UNITED
NATIONS

CCPR

International covenant on civil and political rights

Distr.
RESTRICTED*

CCPR/C/86/D/1159/2003
11 April 2006

ENGLISH
Original: FRENCH

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

VIEWS

Communication No. 1159/2003

Submitted by:	Mariam Sankara et al. (represented by counsel)
Alleged victims:	Mariam, Philippe, Auguste and Thomas Sankara
State party:	Burkina Faso
Date of communication:	15 October 2002 (initial submission)
Document references:	Special Rapporteur's rule 91 decision, transmitted to the State party on 6 February 2003 (not issued in document form) CCPR/C/80/D/1159/2003, decision on admissibility dated 9 March 2004
Date of adoption of Views:	28 March 2006
Subject matter:	Failure to conduct a public inquiry or legal proceedings following the assassination; denial of justice based on political opinions
Procedural issues:	Request for re-examination of the admissibility decision of 9 March 2004

* Made public by decision of the Human Rights Committee.

GE.06-41304 (E) 260406 030506

Substantive issues:	Failure to conduct a public inquiry or legal proceedings following the assassination; inhuman treatment; failure to correct a death certificate; denial of justice; principle of "equality of arms"; right to be heard by an independent and impartial court within a reasonable period; right to security of the person; discrimination based on political opinions
Articles of the Covenant:	Articles 7; 9, paragraph 1; 14, paragraph 1; 26
Article of the Optional Protocol:	Article 5, paragraph 1

On 28 March 2006, the Human Rights Committee adopted the annexed draft as the Committee's Views, under article 5, paragraph 4, of the Optional Protocol, in respect of communication No. 1159/2003. The text of the Views is appended to the present document.

[ANNEX]

Annex

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

Eighty-sixth session

concerning

Communication No. 1159/2003*

Submitted by:	Mariam Sankara et al. (represented by counsel)
Alleged victim:	Mariam, Philippe, Auguste and Thomas Sankara
State party:	Burkina Faso
Date of communication:	15 October 2002 (initial submission)
Decision on admissibility:	9 March 2004

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

Meeting on 28 March 2006,

Having concluded its consideration of communication No. 1159/2003, submitted on behalf of Mariam, Philippe, Auguste and Thomas Sankara under the Optional Protocol to the International Covenant on Civil and Political Rights,

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

Adopts the following:

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

1.1 The authors, Ms. Mariam Sankara (born on 26 March 1953 and residing in France) and her sons Philippe (born on 10 August 1980 and residing in France) and Auguste Sankara (born

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

on 21 September 1982 and residing in France) are, respectively, the wife and children of Mr. Thomas Sankara, former President of Burkina Faso, who died on 15 October 1987. The authors state that they are acting on behalf of Mr. Thomas Sankara and as victims themselves. They allege violations by Burkina Faso of: article 6, paragraph 1, of the Covenant in connection with Thomas Sankara; articles 2, paragraphs 1 and 3 (a) and (b), 14, paragraph 1, 17, 23, paragraph 1, and 26 of the Covenant in connection with Ms. Sankara and her children; and also article 16 of the Covenant in the case of Auguste Sankara. The authors are represented by counsel, Vincent Valai and M. Milton James Fernandes, of the Collectif Juridique Internationale Justice pour Sankara.

1.2 The Covenant and the Optional Protocol thereto entered into force for Burkina Faso on 4 April 1999.

Facts as submitted by the authors

2.1 On 15 October 1987, Thomas Sankara, President of Burkina Faso, was assassinated during a coup d'état in Ouagadougou.

2.2 From 1987 to 1997, the authorities did not, according to the authors, conduct any inquiry into this assassination. Moreover, on 17 January 1988, a death certificate was issued, falsely stating that Thomas Sankara had died of natural causes.

2.3 On 29 September 1997, within the 10-year statute of limitations, Ms. Mariam Sankara, in her capacity as spouse and on behalf of her two minor children, lodged a complaint with the senior examining judge in the Ouagadougou Tribunal de Grande Instance against a person or persons unknown for the assassination of Mr. Thomas Sankara and also for the falsification of administrative documents. On 9 October 1997, the authors deposited a bond of 1 million CFA francs, in accordance with the Code of Criminal Procedure.

2.4 On 29 January 1998, the Procurator-General of Faso issued a direction not to commence a judicial investigation, challenging the jurisdiction of the ordinary courts on the grounds that the alleged events occurred in a military establishment among members of the armed forces and non-combatant personnel, and that the death certificate had been issued by the armed forces health service and signed by a physician who had the rank of commander, and was hence a member of the armed forces.

2.5 On 23 March 1998, by order No. 06/98, the examining judge decided, on the contrary, that the Ouagadougou Tribunal de Grande Instance was the ordinary court competent to examine the case.[1]

2.6 On 2 April 1998, the Procurator of Faso appealed against this decision.[2]

2.7 On 10 December 1999, in the absence of a decision by the Court of Appeal's indictment division, counsel for the authors formally requested the Minister of Justice and the Higher Council of the Judiciary to take all necessary measures in order to ensure the impartiality of justice.

2.8 On 26 January 2000, by decision No. 14, the Ouagadougou Court of Appeal set aside order No. 06/98 of 23 March 1998 and declared the ordinary courts incompetent.

2.9 According to the authors, despite Court of Appeal decision No. 14 and their own application of 27 January 2000, the Procurator of Faso refused or omitted to report the case to the Minister of Defence so that the Minister could institute proceedings.

2.10 On 27 January 2000, counsel challenged decision No. 14 by lodging an appeal with the judicial division of the Supreme Court.

2.11 On 19 June 2001, by decision No. 46, the Supreme Court declared the appeal inadmissible on the grounds that no bond had been deposited.[3]

2.12 On the same day, counsel requested the Prosecutor-General attached to the Supreme Court to report the case to the Minister of Defence so that the Minister could institute proceedings.[4] Also on the same day, in anticipation of a notification from the Procurator's Office, counsel requested the Minister of Defence to issue an order to initiate proceedings.

2.13 On 19 June 2001, during an interview on Radio France Internationale focusing largely on the Sankara case, the President of Burkina Faso stated that the Minister of Defence should not have to deal with court cases.[5]

2.14 On 25 June 2001, a further application was addressed to the Procurator of Faso.

2.15 On 23 July 2001, the Procurator of Faso replied to counsel, stating that their request related to acts categorized as offences committed on 15 October 1987, in other words, over 13 years and 8 months previously, and that, in its decision of 26 January 2000, the Court of Appeal had declared itself incompetent and had instructed the parties to refer the matter to a different court.

2.16 On 25 July 2001, counsel challenged the reply provided by the Procurator of Faso,[6] and once again requested that the case should be brought before the military courts, in accordance with article 71 (3) of the Code of Military Justice, since a claimant for criminal indemnification may not lodge an appeal. To date, no reply from the Procurator, and hence no referral to the Minister of Defence, have been reported.

The complaint

3.1 The authors consider that the failure to organize a public inquiry and legal proceedings to determine the identity and civil and criminal responsibilities of Thomas Sankara's assassins, and also the failure to correct his death certificate, constitute a serious denial of justice in terms of their protection as members of the Sankara family, in breach of articles 17 and 23, paragraph 1, of the Covenant. They consider, moreover, that the failure to conduct an inquiry, and hence the failure to uphold guarantees relating to equality before the law, and also the Procurator's refusal to refer the case to the Minister of Defence, thus preventing their complaint from being resolved, are attributable to their political opinions, in breach of articles 2, paragraph 1, and 26 of the Covenant.

