



International Covenant on Civil and Political Rights

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Human Rights Committee

Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2772/2016*, **, ***

<i>Communication submitted by:</i>	Émile Bisimwa Muhirhi (represented by counsel from TRIAL International)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Democratic Republic of the Congo
<i>Date of communication:</i>	24 March 2016 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rule 92 of the Committee's rules of procedure, transmitted to the State party on 7 June 2016 (not issued in document form)
<i>Date of adoption of Views:</i>	23 March 2021
<i>Subject matter:</i>	Torture and arbitrary detention
<i>Procedural issues:</i>	Lack of cooperation by the State party
<i>Substantive issues:</i>	Right to an effective remedy; cruel, inhuman or degrading treatment or punishment; fair trial; right to liberty; arbitrary interference with family life
<i>Articles of the Covenant:</i>	2 (3), 7, 9, 10, 14 (3) (b) and (g), 17 and 23
<i>Articles of the Optional Protocol:</i>	2, 3 and 5 (2)

1.1 The author of the communication is Émile Bisimwa Muhirhi, a citizen of the Democratic Republic of the Congo born on 3 November 1983. He claims that the State party has violated his rights under articles 7, 9 and 10, read alone and in conjunction with article 2 (3), and articles 14 (3) (b) and (g), 17 and 23 of the Covenant. The Democratic Republic of the Congo acceded to the Optional Protocol to the Covenant on 1 November 1976. The author is represented by counsel from the non-governmental organization (NGO) TRIAL International.

* Adopted by the Committee at its 131st session (1–26 March 2021).

** The following members of the Committee participated in the examination of the communication: Tania María Abdo Rocholl, Wafaa Ashraf Moharram Bassim, Yadh Ben Achour, Arif Bulkan, Mahjoub El Haiba, Furuya Shuichi, Carlos Gómez Martínez, Marcia V.J. Kran, Duncan Laki Muhumuza, Photini Pazartzis, Hernán Quezada Cabrera, Vasilka Sancin, José Manuel Santos Pais, Kobauyah Tchamdja Kpatcha, Hélène Tigroudja, Imeru Tamerat Yigezu and Gentian Zyberi.

*** An individual opinion (partly dissenting) by Committee member Gentian Zyberi is annexed to the present Views.



1.2 On 7 June 2016, pursuant to rule 95 of its rules of procedure, the Committee, acting through its Special Rapporteur on new communications and interim measures, requested the State party to take measures to ensure the protection of the author and his family while the communication was under consideration by the Committee.

The facts as submitted by the author

2.1 The author makes a living from his small business in Bukavu in the province of Sud-Kivu, an area that has long been known for the many abuses committed by the authorities against the local population. On 17 December 2014, at around 6 a.m., he was arrested at his home by members of the National Intelligence Agency, who broke in, took him to their premises and placed him in detention without showing him any arrest warrant. The author was immediately placed in solitary confinement, in a cell barely larger than a cupboard, where he could neither sit nor lie down. It was not until several hours later, at around 10 a.m., that he was informed of the reasons for his arrest while being questioned under torture.

2.2 During the questioning, H.K. (an officer of the National Intelligence Agency who had been present during the arrest) accused the author of having stolen US\$ 172,844 from D.C., the author's cousin and former associate. The author was accused by H.K. of having used the money to purchase property for himself, including a house that he had recently bought. During this questioning, the author was not given the opportunity to defend himself, despite the existence of evidence that could have proved his innocence, such as the accounting books that he and D.C. were keeping at the time. When the author refused to confess, H.K. wrote a false confession on a sheet of paper. He then asked the author to sign the document without allowing him to read it beforehand. When the author refused, H.K. grabbed a truncheon, forced the author to lie on his stomach and began striking him on his back and buttocks. When the pain became unbearable, the author, in tears, finally agreed to sign the papers that H.K. had put in front of him. After he had signed the document, the author was returned to his cell and was not allowed to leave it.

2.3 From this point on, the author was held in poor conditions and was also deprived of his rights to consult a lawyer, to be brought before a judge, to see his family,¹ to have access to medical care and to receive food on a regular basis. A few days later, the author was subjected to a second bout of torture when H.K. summoned the author's father and D.C. to the premises of the National Intelligence Agency. During this aggressive round of questioning, H.K. again tried to extract a confession from the author, while he did not ask D.C. a single question. When his efforts again failed to bear fruit, H.K. grabbed a truncheon and beat the author for around 20 minutes while the author's father begged H.K. to stop. Unable to stand the pain, the author finally signed the papers. This episode left the author with significant physical sequelae, including a fracture to his right forearm, which he sustained while trying to shield himself from the truncheon blows.

