

Patricio Ndong Bee v. Equatorial Guinea
Communication Nos. 1152/2003 and 1190/2003
U.N. Doc. CCPR/C/85/D/1152 & 1190/2003 (2005).

Human Rights Committee
Eighty-fifth session

17 October – 3 November 2005

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-fifth session -

Communications Nos. 1152/2003 and 1190/2003

Submitted by: Patricio Ndong Bee (on behalf of himself and a further four victims) and María Jesús Bikene Obiang (on behalf of her husband, Plácido Micó Abogo) (represented by counsel, Mr. Fernando-Micó Nsue Andema)

Alleged victims: Patricio Ndong Bee, Felipe Ondó Obiang Alogo, Guillermo Nguema Elá, Donato Ondó Ondó, Emilio Ndong Biyongo and Plácido Micó Abogo

State party: Equatorial Guinea

Date of communications: 20 August 2002 and 25 April 2003 (initial submissions)

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

Meeting on 31 October 2005,

Having concluded its consideration of communications Nos. 1152/2003 and 1190/2003, submitted on behalf of Patricio Ndong Bee, Felipe Ondó Obiang, Guillermo Nguema Elá,

Donato Ondó Ondó and Emilio Ndong Biyongo and on behalf of Plácido Micó Abogo, under the Optional Protocol to the International Covenant on Civil and Political Rights,

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

Adopts the following:

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

1.1 The two communications submitted refer to the same facts. The author of communication No. 1152/2003 (first communication) of 20 August 2002 is Patricio Ndong Bee, a citizen of Equatorial Guinea, currently a prisoner in Black Beach Prison, Malabo. He claims to be acting on behalf of himself and another four inmates of the same prison, Felipe Ondó Obiang, Guillermo Ngema Elá, Donato Ondó Ondó and Emilio Ndong Biyongo,(1) who are being held incommunicado. The author of communication No. 1190/2003 (second communication) of 25 April 2003 is María Jesús Bikene Obiang, a citizen of Equatorial Guinea. She is acting on behalf of her husband, Plácido Micó Abogo, who is currently imprisoned incommunicado in the aforementioned prison.(2)

1.2 The authors allege that they are victims of violations by Equatorial Guinea of articles 2, paragraph 3 (a) and (b), 7, 9, paragraphs 1 to 5, and 14, paragraph 3 (a), (b), (c) and (d), of the Covenant. The communications also raise questions relating to article 14, paragraphs 1 and 3 (g), of the Covenant. The Optional Protocol to the Covenant entered into force for Equatorial Guinea on 25 December 1987. The authors are represented by counsel, Fernando-Micó Nsue Andeme.

1.3 Under rule 94 of its rules of procedure, the Committee has decided to consider the two communications jointly.

Factual background

2.1 The five alleged victims of the first communication were supposedly linked to the Fuerza Demócrata Republicana (FDR), an unofficial political party in opposition to the Government, and were detained in Malabo, along with another 150 persons, between the end of February and March 2002. The alleged victims were held in Black Beach Prison, Malabo, without being notified of the charges against them until 20 May 2002, that is, two days before their trial, when the indictment was read out to them.

2.2 Plácido Micó Abogo, the alleged victim in the second communication, was the secretary-general of the Convergencia para la Democracia Social (CPDS), a legal opposition party. After being questioned on several occasions in April and May 2002, he was kept under house arrest until the date of the trial.

2.3 The trial of 144 opponents of the regime, including the alleged victims of both communications, was held in Malabo from 23 May to 6 June 2002. The authors claim that the five members of the court included two high-ranking military officers, and that the alleged victims were not allowed to prepare their defence or appoint defence lawyers; the lawyers who defended them during the trial were officially assigned by the Government through the person of the Prime Minister and had only a day to examine the charges. The authors also claim that the alleged victims were interrogated in Black Beach Prison, where the military prosecutor took note of their statements in the presence of the officers who had interrogated and allegedly tortured them, that some of the accused were sentenced without being given an opportunity to attend the trial, and that the proceedings had suffered undue delays.

2.4 The authors claim that the alleged victims, like the other detainees, were subjected to torture and ill-treatment during their detention and trial, and that the majority were unable to stand on their feet or hold a pen to sign their names during the oral proceedings as a result of the ill-treatment they had received. Of all the individuals tried, 65 were convicted, allegedly solely on the basis of their confessions under torture. They further maintain that after sentencing they continued to be subjected to torture, for example, by being left for five consecutive days without food or drink; this caused the death of one of those convicted. It is also reported that two more alleged victims in the first communication, Guillermo Nguema Elá and Donato Ondó Ondó, may become paralysed in the near future as a result of the torture they have suffered and the lack of medical care.