3.2 The authors maintain that the State party has failed to comply with its obligations (a) to provide them with an effective remedy for the violations they suffered, in accordance with article 2, paragraph 3 (a) and (b), of the Covenant, and (b) to guarantee the impartiality of justice as required under article 14, paragraph 1, of the Covenant. In this regard, the authors explain that the purpose of the decision taken by the court of first instance to declare the military courts competent and to require an abnormally high bond (1 million CFA francs) was to obstruct the examination of their complaint and, consequently, constituted a violation of the "equality of arms" principle. Similarly, the fact that their counsel were obliged to make a formal request to the Court of Appeal to issue a decision falls into the above category of violations. The authors consider that this also applied to the procedure before the Supreme Court, in particular because the President of the Supreme Court is a supporter of both the ruling party and the serving President, and because the decision to rule the appeal inadmissible on the grounds that no bond had been paid was in fact a pretext for not ruling on the merits of the case.

3.3 The authors consider that, as a minor, Auguste Sankara should have been exempted from deposit of a bond under the legislation in force. However, by its decision of 19 June 2001, the Supreme Court refused to recognize him as a minor, in breach of article 16 of the Covenant.

3.4 Lastly, the authors maintain that the authorities' refusal to correct Thomas Sankara's death certificate constitutes a continuing violation of article 6, paragraph 1, of the Covenant.

Observations of the State party on the admissibility of the communication

4.1 In its observations of 1 April 2003, the State party contests the admissibility of the communication.

4.2 The State party conducts what it terms a historical review, focusing primarily on the conditions under which Captain Thomas Sankara came to power on 4 August 1983 and the consequences of this development in terms of human rights violations. The State party describes what it calls a process of democratization and national reconciliation under way since 1991. It also describes the remedies available in Burkina Faso.

4.3 The State party considers that the authors have abused the procedure afforded by the Optional Protocol. In this regard, it points out that, on 30 September 2002, the authors lodged with the senior examining judge in the Ouagadougou Tribunal de Grande Instance a complaint against a person or persons unknown for failure to produce the corpse, accompanied by an application for criminal indemnification. On 16 October 2002, without awaiting the results of this application, the authors submitted a complaint to the Committee. On 16 January 2003, the Procurator of Faso issued a direction not to commence a judicial examination, invoking the previous complaint by the claimant concerning the death of Thomas Sankara. On 3 February 2003, the examining judge in the Ouagadougou Tribunal de Grande Instance issued an order declaring the complaint unfounded, given that the same claimant had, in September 1997, lodged a complaint concerning the assassination of the same person, whose death had been confirmed by the evidence. In the State party's opinion, therefore, the authors had brought the matter before the Committee even though proceedings were pending in the national courts.

4.4 The State party also considers the authors' complaint inadmissible on the grounds that the events in question occurred prior to Burkina Faso's accession to the Covenant and the Optional Protocol, namely, 15 years ago. Furthermore, the State party is of the view that the authors cannot claim a denial of justice in connection with these events, given that there has been no such denial.

4.5 In the State party's opinion, the condition that domestic remedies must have been exhausted has not been met.

4.6 The State party explains that, following the Supreme Court's inadmissibility decision of 19 June 2001 on the grounds of non-payment of the bond, the authors refrained from making use of non-contentious remedies, and consequently cannot claim that the system for the protection of human rights in Burkina Faso is inadequate or that their constitutional right of access to the courts has been violated. The State party asserts, in this regard, that no appeals have been made to:

- The Médiateur (ombudsman) of Faso (as the allegations were linked to the operation of the machinery of the State, the complainant could, under articles 11 and 14 of Act No. 22/94/ADP of 17 May 1994 instituting the office of ombudsman, have brought the case before him for the purposes of State mediation);

- The Collège des sages (panel of elders): the complainant could, like victims of the events of 15 October 1987, have brought the case before this Collège, which was established on 1 June 1999;

- The National Reconciliation Commission (having taken over from the Collège des sages, the Commission had competence to identify economic crimes and crimes of violence committed in Burkina Faso since it became independent in 1960, with a view to proposing recommendations conducive to national reconciliation);

- The Compensation Fund for Victims of Political Violence (despite the fact that the death of Thomas Sankara was attributed to a situation of political violence, the complainant did not approach the Fund, unlike victims of the events of 15 October 1987).

4.7 Similarly, in the State party's view, not all contentious remedies have been exhausted. In respect of complaints of denial of justice, a remedy is available for anyone who considers that he or she is a victim of such a violation under article 4 of the Civil Code,[7] article 166 of the Penal Code[8] and article 281 of order No. 91-51 of 26 August 1991 relating to the organization and functioning of the Supreme Court. However, Ms. Sankara has not made use of these remedies. As to the complaint relating to the President of the Supreme Court, in conformity with articles 648-658 of the Code of Criminal Procedure and articles 291 and 292 of order No. 91-51, any party to proceedings who harbours legitimate suspicions about a judge who will be called upon to rule on his or her interests may apply for disqualification of the judge. The author has not in fact used this remedy. Similarly, she has not made use of articles 283 and 284 of order No. 91-51 providing for penalties in the event of denial of justice.

4.8 In the opinion of the State party, the author also, through negligence or ignorance, committed procedural errors which prevented her application from being examined on the merits. The State party refers to the tardy lodging of the complaint, namely on 29 September 1997, whereas the statute of limitations expired on 15 October 1997, i.e. 10 years after the alleged events. The author was thus running the risk of her complaint being time-barred in the event of referral to a court which lacked jurisdiction. In the State party's view, referral to the Tribunal de Grande Instance, in lieu of the military court, constitutes a procedural error attributable to the author. Given the victim's status (Thomas Sankara was a captain in the regular army of Burkina Faso) and the location where the events occurred (the premises of the Conseil de l'Entente, classed as a military zone during the revolutionary period), the author should quite naturally, in accordance with the law, have brought the matter before the military courts. In the opinion of the State party, the time-barring of the proceedings, which was related to the tardy referral to the courts, and the procedural error invalidated any proceedings before the military court. Consequently, the author cannot blame the Procurator for having refused to refer the case to the Minister of Defence, in conformity with the provisions of the Code of Military Justice. Furthermore, in its view, the author cannot invoke the dismissal of the appeal to the Supreme Court for non-payment of the bond as a ground for denial of justice, since it was incumbent on her to conform to the procedures provided for by law.

4.9 Lastly, the State party claims inadmissibility as to substance in view of the political nature of the complaint. In its view, the late referral of her husband's death to the national courts indicates the author's clear lack of interest in establishing the truth through the law. The State party considers that the facts of the case are fundamentally political since they occurred in a particularly troubled national context which was linked, first, to the aberrations of the revolutionary regime and the risks of instability in the country, and secondly to the military coup which was rendered necessary by circumstances. Lastly, the author's quest for justice is fundamentally political in nature and constitutes an abuse of law. In the State party's view, the author has set herself the goal of avenging her dead husband. Since her decision to go into exile immediately after the events in question, she has persisted in taking numerous initiatives aimed at damaging the country's image. In its opinion, despite the steps taken to facilitate her return to the country, the author has stubbornly remained abroad, where she has the status of a political refugee. Her complaint, therefore, does not fall within the competence of the Committee.

The authors' comments on admissibility

5.1 In their comments of 30 August 2003, the authors contest the State party's arguments on admissibility.

5.2 In the first place, the authors stress that their complaint must be also viewed from the standpoint of article 7 of the Covenant, in that the authorities' refusal to conduct a proper inquiry and to establish the facts surrounding the death of Thomas Sankara may be regarded as cruel, inhuman and degrading treatment inflicted on them. Thus, the authorities prevented them from finding out the circumstances of the victim's death and the precise place where his remains were officially buried. Lastly, the unlawful conduct of the State has had the effect of intimidating and punishing the Sankara family, who have been unjustly left in a state of uncertainty and mental distress.[9]

5.3 The authors consider that the State party's arguments on inadmissibility of the complaint *ratione materiae* and its allegedly political character are without legal basis. In their view, the Committee is competent to consider the facts of the present communication, which admittedly pre-date Burkina Faso's accession to the Optional Protocol, but represent a continuing violation of the Covenant and produce effects which themselves constitute violations of the Covenant to this day, account being taken of the acts of the Government and decisions of the courts since the Covenant's entry into force.