2.4 During his detention, the author repeatedly informed L., a National Intelligence Agency officer charged with reception duties, of the pain and suffering that he was enduring as a result of his having been beaten with a truncheon and whipped. The author asked to be treated or at least to be given medication to alleviate the pain. L. recorded all the author's complaints in a notebook, but no action was subsequently taken. The author never received any treatment for the beating to which he had been subjected.

2.5 At around 7.30 a.m. every morning, through a small tinted glass window in his cell, the author would see D.C. driving through the gates of the premises of the National Intelligence Agency in a car from which D.C. would emerge in the company of H.K. On several occasions, through his window, the author caught a glimpse of D.C. giving money to the sentry who opened the entrance gate and to the military police officers inside the National

¹ On 18 December 2014, the author's wife went to the premises of the National Intelligence Agency. Even after having paid the soldiers on duty, she was allowed to talk to her husband for only one minute, just long enough to see that he was shaking and very downcast, and to ask him why he had been arrested. The author only managed to tell his wife that D.C. had had him arrested because of a money-related matter, about which he knew nothing. The soldiers then abruptly cut short the conversation and took the author back to his cell.

Intelligence Agency. Seeing this shattered the author's hopes of ever escaping from his predicament.

2.6 On 20 December 2014, the author's lawyer submitted a criminal complaint against D.C. to Bukavu general prosecution service for arbitrary arrest and detention, and injurious allegations,² citing the incidents of torture. The lawyer did not name H.K. in the criminal complaint, as he feared that direct reprisals would be taken against the author, who, being in the hands of the National Intelligence Agency, was in a vulnerable position. Following the filing of the complaint, the public prosecutor assigned the case to a criminal investigation officer, who did not take any steps to open a genuine preliminary investigation because, among other reasons, the complainant was being held at the premises of the National Intelligence Agency. Consequently, no further action has been taken in connection with the case. On 9 January 2015, a local NGO known as Action sociale pour le développement Mumosho Mudusa submitted a complaint of unlawful arrest to the public prosecutor attached to Bukavu Court of Appeal in an attempt to have the author and his case brought under the jurisdiction of the general prosecution service.

2.7 On 14 January 2015, D.C. applied to the President of Bukavu Commercial Court for permission to bring a private prosecution against the author. On 15 January 2015, the President issued an order authorizing D.C. to summon the author at short notice to appear before the Commercial Court on 21 January 2015 while the general prosecution service was still investigating the case. At the first hearing before the Commercial Court, the author raised an objection to the Court's jurisdiction. On 23 January 2015, this objection was dismissed pursuant to an interlocutory decision by which the Court asserted its jurisdiction. On 31 January 2015, the author appealed this decision, at which point the proceedings before the Commercial Court were suspended and the case was brought before the Court of Appeal, which was competent to rule on the question of jurisdiction. On 26 February 2015, Bukavu Court of Appeal ruled that the Commercial Court lacked jurisdiction to try the case and remitted the case to Bukavu District Court for an examination of its merits. D.C. then petitioned Bukavu Court of Appeal with a view to preventing the District Court from trying the case on the ground of reasonable suspicion, but the former dismissed the petition in question. D.C. finally decided not to pursue legal action against the author owing to a lack of evidence.

2.8 The author was held at the premises of the National Intelligence Agency until 14 January 2015, when he was brought before Bukavu general prosecution service. When the author appeared before the general prosecution service, the prosecutor issued a warrant for his provisional detention. On 15 January 2015, the author was again brought before the general prosecution service, where he was heard by the Advocate General in the presence of his lawyer. During the hearing, the author mentioned the bouts of torture to which he had been subjected at the premises of the National Intelligence Agency. At the end of the hearing, the author was returned to Bukavu central prison.

2.9 It was only from this date onward – 29 days after his arrest – that the author was able to see and talk to his lawyer for the first time. On 19 January 2015, the author submitted a request for release on bail to the public prosecutor but received no response. Subsequently, on 27 January 2015, a hearing was held before Bukavu District Court so that it could rule on the author's detention pending trial. In the course of this hearing, the author was denied legal assistance and the Court ordered his pretrial detention.

