2, paragraph 3, read in conjunction with articles 7; 9; and 10, paragraph 1, of the Covenant vis-à-vis the author. The Committee is also of the view that articles 6, paragraph 1; 7; 9; and 10, paragraph 1, alone and read in conjunction with article 2, paragraph 3, of the Covenant were breached with regard to the author's cousins, Mr. Chalio Traoré and Mr. Bakary Traoré.

7.9 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 by: (i) ensuring a thorough and diligent investigation into the torture and ill-treatment suffered by the author and his cousins and into the enforced disappearance of the author's cousins, as well as the prosecution and punishment of those responsible; (ii) providing the author with detailed information on the results of its investigation; (iii) immediately releasing Chalio and Bakary Traoré if they are still being detained; (iv) if Chalio and Bakary Traoré have died, returning their remains to their relatives; and (v) providing the author and either Chalio and Bakary Traoré or their immediate families with reparation, including in the form of adequate compensation. The State party is also under an obligation to prevent similar violations in the future.

7.10 Bearing in mind that, by becoming a State party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether or not there has been a violation of the Covenant 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 when 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 present Views and to have them widely distributed.

[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.]

## Appendix

### **Dissenting opinion of Mr. Krister Thelin and Mr. Michael O'Flaherty**

The Committee has concluded that there is a direct violation of article 6 of the Covenant in respect of Mr. Chaliou Traoré and Mr. Bakary Traoré. We disagree with this finding for reasons set out in our dissenting opinions in the two cases of enforced disappearance involving Algeria<sup>1</sup> which were decided during the same session as the present case. In the case before us, the Committee should not have found a violation of article 6, paragraph 1, on its own, but only in conjunction with article 2, paragraph 3, of the Covenant.

*(Signed)* Krister **Thelin**

*(Signed)* Michael **O'Flaherty**

[Done 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.]

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<sup>1</sup> Communication No. 1781/2008, *Djebrouni v. Algeria*, Views adopted on 31 October 2011 and communication No. 1811/2008, *Chihoub v. Algeria*, Views adopted on 31 October 2011.