5.4 The authors maintain that the communication as a whole is admissible in that Burkina Faso has failed to comply with its obligations under the Covenant. Citing communication No. 612/1995 (*Vicente v. Colombia*, Views of 29 July 1997), the authors refer, first, to the fact that the State party did not fulfil its obligation to conduct an inquiry into the death of Thomas Sankara. Secondly, the State party has never denied its failure to fulfil that obligation under the Covenant, a violation which occurred before and after accession to the Optional Protocol. They further note that Thomas Sankara's death certificate falsely attributed his death to natural causes, and that the State party refused or wilfully omitted to rectify it before and after it acceded to the Optional Protocol. Thirdly, the authors consider that, in its observations, the State party made an admission of legal significance, namely that the State authorities were fully aware that Thomas Sankara had not died of natural causes, but did nothing about it.

5.5 The authors emphasize that the acts and wilful omissions on the part of the State party have continued since its accession to the Optional Protocol, and have constituted continuing violations of the Covenant. They recall that they initiated judicial proceedings on 29 September 1997, within the 10-year statute of limitations, because of the authorities' refusal to respect their obligations, and draw attention to the attitude of the authorities, who endeavoured to obstruct or delay their appeals.

5.6 The authors consider that the Court of Appeal was tardy in handing down its decision of 26 January 2000, after their counsel had served a notice to perform. They recall that following that decision declaring the ordinary courts incompetent, the authorities concerned refused or omitted to refer the case to the Ministry of Defence in order that proceedings might be brought in the military courts, as provided for in article 71 (1) and (3) of the Code of Military Justice. On 27 January 2000, therefore, the authors lodged an appeal with the Supreme Court challenging the validity of the decision of the Court of Appeal.

5.7 According to the authors, when they lodged the appeal with the Supreme Court on 27 January 2000, the registrar refused or wilfully omitted to give the counsel formal notification of the requirements laid down in article 110 of order No. 91-0051/PRES of 26 August 1991. He also omitted to ascertain whether article 111 of that order[10] applied, in other words to ascertain the age of Auguste Sankara in order to determine whether he was a minor. By its decision of 19 June 2001, the Supreme Court refused or wilfully omitted to remedy the registrar's violations and to verify *proprio motu* the age of Auguste Sankara, who, having been born on 21 September 1982, was in fact a minor when the appeal was lodged - thus committing two separate violations of Auguste Sankara's rights under article 16 of the

Covenant. In addition, the authors draw attention to the fact that counsel were not allowed to pay 5,000 CFA francs when making their application, and that the Supreme Court refused to examine the case on the merits, on the sole grounds that payment of 5,000 CFA francs[11] was required, and hence to permit continuation of the proceedings.

5.8 The authors again refer to the authorities' wilful failures to act at various stages of the proceedings, namely, their failure to refer the matter to the Minister of Defence in order that proceedings might go ahead before a military court, when in fact such an action is required under the above-mentioned article 71 (3).

5.9 As to the exhaustion of domestic remedies, the authors, referring to the Committee's jurisprudence,[12] state that the Covenant requires criminal proceedings to be initiated at the national level in the case of serious violations, and in particular unlawful deaths. As the State wilfully omitted or refused to initiate any form of inquiry or civil, criminal or military proceedings, the authors explain that they then lodged a complaint against a person or persons unknown in connection with the death of Thomas Sankara and the rights of his family, insofar as that was the only domestic remedy available in respect of the alleged violations. They recall that they were unable to initiate such proceedings before the military courts under article 71 (3) of the Code of Military Justice. On the basis of the Committee's jurisprudence,[13] the authors maintain that none of the remedies mentioned by the State party may be regarded as effective, given their purely disciplinary or administrative nature, and the fact that they are not legally binding on the public authorities (in the case of non-contentious remedies) and cannot provide an effective remedy for alleged serious violations (in the case of contentious remedies). As to domestic remedies for denial of justice, the authors, citing the Committee's jurisprudence,[14] consider that it is incumbent on the Committee to determine whether the Supreme Court violated its obligations of independence and impartiality, and that they could not, at the time of their appeal, know in advance what action the Court would take. In their opinion, the application for disqualification of the President of the Supreme Court could not constitute an effective recourse in that it would not remedy the irreversible effects of the Court's decision, which is not appealable. With regard to the appeal of 20 September 2002 concerning the failure to produce the body of Thomas Sankara, the authors state that the purpose of that appeal was to obtain direct evidence concerning the circumstances of the victim's death, and that the appeal could not remedy the alleged violations vis-à-vis the members of his family. The authors add that the only effective and adequate remedy for the family members was exhausted by the Supreme Court decision of 19 June 2001. Lastly, in conformity with the Committee's jurisprudence,[15] the authors consider that they could not be required to apply for habeas corpus.

5.10 The authors made further submissions concerning the merits of the communication. They point out that, in its observations, the State party officially admitted that the authorities knew the death of Thomas Sankara on 15 October 1987 was not due to natural causes. From that they conclude that the appeal lodged on 30 [sic] September 2002 is no longer necessary. They further note that the then Minister of Justice, now the President of Burkina Faso, did not institute proceedings despite being aware that the victim did not die a natural death. Similarly, the Procurator of Faso and the Minister of Defence did not ensure that the Supreme Court's decision was referred to the military courts. The authors again refer to the statement made by the President of Burkina Faso on Radio France Internationale on 19 June 2001 and consider it to be in breach of article 71 (1) and (3) of the Code of Military Justice, which establishes, among the duties of the Minister of Defence, his exclusive competence to order proceedings in the military

courts. The authors stress that whenever a violation has been reported by a civilian examining judge, Procurator of Faso or Procurator-General, the Minister of Defence has ordered proceedings to be brought. According to the authors, who refer to a statement in *Le Pays*,[16] the Minister of Defence personally refused to exercise the powers conferred on him by article 71 (3) of the Code of Military Justice. They again stress that all the judicial authorities, including the Procurator of Faso and the Procurator-General, have either refused to allow, or wilfully prevented or omitted to initiate, proceedings in the military courts.

Decision on admissibility

6.1 At its eightieth session, the Committee examined the admissibility of the communication.

6.2 The Committee noted the State party's arguments concerning the inadmissibility of the communication *ratione temporis*. Having also noted the authors' arguments, the Committee considered that a distinction should be drawn between the complaint relating to Mr. Thomas Sankara and the complaint concerning Ms. Sankara and her children. The Committee considered that the death of Thomas Sankara, which may have involved violations of several articles of the Covenant, occurred on 15 October 1987, hence before the Covenant and the Optional Protocol entered into force for Burkina Faso.[17] This part of the communication was therefore inadmissible *ratione temporis*. Thomas Sankara's death certificate of 17 January 1988, stating that he died of natural causes - contrary to the facts, which are public knowledge and confirmed by the State party (paras. 4.2 and 4.7) - and the authorities' failure to correct the certificate during the period since that time must be considered in the light of their continuing effect on Ms. Sankara and her children.

6.3 In conformity with its jurisprudence,[18] the Committee was of the view that it could not consider violations which occurred before the entry into force of the Optional Protocol for the State party unless those violations continued after the Protocol's entry into force. A continuing violation is to be interpreted as an affirmation, after the entry into force of the Optional Protocol, by act or by clear implication, of previous violations by the State party. The Committee took note of the authors' arguments concerning, first, the failure of the authorities to conduct an inquiry into the death of Thomas Sankara (which was public knowledge) and to prosecute those responsible - allegations which are not in fact challenged by the State party. These constitute violations of their rights and of the obligations of States under the Covenant.[19] Secondly, it was clear that in order to remedy this situation, the authors initiated judicial proceedings on 29 September 1997, i.e. within the limits of the 10-year statute of limitations, and these proceedings continued after the Covenant and the Optional Protocol entered into force for Burkina Faso. Contrary to the arguments of the State party, the Committee considered that the proceedings were prolonged, not because of a procedural error on the part of the authors, but because of a conflict of competence between authorities. Consequently, insofar as, according to the information provided by the authors, the alleged violations resulting from the failure to conduct an inquiry and prosecute the guilty parties have affected them since the entry into force of the Covenant and the Optional Protocol because the proceedings have not concluded to date, the Committee considered that this part of the communication was admissible *ratione temporis*.