2.10 On 18 February 2015, the author submitted a request for release on bail to Bukavu District Court. On 19 February 2015, the Court rejected the application on the ground that there was credible evidence to indicate that he was guilty as charged. On 20 February 2015, the author appealed this decision but, in early March 2015, Bukavu Tribunal de Grande Instance (court of major jurisdiction) upheld the lower court's decision and rejected the appeal.

2.11 On 27 February 2015, since no action had been taken on the criminal complaint filed on 20 December 2014 against D.C. for arbitrary arrest and detention, and injurious allegations,

² Injurious allegations, otherwise known as defamation, and insults are covered by and punishable under articles 74, 75 and 77 of the Criminal Code.

the author applied to Bukavu Tribunal de Grande Instance for permission to bring a private prosecution against H.K. and D.C. for torture and arbitrary arrest and detention. The opening hearing in this case took place on 19 March 2015. H.K. did not attend the hearing, while D.C. appeared, accompanied by two lawyers. The Court declared that it had competence to try the two defendants and that the defendant H.K. had failed to appear. At this hearing, the defence lawyers raised preliminary objections, including one relating to the need to obtain prior authorization from the director of the National Intelligence Agency in order for proceedings to be brought against the Agency's officers, such as H.K.³ On 30 July 2015, the Court dismissed all the objections raised and referred the case for a public hearing, to be held on 13 August 2015. During this hearing, D.C. appealed the interlocutory decision issued by the Tribunal de Grande Instance. On 7 February 2016, the Court of Appeal received the pleadings of the parties in relation to the appeal and reserved judgment on the case. In July 2017, the Court of Appeal dismissed the objection raised by D.C. and remitted the case to the Tribunal de Grande Instance. Since then, the case is still ongoing.

2.12 The author remained in pretrial detention at Bukavu central prison until 6 June 2015, when a second request for his release on bail, submitted by his lawyer on 3 June 2015, was finally granted. On 29 June 2015, the author was admitted to the Panzi General Hospital to undergo medical examinations and receive comprehensive care. He was attended to by a forensic doctor who specialized in surgery. The medical report, which is dated 3 July 2015, refers to "a general state of anxiety; ... on the chest: linear, parallel abrasions on the posterior side of the torso ... deformation and curvature of the forearm at the medullary cavity, limited pronation and supination". The report also identifies "an old fracture of two bones in the right forearm and the sequelae of blows and injuries related to ill-treatment in detention, 'torture', see the marks on the back made by a strap". It also states that "the assessment of the harm ... indicates a temporary inability to work for 60 days; a permanent partial disability of 25 per cent; a significant level of pain and suffering (suffering endured) 6/7; and slight disfigurement 3/7".⁴

2.13 Although the author has been released, the complaint against D.C. is still pending and the threats against the author have not stopped. On several occasions, attempts have been made to intimidate or directly attack the author and his family in the street, at the police station or at their home.⁵ On each occasion, the violence was carried out by members of D.C.'s family, with the aim of intimidating the author and obtaining the money that he was alleged to have stolen.

2.14 On 15 July 2015, the author was again arrested at his home, without a warrant, before being questioned and detained for several hours. On this occasion, the author was accused of having burgled D.C.'s house, but the authorities soon realized that, at the time of the alleged burglary, the author was still in detention at Bukavu central prison and that the charges were therefore unfounded. He was released a few hours after his arrest.

2.15 On 2 March 2015, the NGO TRIAL International sent a request for urgent action on the author's behalf to the Working Group on Arbitrary Detention and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment so that the special procedure mandate holders in question could take steps to demand the author's immediate and unconditional release. On 8 May 2015, TRIAL International submitted an individual petition concerning the author's detention to the Working Group on Arbitrary Detention. On 3 September 2015, the Working Group rendered an opinion in favour of the author, finding the author's arrests and detention to be arbitrary and determining that the violence that he had suffered at the premises of the National Intelligence Agency constituted torture. In its conclusions, the Working Group recommended that the Government of the State party take all the necessary measures to provide redress for the serious material and moral damage suffered by the author, including comprehensive compensation as defined in article 9 (5) of

³ This rule is contained in article 25 of Decree-Law No. 003-2003 of 11 January 2003 on the establishment and organization of the National Intelligence Agency.

⁴ A copy of the medical report appears in the case file.