6.4 As to the exhaustion of domestic remedies, and the State party's argument of inadmissibility based on failure to make use of non-contentious remedies,[20] the Committee recalled that domestic remedies must be not only available but also effective, and that the term "domestic remedies" must be understood as referring primarily to judicial remedies. The effectiveness of a remedy also depended, to a certain extent, on the nature of the alleged violation.[21] In the present case, the alleged violation concerned the right to life, and was linked primarily to the alleged failure to conduct an inquiry and to initiate proceedings against the guilty parties, and secondarily to the alleged failure to correct the victim's death certificate, as well as to the failure of the appeals initiated by the authors in order to remedy the situation. In these circumstances, the Committee considered that the non-contentious remedies mentioned by the State party in its submission could not be considered effective for the purposes of article 5, paragraph 2 (b), of the Optional Protocol.[22]

6.5 With regard to the State party's claims relating to the non-use of certain contentious remedies concerning the denial of justice, the Committee noted that the State party had confined itself to a mere recital of remedies available under Burkina Faso law, without providing any information on the relevance of those remedies in the specific circumstances of the case or demonstrating that they would have constituted effective and available remedies. With particular regard to the application for disqualification of the President of the Supreme Court, the Committee considered that the authors could not know the Court's decision in advance, and that it would be for the Committee to determine, in the examination of the merits, whether the President's decision had been arbitrary or constituted a denial of justice.

6.6 On the question of the claim of inadmissibility on the ground that the authors had lodged a complaint with the Committee when proceedings were pending before the national courts, the Committee could not accept this argument in that the additional remedy introduced by the authors in connection with the complaint of 30 September 2002 against a person or persons unknown had been exhausted at the time the communication was examined.

6.7 As to the State party's claim concerning prescription resulting from the tardy and procedurally incorrect referral of the case to the courts, the Committee considered it unfounded as set out above (cf. para. 6.3). Moreover, the Committee cannot accept this argument in support of the State party's assertion that the Procurator could not be blamed for having refused to refer the case to the Minister of Defence. In this connection, the Committee found that the grounds for refusal adduced by the Procurator on 23 July 2001 were manifestly unfounded since (a) as set forth above, that statute of limitations could not be applied (and had not in fact been applied by the various authorities throughout the proceedings), and (b) the authors could not themselves bring the case before the military courts (the only competent jurisdiction, the Court of Appeal's decision No. 14 having become final following decision No. 46 of the Supreme Court). Only the Minister of Defence, after referral by the Procurator, could issue the order to initiate proceedings, failing which it would be invalid. Hence the Procurator wrongly halted the proceedings initiated by the authors and, furthermore, did not respond to their appeal of 25 July 2001, a fact which has not been commented on by the State party.

6.8 Lastly, the Committee considered that the authors exhausted domestic remedies in conformity with article 5, paragraph 2 (b), of the Optional Protocol.

6.9 As to the State party's argument about the allegedly political character of the complaint, the Committee considered that this in no way affected the admissibility of the communication and, in fact, fell within the scope of the examination of the communication on the merits.

6.10 Regarding the complaints of violations of articles 17 and 23 of the Covenant, the Committee considered that the authors' allegations concerning the consequences, where their protection in particular was concerned, of the failure to conduct an inquiry into the death of Thomas Sankara and to identify those responsible did not fall within the scope of the articles mentioned, but did raise issues with respect to article 7[23] and article 9, paragraph 1,[24] of the Covenant.

6.11 Concerning the complaint of a violation of article 16 of the Covenant, the Committee considered that the authors' allegations did not fall within the scope of this article, but might raise issues with regard to article 14, paragraph 1.

6.12 On the question of the complaints under article 14, paragraph 1, and article 26 of the Covenant (cf. para. 3.1), the Committee considered that these allegations had been sufficiently substantiated for purposes of admissibility. The Human Rights Committee therefore decided that the communication was admissible under articles 7, 9, paragraph 1, 14, paragraph 1, and 26 of the Covenant.

State party's observations on the merits

7.1 On 27 September 2004, the State party forwarded its observations on the merits. It considers that in its decision on admissibility, the Committee, by recharacterizing some of the authors' allegations, prejudged its decision on the merits and ignored the principle of the presumption of innocence. The State party reiterates that the use of domestic remedies by the author was characterized by wilful omissions which constitute an abuse of the procedure under the Optional Protocol.

7.2 Concerning the allegation under article 2, paragraph 1, and article 26 of the Covenant, the State party considers that the authors have not demonstrated that the Sankara family suffered discrimination because of their political views. The authors cannot cite their lack of success in the judicial proceedings as evidence of such discrimination since they are not active in any political party in Burkina Faso, do not live there and play no direct part in national political life. In any event, in the view of the State party, the authors cannot validly claim a violation of article 2, paragraph 1, of the Covenant because at the time the Covenant and the Optional Protocol entered into force for Burkina Faso in April 1999, the State party could no longer legally institute an investigation into the death of Thomas Sankara. The State party maintains that, since all legal action regarding this matter has been time-barred since 15 October 1997, no continuing violation of the Covenant can be alleged, unless it were to be considered that domestic law became invalid on the entry into force of the Covenant for Burkina Faso, which is not the case.

7.3 With regard to the alleged violation of article 2, paragraph 3, of the Covenant, the State party considers that the Committee has indicated a preference for contentious remedies

(para. 6.4), whereas the possibility of the use of non-contentious remedies cannot be ruled out. The State party explains that in practice these procedures can often prove more effective than contentious procedures. It enumerates the non-contentious remedies available in Burkina Faso, which are effective remedies, and which have in most cases proved more important and more effective than contentious remedies, but which the authors refused to pursue (cf. para. 4.6). The State party holds that contentious remedies are also effective, but that the Sankara family expected "special justice" because of its history, in breach of the principle of equality before the law and justice.

7.4 Concerning the alleged violation of article 6, paragraph 1, of the Covenant, the State party explains that legally Thomas Sankara's death certificate is an administrative document, and that it was incumbent on the Sankara family, in keeping with the current legislation, to apply to the competent administrative court to have it cancelled or corrected. The State party also considers that the failure to correct the death certificate does not in itself constitute a violation of the right to life.

7.5 Concerning the alleged violation of article 14, paragraph 1, of the Covenant, the State party outlines its legislation guaranteeing the independence of the judicial system. It also maintains that in the present case the authors have not demonstrated that the judges were biased. Thus the judge in the court of first instance has discretion to set the amount of the bond in the light of the circumstances of the case. Setting the amount at 1 million CFA francs cannot by itself indicate bias in the judge's decision, since the amount varies with the importance of the case and the parties involved. The State party claims that this amount is in no way exceptional in the context of the customary practice of courts in Burkina Faso.[25] As for the deposit of security at the appeal stage, which stands at 5,000 CFA francs, payment is legally mandatory for all persons lodging an appeal, failing which the application is inadmissible. According to the State party, the authors, having omitted to comply with this formality, cannot allege or presume bias on the part of the judges. The State party also considers that citing the political links of the President of the Appeal Court cannot stand up to examination, in view of the fact that the Appeal Court's decisions are in any event collective, and that the complainant was free to apply for the disqualification of the President of the Appeal Court in accordance with the current legislation,[26] but did not do so. In any event, in the State party's view, losing a case constitutes insufficient grounds for describing a judge as partisan or a court as biased.

7.6 With regard to the alleged violation of article 16 of the Covenant, which the Committee preferred to recategorize in terms of article 14, paragraph 1, of the Covenant, the State party holds that, contrary to the authors' claims, exempting minors from the requirement to deposit a bond, in accordance with article 111 of order No. 91-0051/PRES of 26 August 1991, cannot be regarded as mandatory, so that it was not incumbent on the Supreme Court to note *proprio motu* Auguste Sankara's status as a minor. Moreover, Auguste Sankara's application is not separate from those of the other members of the family, and consequently cannot be considered separately.

7.7 Concerning the alleged violation of article 17 of the Covenant, which the Committee preferred to recategorize in terms of articles 7 and 9, paragraph 1, of the Covenant, the State party explains that the failure to hold an inquiry into the death of Thomas Sankara and identify

those responsible are not admissible, in view of the fact that the events pre-dated the entry of the Covenant into force for Burkina Faso. The State party maintains that article 7 of the Covenant cannot be invoked insofar as the authors have never been harassed, and have never suffered from treatment to which this provision refers. Moreover, such an allegation would involve a physical impossibility, insofar as the authors have not lived in Burkina Faso since the events of 1987. Similarly, according to the State party, article 9, paragraph 1, of the Covenant cannot be invoked since the authors no longer live in Burkina Faso.

7.8 Concerning the allegation that article 23 of the Covenant was violated, which the Committee ruled inadmissible, the State party, after referring to its legislation recognizing and guaranteeing the rights of the family, points out that the authors cannot accuse Burkina Faso of not having protected them, since they no longer live in the country and voluntarily removed themselves from the supervision of the Burkina Faso authorities by seeking refugee status abroad, though they were in no way at risk, or being harassed.

7.9 The State party reiterates its position that the authors' complaint constitutes an abuse of process, insofar as it pursues purely political aims. According to the State party, it would be difficult to subject the facts alleged by the complainant to a legal assessment in the light of Burkina Faso's international human rights commitments, owing to their political nature. What are involved are incidents closely related to the country's political life which occurred in a troubled national context that was linked to the aberrations of the revolutionary regime and the risks of instability in the country and to the military coup which was rendered necessary by circumstances. Hence these incidents cannot be dissociated from the events of 15 October 1987, and the Committee cannot evaluate them independently of their context. The State party claims that the Committee would be exceeding its authority if it were nevertheless to examine all of these incidents. It explains that Ms. Sankara has set herself the goal of seeking revenge for her dead husband, and harming the image of the country and the Government.

7.10 Lastly, the State party calls on the Committee to reject the communication and rule that there has been no violation since the Covenant entered into force. It adds that, at the express request of the parties concerned, the Government is nonetheless prepared to check Thomas's death certificate and, if necessary, to have it corrected, in keeping with the applicable laws and regulations in force in Burkina Faso. In any event, according to the State party, there is nothing to prevent the authors from returning to Burkina Faso or living there. The State party maintains that it guarantees security and protection to all persons living on its territory or subject to its jurisdiction. Furthermore, if the authors consider themselves to be under threat or lacking security, it is for them to seek special protection from the competent authorities. However, according to the State party, Burkina Faso cannot effectively guarantee protection for its nationals living in a foreign State. In addition, according to the State party, it remains true that the security of the authors has never been disturbed at the hands of Burkina Faso in the various countries where they have chosen to live (Gabon, France, Canada).

Authors' comments

8.1 In their comments dated 15 November 2004, the authors state that they are presenting new elements which would warrant a partial revision of the Committee's decision on

admissibility. They consider that, in its observations on the merits, the State party acknowledged that Thomas Sankara did not die a natural death and that a number of public figures were aware of the circumstances surrounding the events of 15 October 1987.

8.2 Consequently, the authors first request the Committee to declare admissible the allegation under article 6 of the Covenant, a provision which obliges the State party to investigate and prosecute those responsible for violations of Thomas Sankara's right to life, and to respect and guarantee Thomas Sankara's right to life.[27] According to the authors, the State party's obligation to protect the human dignity of Thomas Sankara continues after his death.[28] The failure to comply with the obligation to establish the circumstances of the acknowledged extrajudicial death of an individual is an affront to human dignity. In the light of the evidence that Mr. Sankara did not experience a natural death, notwithstanding his death certificate, but was in fact assassinated during a coup d'état, the authors deem it vital for the State party to protect his dignity by embarking on a judicial investigation and determining the circumstances of his death, and then correcting the death certificate.

8.3 Secondly, the authors call on the Committee to declare admissible the allegation under article 16, on the grounds that the State party did not supply a copy of Supreme Court decision No. 46 of 19 June 2001 or did not recognize the authenticity of the copy they themselves submitted. The authors reiterate that the Supreme Court arbitrarily denied Auguste Sankara's right to be recognized as a person before the law. According to the authors, since the provisions of article 111 of order No. 91-0051/PRES of 26 August 1991 relating to minors are mandatory, it was incumbent on the Supreme Court to note *proprio motu* the status of Auguste Sankara as a minor, to grant him exemption from the bond requirement and thus to grant him the right of access to the courts. In addition, the authors point out that when the right of a person to be recognized by the law is violated, article 14 of the Covenant is necessarily violated.

8.4 The authors also reiterate their comments relating to violations of articles 7 and 9, paragraph 1, by the State party. They emphasize that the State party's response to the above-mentioned new elements relating to the role played by President Blaise Compaoré in the death of Thomas Sankara will be vital in throwing light on the events of 15 October 1987.

8.5 The authors point out that the State party violated article 26 of the Covenant, protecting the right to equality before the law and to freedom from discrimination based on political opinions. Contrary to the State party's observations, the authors explain that a person may have a political opinion, even if he or she no longer lives in Burkina Faso, and is not involved in politics. The authors consider that the State party has not presented sufficient legal arguments to refute their detailed allegations. Moreover, the State party had noted that the surviving members of the Sankara family had been granted refugee status abroad. The granting of that status, in the authors' view, constitutes prima facie proof of the existence of discrimination based on political opinions in the country of origin. According to the authors, the State party's allegations that the Sankara family wished to benefit from special treatment in the Burkina Faso courts demonstrated a failure to understand the nature of the discrimination they had suffered, namely, the deliberate unfair treatment suffered by the authors in their dealings with a variety of official bodies in Burkina Faso.

8.6 In relation to article 14, paragraph 1, of the Covenant, the authors point out that the Supreme Court was guilty of a denial of justice in adopting its decision No. 46 of 19 June 2001, which the State party has still not supplied. The Committee's jurisprudence confirms that a decision taken by a country's highest court can in itself be the source of an alleged denial of justice.[29] The authors acknowledge that the Committee has no independent machinery which could conduct an investigation, and is generally not in a position to review the evidence and the facts as assessed by domestic courts. However, the authors refer to the exception to that rule set out in the case *Griffin v. Spain*.[30] In the authors' view, the Supreme Court displayed a lack of logic when it invoked the failure to pay the modest sum of 5,000 CFA francs in refusing to consider the merits of a case.

Supplementary observations by the State party on the authors' comments

9.1 In its supplementary observations of 15 October 2005, the State party reiterates its observations concerning inadmissibility. According to the State party, neither the failure to conduct an investigation, nor the alleged failure to correct the death certificate, nor the invoking of the violation of Thomas Sankara's dignity, can justify applying the provisions of the Covenant in respect of him retroactively, since there is no continuity in the events over time, and to do so would run totally counter to the principles of public international law. The State party maintains the argument of prescription to justify the fact that no investigation has been held since the Covenant entered into force. Furthermore, in bringing the case before a court which was manifestly incompetent to consider it, the authors brought on prescription by their own actions, since referral to an incompetent court does not interrupt the statute of limitations. In that way, it was not incumbent on the State party to institute proceedings after the Covenant had entered into force. In the present case, since the author of the communication had not indicated any act attributable to the State party which had been committed subsequently or had continued after the entry into force of the Covenant, the Committee could not validly rule on the facts without ignoring its own jurisprudence and a well-established international rule. Regarding the author's allegations that the last investigative action was taken on 29 September 1997, providing grounds for suspending the statute of limitations, the State party considers this to be a "pernicious interpretation" of article 7 of the Code of Criminal Procedure: the institution of proceedings is not an investigative act, because it is not brought before a competent court.