⁵ These incidents include an occasion when, around one month after he had been released on bail, the author was arrested and threatened at his home by officers of the criminal investigation police acting under the orders of Colonel T.

the Covenant. In addition, the Government was to conduct an investigation into the circumstances surrounding the violation of his rights with a view to determining responsibility and ensuring that any offence committed was punished.⁶

2.16 Since then, the author has regularly followed up on the national procedures that have been initiated. On 30 October 2015, he sent a letter to the National Human Rights Commission requesting it to take action in respect of his case so that he might obtain justice and reparation. With regard to the criminal proceedings pending before the District Court, D.C. has employed a series of “delaying tactics” to prevent the author from being tried within a reasonable period of time or released unconditionally. Despite the author’s diligence and insistence, the slowness of the judicial proceedings is preventing the private prosecution brought against D.C. and H.K. from following its normal course. The financial situation of the author and his family remains extremely precarious. The family is struggling to survive on the money that it makes from its small business selling flour and manioc.

2.17 Lastly, the author states that: (a) all available measures have been taken to exhaust domestic remedies; (b) these remedies have been unreasonably prolonged, since an investigation into the allegations of torture made against an officer of the National Intelligence Agency in December 2014 and set out in his complaint to Bukavu general prosecution service was not opened until after he had submitted a complaint to Bukavu Tribunal de Grande Instance on 27 February 2015, and since he was released on bail only after having submitted three requests and having spent six months in detention, despite the clear substantive and procedural errors made in the course of his arrest and detention; (c) the remedies have proven to be ineffective, as no action was taken to follow up on his first criminal complaint, submitted in December 2014, and the private prosecution has stalled at first instance because the preliminary objections are still being considered almost 12 months after they were first raised; and (d) it is dangerous for the author to make use of domestic remedies in view of the acts of intimidation and threats that prompted him and his family to move out of their neighbourhood in August 2015.

The complaint

3.1 The author claims a violation by the State party of articles 7, 9 and 10, read alone and in conjunction with article 2 (3), and articles 14 (3) (b) and (g), 17 and 23 of the Covenant.

3.2 Firstly, the author was subjected to extremely severe ill-treatment that caused him great suffering and that continues to affect his health to this day. These acts of torture were committed by H.K., an officer of the National Intelligence Agency, with a view to extracting confessions from the author during his arbitrary detention at the Agency’s premises from 17 December 2014 to 14 January 2015, in violation of article 7 of the Covenant.

3.3 Secondly, the author asserts that he was held in poor conditions for the duration of his detention from 17 December 2014 to 6 June 2015. These conditions, which included his being held in solitary confinement for a long period, being forced to occupy a tiny cell at the premises of the National Intelligence Agency in which he was unable to move and had to remain in the same position at all times, being denied contact with his family and lawyer, being denied medical assistance, and having threats made against him, undermined the author’s dignity and physical and moral integrity, and constitute a violation of articles 7 and 10 of the Covenant.

3.4 Despite the author’s having, on numerous occasions, reported acts of torture and ill-treatment to various authorities (firstly, the authorities of the National Intelligence Agency; secondly, the authorities of Bukavu central prison; and lastly, the courts, to which he has submitted two criminal complaints and several requests for release on bail) no investigation was initiated until March 2015, approximately three months after he made his first allegations. Despite the author’s efforts, the legal proceedings initiated remain stalled at first instance and no significant investigative measures have yet been taken. Indeed, the Congolese authorities have held up the proceedings by failing to respect the legal deadlines and not punishing the defendants for their delaying tactics. The author considers that the State party has failed to

⁶ See A/HRC/WGAD/2015/25.

provide him with an effective remedy, in violation of article 2 (3), read in conjunction with articles 7 and 10 of the Covenant.

3.5 The author also claims that his right to liberty was violated when officers of the National Intelligence Agency arbitrarily deprived him of his liberty between 17 December 2014 and 14 January 2015. Subsequently, his right to liberty was also violated when he was placed in pretrial detention at Bukavu central prison from 14 January to 6 June 2015 without the conditions established in Congolese law having been met⁷ since, at the time, the evidence of guilt invoked by the court was based only on D.C.'s statements and on the documents that the author had been forced to sign under torture and ill-treatment without his having been allowed to read them. The author therefore submits that his detention had no legal basis, was not accompanied by procedural guarantees and was therefore arbitrary from the outset. Lastly, the author's right to liberty was violated on 15 July 2015 when, once again, he was arrested without a warrant and detained for questioning before being released a few hours later. The author also alleges that, for the duration of his detention, the State party violated his right to the procedural guarantees provided for in article 9 of the Covenant, including his right to be informed of the reasons for his arrest under article 9 (2); his right to be brought before a judge or competent authority as soon as possible⁸ under article 9 (3); and his right to take proceedings before a court under article 9 (4).⁹ Lastly, the author's right to obtain compensation under article 9 (5), and for the purposes of article 2 (3) of the Covenant, has not been respected, and a full investigation into the violations that he suffered in detention has not been initiated. Therefore, the author also claims a violation by the State party of article 2 (3), read in conjunction with article 9 of the Covenant.