9.2 Concerning the allegations that the State party omitted or refused to correct Thomas Sankara's death certificate, before and after acceding to the Optional Protocol, the State party explains that the death certificate is no more than an act of recording by an expert, and not a civil registration document. A document prepared by an expert can be rectified or corrected only by an expert, a role the State party could not play, and the responsibility of an expert is and remains an individual and personal responsibility. Hence the failure to correct the death certificate cannot bring into play the responsibility of the State party.

9.3 The State party maintains that the authors' assertions regarding violation of the dignity of Thomas Sankara, allegedly constituting a continuing violation, are not substantiated and do not point to violations of the provisions of the Covenant. Sympathizers regularly visit Thomas Sankara's grave to pay tribute, he himself has been officially rehabilitated and honoured

as a national hero, a number of political parties which are still represented in the National Assembly bear his name, and a heroes' monument is under construction in Ouagadougou, partly celebrating Thomas Sankara. In addition, according to the State party, the protection of dignity under the Covenant guarantees only the rights of living persons, and not the dead. Consequently, the allegation that Thomas Sankara's right to dignity has been violated is manifestly unfounded.

9.4 Concerning the alleged admissions of legal significance made by the State party in connection with Thomas Sankara's status as a victim, the State party notes the flimsiness of these observations and considers that the Committee should reaffirm its initial position regarding the inadmissibility of this part of the complaint.

9.5 In the view of the State party, the authors' observations demonstrate that the requirements for admissibility before the Committee have not all been met in this case, in relation to the Committee's partial decision on admissibility. The State party requests the Committee to reconsider its admissibility decision. Not only have not all remedies been exhausted in relation to all their allegations, but in addition the allegations reflect an abuse of rights and abuse of process and are manifestly incompatible with the provisions of the Covenant.

9.6 The State party reaffirms that it has demonstrated the effectiveness of non-contentious remedies in the specific case of Burkina Faso, in the prevailing political and social context. The authors have not denied that these remedies are effective, and do not explain their steadfast refusal to make use of non-contentious remedies. The State party also reiterates that the authors have failed to use certain contentious remedies. It refers to its observations on admissibility, and in particular to article 123 of the Personal and Family Code, under which they could secure correction of the death certificate. Lastly, the State party maintains that Ms. Sankara, through negligence or ignorance, committed procedural errors which prevented consideration of the substance of her complaint, and it refers to its observations on admissibility.

9.7 In relation to abuse of process, the State party maintains that the complaints raised by the authors are more political than legal in nature, and are in fact directed at the country's President.

9.8 The State party puts forward the following arguments as to the merits. Regarding the alleged violation of article 2, the State party considers that these violations cannot have occurred in the present case, but if the Committee were to acknowledge such an obligation, the State party is prepared to present relevant arguments. Concerning the alleged violation of article 7, the State party holds that any accusation of cruel, inhuman and degrading treatment cannot be validly upheld in fact or in law, owing to the efforts made by the State party, which met with a categorical refusal on the part of Ms. Sankara. The State party refers to the efforts it has made to achieve reconciliation vis-à-vis Thomas Sankara, and in particular the fact that the location of his grave is public knowledge. The Sankara family cannot claim intimidation of any kind, insofar as its members no longer live in Burkina Faso. The State party considers that the authors have not demonstrated any act attributable to the State party which has caused either physical suffering or mental suffering such as to substantiate a violation of article 7.

9.9 Concerning the alleged violation of article 9, paragraph 1, the State party indicates that the authors have put forward the same arguments as for article 7, and that they have failed

likewise to supply any specific arguments to back up the allegations. The authors have not been the victims of arrest or arbitrary detention, nor has their security been disturbed. Accordingly, the State party calls on the Committee to reject the allegation.

9.10 Concerning article 14, paragraph 1, the State party refers to its observations on the merits, in relation to the amount of the bond, which cannot alone indicate bias on the part of the judge. In addition, and citing the Committee's jurisprudence,[31] the State party maintains that the authors did not raise any irregularity before the judicial division of the Supreme Court. Moreover, concerning the authors' arguments based on *Griffin v. Spain*, the State party notes that they have not demonstrated the arbitrary and unfair nature of the proceedings in the Supreme Court, that they have not demonstrated any procedural irregularity, and that the only procedural obstacles which may be cited in the present case are attributable to the failure to deposit a bond, for which the authors have only themselves to blame.

9.11 Concerning article 26, the State party refers to its observations, adding that articles 1 and 8 of Burkina Faso's Constitution protect citizens against all forms of discrimination and guarantee freedom of expression. Discrimination is forbidden by the new 1996 Criminal Code, which lays down severe punishment. According to the State party, the authors have not demonstrated that they have political opinions which gave rise to discriminatory measures on the part of the authorities. Benefiting from refugee status in a foreign country does not in itself constitute proof of discrimination based on the political opinions of the beneficiary. According to the State party, the criteria used by each State in granting refugee status are in practice sometimes subjective, and the Sankara family members still living in Burkina Faso are not harassed in any way because of their political views. The State party calls on the Committee to reject the allegation that article 26 was violated.

Authors' comments on the State party's observations

10. In their comments of 15 January 2006, the authors reaffirm their earlier observations. Concerning the time bar, they explain that no court has called this matter into question, and that in relation to article 7 of the Code of Criminal Procedure[32] and the applicable case law, there has never been a time bar.

Request for reconsideration of the admissibility decision

11. The Committee has taken note of the request for reconsideration of its decision on admissibility, made both by the State party and by the authors. It points out that most of the arguments advanced in support of the request for reconsideration relate to parts of the communication which had already been thoroughly examined during consideration of the issue of admissibility, and that the other arguments must be analysed as part of the consideration of the merits. Consequently, the Committee decides to proceed to consider the merits of the communication.

Consideration of the merits

12.1 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 in article 5, paragraph 1, of the Optional Protocol.

12.2 Concerning the alleged violation of article 7, the Committee understands the anguish and psychological pressure which Ms. Sankara and her sons, the family of a man killed in disputed circumstances, have suffered and continue to suffer because they still do not know the circumstances surrounding the death of Thomas Sankara, or the precise location where his remains were officially buried.[33] Thomas Sankara's family have the right to know the circumstances of his death,[34] and the Committee points out that any complaint relating to acts prohibited under article 7 of the Covenant must be investigated rapidly and impartially by the competent authorities.[35] In addition, the Committee notes, as it did during its deliberations on admissibility, the failure to correct Thomas Sankara's death certificate of 17 January 1988, which records a natural death contrary to the publicly known facts, which have been confirmed by the State party. The Committee considers that the refusal to conduct an investigation into the death of Thomas Sankara, the lack of official recognition of his place of burial and the failure to correct the death certificate constitute inhuman treatment of Ms. Sankara and her sons, in breach of article 7 of the Covenant.

12.3 Concerning the alleged violation of article 9, paragraph 1, of the Covenant, the Committee recalls its jurisprudence to the effect that the right to security of person guaranteed in article 9, paragraph 1, of the Covenant applies even outside the context of formal deprivation of liberty.[36] The interpretation of article 9 does not allow a State party to ignore threats to the personal security of non-detained persons within its jurisdiction.[37] In the present case, individuals shot and killed Thomas Sankara on 15 October 1987, and, fearing for their safety, his wife and children left Burkina Faso shortly thereafter. However, the arguments put forward by the authors are not sufficient to reveal a violation of article 9, paragraph 1, of the Covenant.