3.6 In addition, the author alleges that the State party has failed in its obligation to guarantee him a fair trial, in particular because forced confessions signed under torture at the premises of the National Intelligence Agency were admitted as evidence and used in the legal proceedings against him. The author did not have access to a lawyer for the duration of his detention at the Agency's premises, including during the questioning and confrontations to which he was subjected, following which he was forced to sign documents that he had not been allowed to read beforehand. On 27 January 2015, during the hearing before the District Court, which was to rule on his pretrial detention, the author was denied legal assistance in flagrant violation of article 30 of the Code of Criminal Procedure. Lastly, he was not granted full access to the documents necessary to effectively challenge the charges against him.¹⁰ In this regard, the State party failed to comply with its obligations to the author under article 14 (3) (b) and (g) of the Covenant.

3.7 The author states that he has, on numerous occasions, been the victim of unlawful interference in his private life, family and home. On 17 December 2014 and 15 July 2015, the author was arbitrarily and violently arrested by State officers. On both occasions, the arrests took place at his home in the middle of the night. The violations that the author suffered during his detention constituted arbitrary interference in his private life, which

⁷ Under article 28 of the Code of Criminal Procedure, pretrial detention should be used only in exceptional situations and, in all cases, only after the accused has been questioned. In the present case, the author was not heard until 15 January 2015, i.e., after a warrant for his provisional detention had been issued. Furthermore, pursuant to article 28 (3), the author should have been brought before the competent judge so that he or she could rule on the extension of the author's detention within five days of the issuance of the provisional detention warrant. In the present case, this was done on 27 January 2015, 13 days after the issuance of the provisional detention warrant and without the accused's having been assisted by his lawyer, in violation of article 30 of the Code of Criminal Procedure.

⁸ The author was not brought before a competent judge until 27 January 2015, i.e., 41 days after his arrest. He was not assisted by a lawyer.

⁹ During his detention at the premises of the National Intelligence Agency between 17 December 2014 and 14 January 2015, the author could not exercise his right to take proceedings before a court to have the lawfulness of his detention reviewed. In fact, during this period, he was denied the right to be assisted by a lawyer. There has been no follow-up to the criminal complaint submitted by his lawyer on his behalf on 20 December 2014.

¹⁰ The author has never been granted access to the documents that he was forced to sign when he was being tortured by H.K. at the premises of the National Intelligence Agency and on the basis of which the District Court ruled that there were serious grounds for finding the author guilty.

affected his career, his physical and mental health, and his family life. The author therefore considers that the State party has violated his rights under article 17 of the Covenant.

3.8 Lastly, the author claims a violation of article 23 of the Covenant because the offences, attacks and threats carried out against him and his family have had a seriously detrimental effect on his family and his family life. First of all, his family's finances were seriously affected by his being absent for more than six months. Secondly, his prolonged arbitrary detention caused the break-up of the family unit and harmed the mental health of his family members. Lastly, the harm done to the author's mental health and the threats and attacks perpetrated at his home and directly against his family created a climate of insecurity, fear and intimidation that prompted the family to move to another neighbourhood in August 2015.

3.9 The author requests appropriate reparation, including financial compensation for the material and non-material harm caused; physical, psychological, social and financial rehabilitation; measures of satisfaction; and guarantees of non-repetition accompanied by a public apology to the victim.

Lack of cooperation by the State party

4. On 7 June 2016, 25 January 2017, 3 July 2017 and 14 September 2018, the Committee requested the State party to submit its observations on the admissibility and merits of the communication. The Committee regrets the State party's failure to provide any information with regard to the admissibility or the substance of the author's claims. It recalls that article 4 (2) of the Optional Protocol obliges States parties to examine in good faith all allegations brought against them and to make available to the Committee all the information at their disposal. In the absence of a reply from the State party, due weight must be given to the author's allegations, to the extent that they are substantiated.