12.4 Concerning the alleged violation of article 14, paragraph 1, of the Covenant, while the authors' request for public inquiry and legal proceedings do not need to be determined by a court or tribunal, the Committee considers however that whenever, as in the present case, a judicial body is entrusted with the task of deciding on the start of such inquiry and proceedings, it must respect the guarantee of equality of all persons before the courts and tribunals as enshrined in article 14, paragraph 1, and the principles of impartiality, fairness and equality of arms implicit in this guarantee.[38]

12.5 The Committee notes the authors' arguments regarding the non-respect of the guarantee of equality by the Supreme Court when it rejected the appeal on the grounds of failure to deposit security of 5,000 CFA francs, and its refusal to take into account Auguste Sankara's status as a minor. It appears, firstly, that the State party did not contest the claim that, contrary to article 110 of order No. 91-51 of 26 August 1991, the registrar failed to inform counsel of the obligation to deposit the sum of 5,000 CFA francs as security; and secondly, that the Supreme Court ruling stating that the authors provided no evidence in support of an exemption for Auguste Sankara, as a minor, was unwarranted since the authors were unaware that security was required precisely because of the registrar's failure to inform them of the fact - a key point of which the Court was fully aware. The Committee accordingly considers that the Supreme Court failed to comply with the obligation to respect the guarantee of equality of all persons before the courts and tribunals as enshrined in article 14, paragraph 1, of the Covenant and the principles of impartiality, fairness and equality of arms implicit in this guarantee.

12.6 The Committee notes that after the Supreme Court adopted decision No. 46 of 19 June 2001, confirming decision No. 14 in which the Appeal Court declared the ordinary courts incompetent, the relevant authorities refused or omitted to refer the case to the Minister of Defence so that proceedings could be instituted in the military courts in accordance with article 71 (1) and (3) of the Code of Military Justice. The Committee also refers to its deliberations on admissibility and the conclusion it reached that the Procurator wrongly halted the proceedings instituted by the authors and in addition failed to respond to their appeal of 25 July 2001. Lastly, the Committee notes that after the ordinary courts were declared incompetent, almost five years passed, but no judicial proceedings were instituted by the Minister of Defence. The State party was unable to explain these delays, and on this point the Committee considers that, contrary to the State party's arguments, no time bar could invalidate proceedings in a military court, and consequently the failure to refer the matter to the Minister of Defence should be attributed to the Procurator, who alone had the power to do so. The Committee considers that this inaction since 2001, despite the various remedies sought subsequently by the authors, constitutes a violation of the obligation to respect the guarantee of equality of all persons before the courts and tribunals as enshrined in article 14, paragraph 1, and the principles of impartiality, fairness and equality of arms implicit in this guarantee.

12.7 Concerning the alleged violation of article 26 of the Covenant, the Committee considers that the arguments put forward by the authors concerning the authorities' discrimination against them for their political opinions are insufficient to reveal a violation.

13. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol, is of the view that the facts before it disclose a violation of articles 7 and 14, paragraph 1, of the Covenant.

14. The Committee recalls that in acceding to the Optional Protocol, the State party recognized the competence of the Committee to determine whether the Covenant had been breached and that, under article 2 of the Covenant, it undertook to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant, and to guarantee an effective and enforceable remedy when a violation has been established. Under article 2, paragraph 3 (a), of the Covenant, the State party is required to provide Ms. Sankara and her sons an effective and enforceable remedy in the form, inter alia, of official recognition of the place where Thomas Sankara is buried, and compensation for the anguish suffered by the family. The State party is also required to prevent such violations from occurring in the future.

15. Bearing in mind that, by acceding to the Optional Protocol, States parties recognize the competence of the Committee to determine whether there has been a violation of the Covenant, and that, under article 2 of the Covenant, they undertake to ensure to all individuals within their territory and subject to their jurisdiction the rights recognized in the Covenant, and to guarantee an effective and enforceable remedy when a violation has been established, the Committee wishes to receive from the State party, within 90 days following the submission of these Views, information about the measures taken to give effect to them. 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 in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]

Notes

[1] The examining judge considered that, in accordance with article 51 of the Code of Criminal Procedure, the examination division of the Ouagadougou Tribunal de Grande Instance had jurisdiction in the light of the location of the crime and the fact that it was not time-barred. "[…] Considering that, in the present case, it was not reported that the crime of premeditated murder in question had taken place in a military establishment; that even if this were true, it should be noted that the perpetrator or perpetrators of this crime have not been identified to date; that this, moreover, is the reason why the complaint was lodged against a person or persons unknown; that consequently, in the present circumstances, it would be very hazardous, without having previously identified the perpetrators, to conclude that they were members of the armed forces; that even if the person responsible for issuing a false administrative document had military status, it should be pointed out that this second offence is subsidiarily linked to the first, namely premeditated murder, in the sense that its existence depends on the existence of the first, which is the principal offence; that, moreover, it is a general principle of law that the accessory follows the principal […]; that it follows that the military status of the person responsible for the false document could not serve as legal justification for the referral of the perpetrator or perpetrators of the principal offence, namely premeditated murder, to the military courts […]."

[2] "[…] it is no secret that the events on which the complaint is based took place on the evening of 15 October 1987 in the Conseil de l'Entente barracks. In other words, the acts in question were perpetrated not only in a military establishment, but also by persons with military status. In no respect does this involve an ordinary offence. The false document mentioned in the complaint is an accessory following the principal, the outcome of which is linked to the principal action. Therefore: The indictment division is requested to declare the examining judge incompetent, in accordance with article 34 of the Code of Military Justice […]". Article 34 of the Code of Military Justice: "The military courts are competent to examine and pass judgement on ordinary offences committed by members of the armed forces, or equivalent non-combatant personnel in service, in military establishments or where they are accommodated, as well as the military offences established under this Code in accordance with the rules of procedure which apply thereto […]".

[3] It emerges from the Supreme Court decision that the authors stated in the Court that, at the time they lodged their complaint on 9 October 1997, pursuant to article 85 of the Code of Criminal Procedure, they had paid to the examining judge a bond of 1 million CFA francs, and that, furthermore, they had not paid the security to the Supreme Court registrar as the latter had omitted to read out the provisions of article 110 of order No. 91-0051/PRES of 26 August 1991 relating to the composition, organization and functioning of the Supreme Court ("the plaintiff is required, on pain of inadmissibility, to pay a sum of 5,000 francs as security before the end of the month following his or her notice of intent to appeal. The security is payable either directly to the chief registrar of the Supreme Court or by a money order addressed to the chief registrar. The registrar receiving the notice of intent shall read out to the plaintiffs the provisions of the foregoing two paragraphs and mention this formality in the record"). The Supreme Court considered that the deposits of security provided for under article 85 of the Code of Criminal Procedure and article 110 of the above-mentioned order were separate, and that the payment of the security provided for in the first provision did not obviate payment of that required under the second provision. The Supreme Court also considered that in failing to inform the plaintiffs of

the obligation to pay security the registrar was not, in law, liable to any procedural penalty, and that the authors could not, therefore, be exempted from this obligation as a result of the aforesaid omission.

[4] Arguing that Court of Appeal decision No. 14 had become final as a result of Supreme Court decision No. 46 and that consequently the ordinary courts were incompetent, the authors, on the strength of article 71 (3) of the Code of Military Justice, asked the Prosecutor-General to report the criminal act to the Minister of Defence, who would then be required to issue a prosecution order (article 71: "If the case involves an offence within the competence of the military courts, the Minister of Defence shall determine whether or not it is necessary to refer the case to the military justice system. No proceedings may take place, on pain of invalidity, without a prosecution order issued by the Minister of Defence. In all cases where the offence has been reported by a civilian examining judge, a Procurator of Faso or a Procurator-General, the Minister of Defence is required to issue the prosecution order. The said prosecution order cannot be appealed; it must make specific reference to the acts to which the proceedings will relate, characterize them and indicate the applicable legislation"). The authors recalled that, on 27 January 2000, they had also, unsuccessfully, addressed such a request to the Procurator of Faso. However, according to the authors, in a similar case (*Public Prosecutor v. Kafando Marcel et al*., which was the subject of referral order No. 005/TMO/CCI of 17 July 2000), the Procurator of Faso in the Ouagadougou Tribunal de Grande Instance had, in communication No. 744/99, reported to the Government Commissioner to the Military Court acts categorized as serious and ordinary offences that appeared to have been committed on Conseil de l'Entente premises. Moreover, according to the authors, the Minister of Defence, after a preliminary inquiry, had issued a prosecution order.