Issues and proceedings before the Committee

Consideration of admissibility

5.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 97 of its rules of procedure, whether the communication is admissible under the Optional Protocol to the Covenant.

5.2 The Committee must first ascertain, as required under article 5 (2) (a) of the Optional Protocol, that the matter is not being examined under another procedure of international investigation or settlement. The Committee notes that the author's case has been examined by the Working Group on Arbitrary Detention, which rendered an opinion on 3 September 2015. As the Working Group on Arbitrary Detention had already concluded its consideration of the case before the present communication was submitted to the Committee, the Committee will not address the issue of whether consideration of a case by the Working Group is another procedure of international investigation or settlement under article 5 (2) (a) of the Optional Protocol.¹¹ Consequently, the Committee considers that there are no obstacles to the admissibility of the communication under this provision.

5.3 Regarding the exhaustion of domestic remedies, the Committee recalls, firstly, that the State party has a duty not only to carry out thorough investigations of alleged violations of human rights brought to the attention of its authorities, but also to prosecute, try and punish anyone held to be responsible for such violations.¹² The Committee also recalls its jurisprudence according to which the author must exhaust, for the purpose of article 5 (2) (b) of the Optional Protocol, all judicial or administrative remedies that offer him or her a reasonable prospect of redress.¹³ The Committee notes that the State party has not contested the admissibility of any of the claims submitted. In addition, it takes note of the information and supporting documents provided by the author regarding the complaints and requests that he filed with various authorities of the State party, none of which appears to have led to an investigation. The Committee notes that six years have elapsed since 27 February 2015, the

¹¹ *Cedeño v. Bolivarian Republic of Venezuela* (CCPR/C/106/D/1940/2010), para. 6.2.

¹² *Boudjemai v. Algeria* (CCPR/C/107/D/1791/2008), para. 7.4.

¹³ *Patiño v. Panama* (CCPR/C/52/D/437/1990), para. 5.2.

date of the author's last complaint of torture and arbitrary arrest and detention, without a decision having been issued on its merits. Therefore, since this domestic remedy has been unreasonably prolonged and is in fact preventing the author from claiming a violation of his rights, the Committee considers that the remedy is not effective or efficient and that it is not precluded from examining the communication under article 5 (2) (b) of the Optional Protocol.

5.4 The Committee is of the view that the author has sufficiently substantiated his allegations for the purposes of admissibility and proceeds to its consideration of the merits of his claims under articles 7, 9 and 10, read alone and in conjunction with article 2 (3), and articles 14 (3) (b) and (g), 17 and 23 of the Covenant.

Consideration of the merits

6.1 The Committee has considered the present communication in the light of all the information submitted to it by the parties, in accordance with article 5 (1) of the Optional Protocol.

6.2 The Committee notes that the State party has not responded to the author's allegations and recalls its jurisprudence according to which the burden of proof should not rest solely on the author of a communication, especially given that the author and the State party do not always have the same degree of access to evidence and that often only the State party is in possession of the necessary information.¹⁴

6.3 The Committee takes note of the author's allegations under article 7 of the Covenant to the effect that: (a) the treatment he endured during his detention at the premises of the National Intelligence Agency from 17 December 2014 to 14 January 2015 constituted torture; (b) he was detained at the premises of the National Intelligence Agency in deplorable conditions; and (c) he was held in solitary confinement from 17 December 2014 to 14 January 2015 without his being able to leave a cell barely larger than a cupboard, which was so small that he was unable to move and therefore had to remain in the same position at all times. In this regard, the Committee notes that prolonged solitary confinement of a detained or imprisoned person may amount to acts prohibited by article 7 of the Covenant.¹⁵ It also notes the allegations that, following the author's refusal to confess during two rounds of questioning, he was severely beaten with a truncheon and that his father was forced to watch him being beaten during the second round. The Committee further notes that these acts were allegedly carried out by an officer of the National Intelligence Agency with a view to extracting confessions from the author. Lastly, the Committee notes that these allegations are supported by various signs of torture, including a fracture to the right forearm, described in a forensic report dated 3 July 2015, according to which the author has a permanent partial disability of 25 per cent. In view of the gravity of the allegations and in the absence of any information from the State party to refute them, the Committee concludes that there was a violation of article 7 of the Covenant in the present case.

6.4 In view of the above, the Committee will not consider separately the claims relating to the violation of article 10 of the Covenant.

6.5 With regard to article 9 of the Covenant, the Committee notes the author's allegations that: (a) he was arrested by officers of the National Intelligence Agency without a warrant or any legal basis and arbitrarily deprived of his liberty between 17 December 2014 and 14 January 2015 at the Agency's premises, and then between 14 January 2015 and 6 June 2015 at Bukavu central prison, in violation of article 9 (1); (b) that he was not informed of the reasons for his arrest, in violation of article 9 (2); (c) that he was not brought before a judge or competent authority as soon as possible, in violation of article 9 (3); (d) that his right to take proceedings before a court was not respected, in violation of article 9 (4); and (e) that he has not been able to obtain redress, in violation of article 9 (5). In the absence of any information from the State party refuting these allegations, the Committee concludes that the

¹⁴ See, inter alia, *El Abani v. Libyan Arab Jamahiriya* (CCPR/C/99/D/1640/2007), para. 7.4; and *Berzig v. Algeria* (CCPR/C/103/D/1781/2008), para. 8.3.

¹⁵ Human Rights Committee, general comment No. 20 (1992), para. 6.

author's arrest and detention were arbitrary and that the rights guaranteed to the author under article 9 of the Covenant have been violated.¹⁶

6.6 The Committee notes the author's allegation that his rights under articles 7 and 9 of the Covenant, read in conjunction with article 2 (3), were violated, given the lack of an effective remedy against these violations. In this case, more than six years have passed since the criminal complaint against D.C. for torture and arbitrary arrest and detention was submitted to the general prosecution service on 20 December 2014 without a prompt and immediate investigation having been carried out. Subsequently, on 27 February 2015, the author submitted a request to bring a private prosecution against H.K. and D.C. for torture and arbitrary arrest and detention to Bukavu Tribunal de Grande Instance, which, despite the author's insistence, is still under investigation at first instance. The Committee notes that the State party has not provided any explanation for the lack of measures to remedy the alleged violations and concludes that the State party has violated the author's rights under articles 7 and 9, read in conjunction with article 2 (3) of the Covenant.

6.7 The Committee also notes the author's allegations that he was denied access to a lawyer for the duration of his detention at the premises of the National Intelligence Agency, during the rounds of questioning and confrontations to which he was subjected, following which he was forced to sign documents without his being allowed to read them beforehand, and during the hearing at the District Court on 27 January 2015, at which a ruling on his pretrial detention was to be issued. Furthermore, he was not given full access to the documents necessary to effectively challenge the charges against him. In the absence of a rebuttal from the State party, the Committee considers that these restrictions constitute a violation of article 14 (3) (b) of the Covenant, insofar as the author was not afforded adequate facilities to prepare his defence or to communicate with his counsel during the different stages of the proceedings.

6.8 The Committee further notes the author's claim that, during his arbitrary detention, he was tortured by an officer of the National Intelligence Agency and forced to sign confessions. These confessions, the author claims, were used as a basis for arbitrarily depriving him of his liberty, in violation of his rights under article 14 (3) (g) of the Covenant. Considering the Committee's findings regarding the violation under article 7 of the Covenant, the State party's failure to investigate the allegations of torture made by the author and the fact that the author's confessions were admitted as evidence and used to justify his pretrial detention, the Committee considers that the State party has violated the author's rights under article 14 (3) (g) of the Covenant.¹⁷

6.9 Lastly, the Committee notes that the author was arrested at his home by officers of the National Intelligence Agency, who broke in, and that, after the author was released on bail, further attempts were made to intimidate him and his family in the street and at their home. The Committee also notes that, after having been subjected to acts of intimidation and threats, the author was forced to change his residence in August 2015. The Committee recalls that the arbitrary separation of the author from the rest of his family and the detrimental effect on their family life may raise questions under article 17 of the Covenant, read in conjunction with article 23 (1). In the absence of observations from the State party and taking into account all the circumstances of the present case, the Committee considers that these facts constitute arbitrary and unlawful interference with the author's privacy, home and family. Accordingly, the Committee concludes that the State party has violated the author's rights under article 17, read alone and in conjunction with article 23 of the Covenant.¹⁸

7. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the facts before it disclose a violation by the State party of articles 7 and 9, read alone and in conjunction with article 2 (3), and of article 14 (3) (b) and (g), and article 17, read alone and in conjunction with article 23 of the Covenant.