[5] "It's all very well to keep harping on one particular aspect of the Sankara case. But it should not be forgotten that there are certainly many cases before the courts. The Minister of Defence is not there to deal with justice-related issues; he certainly has other concerns. But I can assure you that, in all matters relating to all legal cases, there will be nothing to prevent cases from proceeding from start to finish in our country. We have chosen the rule of law and we intend to meet our responsibilities in this regard."

[6] The authors claim, first, that the statute of limitations was interrupted (neither the judicial examination order nor the Court of Appeal decision challenged the admissibility of the complaint. Similarly, the predecessor of the current Procurator of Faso had not invoked the statute of limitations, but article 34 of the Code of Military Justice. Lastly, the Supreme Court's decision on inadmissibility applies only to the non-payment of security and not to the statute of limitations). Secondly, the authors claim that the Court of Appeal decision instructed the parties, not only the claimant but also the prosecuting authorities, to take proceedings in another court. In accordance with this decision, the authors explain that they were unable, under the provisions of the Code of Military Justice, to bring the case directly before the Minister of Defence (who is the only person with authority to issue the prosecution order in connection with an offence within the jurisdiction of the military courts), and were thus obliged to refer the case to the Procurator in accordance with article 71 (3) of the Code of Military Justice. Once again, reference is made to the *Public Prosecutor v. Kafando Marcel et al.* case.

[7] Article 4: "Any judge who, invoking the silence, obscurity or inadequacy of the law, refuses to deliver a judgement may be prosecuted for denial of justice."

[8] Article 166: "Any judge who, on whatever pretext, including the silence or obscurity of the law, refuses to render the justice he owes to the parties after being requested to do so, and who persists in his refusal after a warning or order from his superiors, shall be liable to imprisonment for a term of two months to one year and a fine of 50,000 to 300,000 francs. A judge found guilty of this offence may, furthermore, be barred from any judicial function for a period of not more than five years."

[9] Communication No. 886/1999, *Schedko et al. v. Belarus*, Views of 3 April 2003.

[10] Article 111 of order No. 91-0051/PRES of 26 August 1991: "The following are nevertheless exempted from payment of a bond: persons sentenced to ordinary imprisonment or light imprisonment; persons who are in receipt of, or have requested, legal aid; minors under the age of 18."

[11] Equivalent to approximately 7.6 euros, according to the authors.

[12] Communications Nos. 563/1993, *Nydia Bautista de Arellana v. Colombia*, Views of 27 October 1995, 612/1995, *Vicente v. Colombia*, Views of 29 July 1997, and 778/1997, *Coronel v. Colombia*, Views of 24 October 2002.

[13] Communication No. 612/1995, *Vicente v. Colombia*, Views of 29 July 1997.

[14] Communication No. 886/1999, *Schedko et al. v. Belarus*, Views of 3 April 2003.

[15] Communication No. 30/1978, *Bleier v. Uruguay*, Views of 29 March 1982.

[16] "At this juncture, matters must not be confused. To date, the Minister of Defence has not been called upon to intervene as such in the Thomas Sankara case. I have no judicial document or a document from a claimant calling on me to act. If one day this problem arises, courageously and with the President of Burkina Faso as the supreme chief of the armed forces, we shall ensure that a solution is found to the problem. Thomas Sankara was in fact one of our brothers in arms. There is no reason why any problem raised concerning him cannot be solved." *Le Pays*, No. 2,493, 22 October 2001.

[17] Communication No. 345/1998, *R.A.V.N. et al. v. Argentina*, decision of 26 March 1990 on inadmissibility.

[18] Communications Nos. 24/1997, *S. Lovelace v. Canada*, Views of 30 July 1981, 196/1985, *I. Gueye v. France*, Views of 3 April 1989, 516/1992*, J. Simunek et al. v. Czech Republic*, Views of 19 July 1995, 520/1992, *E. and A.K. v. Hungary*, decision of 7 April 1994 on inadmissibility, and 566/1993, *Ivan Somers v. Hungary*, Views of 23 July 1996.

[19] Communication No. 612/1995, *Vicente v. Colombia*, Views of 29 July 1997.

[20] Médiateur du Faso, Collège des sages, National Reconciliation Commission, and Compensation Fund for Victims of Political Violence.

[21] Communication No. 612/1995, *Vicente v. Colombia*, Views of 29 July 1997.

[22] Communications Nos. 612/1995, *Vicente v. Colombia*, Views of 29 July 1997, and 778/1997, *Coronel et al. v. Colombia*, Views of 24 October 2002.

[23] Communications Nos. 950/2000, *Sarma v. Sri Lanka*, Views of 16 July 2003, and 886/1999, *Schedko v. Belarus*, Views of 3 April 2003.

[24] Communication No. 821/1998, *Chongwe v. Zambia*, Views of 25 October 2000.

[25] As an example, the State party mentions a bond in the amount of 1.5 million CFA francs deposited in the case *Fonds Chrétien de l'Enfance Canada (FCC) v. Batiano Célestin* in 1997.

[26] Under articles 648-658 of the Code of Criminal Procedure and articles 291 and 292 of order No. 91-51 of 26 August 1991 on the organization and functioning of the Supreme Court, any party in court proceedings who entertains legitimate suspicions regarding a judge who is to rule on his or her interests may prevent the judge from doing so by applying for disqualification. However, according to the State party, the author did not make use of this opportunity. Nor did she make use of the appeal against judicial misconduct provided for in articles 283 and 284 of order No. 91-51, under which denial of justice may be punished.

[27] The authors cite communications Nos. 161/1983, *Herrera Rubio v. Colombia*, Views of 2 November 1987, and 778/1997, *Coronel et al. v. Colombia*, Views of 24 October 2002.

[28] The authors refer to communications Nos. 1024/2001, *Sanlés Sanlés v. Spain*, decision of 30 March 2004 on inadmissibility, and 717/1996, *Acuña Inostroza et al. v. Chile*, decision of 23 July 1999 on inadmissibility, and to the individual opinions on communication No. 718/1996, *Vargas Vargas v. Chile*, decision of 26 July 1999 on inadmissibility.

[29] Communication No. 718/1996, *Vargas Vargas v. Chile*, decision of 26 July 1999 on inadmissibility, para. 6.7.

[30] Communication No. 493/1992, *Griffin v. Spain*, Views of 4 April 1995: "… unless it can be ascertained that the proceedings were manifestly arbitrary, that there were procedural irregularities amounting to a denial of justice, or that the judge manifestly violated his obligation of impartiality" [para. 9.6].

[31] Communication No. 811/1998, *Mulai v. Republic of Guyana*, Views of 20 July 2004: "where attempts at jury tampering come to the knowledge of either of the parties, these alleged improprieties should have been challenged before the court" [para. 6.1].

[32] "In criminal matters, prosecution is time-barred 10 years after the date on which the offence was committed, if no act of investigation or prosecution has taken place in that interval. If such

acts have taken place during that interval, prosecution shall be time-barred only 10 years after the latest such act. The same applies even to persons who were not affected by the act of investigation or prosecution."

[33] Communications Nos. 886/1999, *Schedko v. Belarus*, Views of 3 April 2003, para. 10.2, and 887/1999, *Staselovich v. Belarus*, Views of 3 April 2003, para. 9.2.

[34] Communication No. 107/1981, *Quinteros v. Uruguay*, Views of 21 July 1983, para. 14.

[35] General comment No. 20, para. 14.

[36] Communications Nos. 195/1985, *Delgado Páez v. Colombia*, Views of 12 July 1990, para. 5.5, and 711/1996, *Carlos Dias v. Angola*, Views of 20 March 2000, para. 8.3.

[37] Communications Nos. 821/1998, *Chongwe v. Zambia*, Views of 25 October 2000, para. 5.3, and 468/1991, *Bahamonde v. Equatorial Guinea*, Views of 20 October 1993, para. 9.2.

[38] Communication No. 1015/2001, *Perterer v. Austria*, decision of 20 July 2004 on inadmissibility, para. 9.2.