8. Pursuant to article 2 (3) (a) of the Covenant, the State party is under an obligation to provide the author with an effective remedy. This provision requires that States parties make full reparation to individuals whose Covenant rights have been violated. In the present case,

¹⁶ See Human Rights Committee, general comment No. 35 (2014).

¹⁷ *Pandey v. Nepal* (CCPR/C/124/D/2413/2014), para. 8.9; and *Bazarov v. Kyrgyzstan* (CCPR/C/118/D/2187/2012), para. 6.4.

¹⁸ *Lumbala Tshidika v. Democratic Republic of the Congo* (CCPR/C/115/D/2214/2012), para. 6.7.

the State party is under an obligation to: (a) pursue in a prompt, effective, exhaustive, independent, impartial and transparent manner the investigation and prosecution of the facts alleged by the author concerning his arrest, detention and the torture to which he was subjected while he was being held at the premises of the National Intelligence Agency; (b) prosecute, try and punish those responsible for the alleged violations in a way that is commensurate with their gravity; (c) provide the author with detailed information about the results of the investigation; (d) ensure that any necessary and adequate physical and psychological rehabilitation and medical treatment is provided to the author free of charge; and (e) provide the author with adequate compensation and appropriate measures of satisfaction. The State party is also under an obligation to take steps to prevent similar violations in the future.

9. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy when it has been determined that a violation has occurred, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the present Views. The State party is also requested to publish the Committee's Views and to have them widely disseminated in the official language of the State party.

Annex

[Original: English]

Individual opinion of Gentian Zyberi (partly dissenting)

1. I am in agreement with the Committee's finding that there has been a violation of articles 7 and 9, read alone and in conjunction with article 2 (3), and of articles 14 (3) (b) and (g) and 17 of the Covenant. The claim concerning a violation of article 23, however, should have been declared inadmissible, as it has not been adequately raised with the domestic authorities. Moreover, it has been the general practice of the Committee, having found of a violation of articles 7 and 9, to consider the application of article 23 unnecessary.¹

2. The Committee does not provide an explanation as to why the author's claim under article 23 is admissible, accepting it without much discussion, together with the claim under article 17. Despite the regrettable fact that the State party has failed, yet again, in its duty to cooperate with the Committee under the Optional Protocol, not responding to its invitations to submit its observations on the admissibility and merits of the communication for a period of over two years, the Committee would need to be at least satisfied that the author's claims before it have been raised at the domestic level, to conform with the requirement of exhaustion of domestic remedies.

3. In the case at hand, the author has raised at the domestic level claims concerning violations of articles 7, 9, 10 and 14, but not concerning article 23. The author applied to the Bukavu Tribunal de Grande Instance (court of major jurisdiction) to request that H.K. and D.C. be prosecuted for torture and arbitrary arrest and detention² and he regularly followed up on the national procedures that had been initiated.³ He has on numerous occasions reported acts of torture and ill-treatment to various authorities, firstly, the authorities of the National Intelligence Agency; secondly, the authorities of Bukavu central prison; and thirdly, the courts, to which he has submitted two criminal complaints and several requests for release on bail.⁴ However, the author does not seem to have raised in these various complaints to the domestic authorities a related claim of a violation of article 23. Given the author's prolonged engagement with the domestic authorities, despite alleged acts of pressure or threats, it is difficult to accept that the author is justified in not having raised the claim concerning article 23 with them. Hence, this specific claim should have been declared inadmissible.

¹ William A. Schabas, *U.N. International Covenant on Civil and Political Rights: Nowak's CCPR Commentary*, 3rd rev. ed. (N.P. Engel, 2019), citing, among others: *Tharu et al. v. Nepal* (CCPR/C/114/D/2038/2011), para. 10.11; *El Hojouj Jum'a et al. v. Libya* (CCPR/C/111/D/1958/2010 and Corr.1), para. 6.8; *Faraoun et al. v. Algeria* (CCPR/C/109/D/1884/2009), para. 7.13; *A.H.G. and M.R. v. Canada* (CCPR/C/113/D/2091/2011), para. 10.5; *Serna et al. v. Colombia* (CCPR/C/114/D/2134/2012), para. 9.9; and *Dovadžija and Dovdzija v. Bosnia and Herzegovina* (CCPR/C/114/D/2143/2012), para. 11.9.

² See the Views to which the present opinion is annexed, para. 2.11.

³ *Ibid.*, para. 2.16.

⁴ *Ibid.*, para. 3.4.