2.5 The author of the first communication claims to have filed a petition for annulment of proceedings and an application for judicial review of the sentence. The author of the second communication for her part claims to have filed a petition for annulment of the sentence. Both authors allege that, when they submitted their communications, these remedies had not been allowed and that this meant that there was no possibility of their being allowed since the three-month deadline for acceptance established in the procedural laws of Equatorial Guinea had expired. The author of the first communication has supplied a copy of a petition for annulment of proceedings filed with the Supreme Court on 17 June 2002, alleging acts of torture and irregularities in the proceedings.

The complaint

3.1 The authors claim a violation of article 7 of the Covenant, since the alleged victims were subjected to constant torture and ill-treatment both during their detention and trial and subsequently.

3.2 The authors claim that the alleged victims were arrested arbitrarily at the end of February 2002 without being informed of the reason for this until two days before the trial, which was held more than two months after the arrests, which they contend is a violation of article 9, paragraphs 1 to 5, of the Covenant.

3.3 The authors also consider that there was a violation of article 14, paragraph 3 (a), (b), (c) and (d), of the Covenant because the alleged victims were not granted the minimum guarantees during proceedings; they were not notified of the charges until two days before the trial, they were not allowed to prepare their defence or choose their counsel, the court was partially composed of military personnel, they were forced to sign their confessions under torture, their statements were taken in the prison where they were held and there were undue delays during the proceedings.

3.4 The authors claim a violation of article 2, paragraph 3 (a) and (b), of the Covenant, since the State party did not respect its commitment to guarantee the right of the prisoners to file an effective remedy against the torture, the illegal detention and the ill-treatment to which they were and still are subjected.

3.5 The allegations in paragraph 3.3 above raise issues concerning article 14, paragraph 3 (g), of the Covenant.

Failure of the State party to cooperate

4. On 8 January and 26 June 2003 respectively the State party was requested to submit observations on the admissibility and the merits of the authors' allegations within six months. Since on neither occasion was a reply received, reminders were sent to the State party on 20 September and 18 November 2004. The Committee notes that the observations have not been received. The Committee regrets the lack of cooperation on the part of the State party and recalls that article 4, paragraph 2, of the Optional Protocol requires the State party to consider in good faith all the accusations made against it and to submit all available information to the Committee in writing. In that the State party has not cooperated with the Committee on the matters brought to its attention, the authors' assertions must be given their due importance insofar as they appear justified.

Issues and proceedings before the Committee

Considerations as to admissibility

5.1 In accordance with rule 93 of its rules of procedure, before considering any claim contained in a communication, the Human Rights Committee must decide whether or not the communication is admissible under the Optional Protocol to the Covenant on Civil and Political Rights.

5.2 The Committee is of the view that the authors have justified their authority to act on behalf of the alleged victims in the incommunicado situation in which they are apparently being held. Consequently, the Committee concludes that the authors have locus standi, under article 1 of the Optional Protocol, to proceed with the communications.(3)

5.3 The Committee has ascertained that the same matter is not being examined under another procedure of international investigation or settlement, in compliance with the provisions of article 5, paragraph 2 (a), of the Optional Protocol.

5.4 With regard to the requirement that domestic remedies should be exhausted, the Committee reaffirms its established jurisprudence that it is only necessary to exhaust those remedies that have some prospect of success. The Committee takes note that the authors filed such remedies as the law permits against their conviction, but that these were not even allowed within the deadline established for the purpose under domestic procedural laws. In the absence of relevant information from the State party, the Committee considers that the authors have exhausted domestic resources and that there is nothing to prevent it, under article 5, paragraph 2 (b), of the Optional Protocol from considering the communications.

5.5 With regard to the authors' contention that the proceedings suffered undue delays, the Committee observes that proceedings were initiated on 23 May 2002 and that the verdict was handed down on 6 June 2002. The Committee considers that the authors have not sufficiently substantiated this part of the communications and therefore decides that it is inadmissible under article 2 of the Optional Protocol.

5.6 The Committee consequently declares the communication admissible with regard to the alleged violations of articles 7, 9 and 14, paragraph 3 (a), (b), (d) and (g), of the Covenant, and proceeds to consideration of the merits.

Consideration of the merits

6.1 The Committee takes note of the authors' claims that the alleged victims were subjected to treatment incompatible with article 7 of the Covenant. The authors have described various instances of ill-treatment to which they were apparently subjected, such as being deprived of food and drink for five consecutive days. In the absence of a reply from the State party challenging these allegations, the Committee considers that they should be given their due weight and finds that there has been a violation of article 7 of the Covenant.

6.2 The Committee notes that the authors claim that the alleged victims were held for a period of two months without being notified of the reasons and without being brought before a court. In the absence of a reply from the State party contradicting these allegations, the Committee finds that they should be given their due weight, and that the facts described disclose a violation of the authors' right to liberty and security of person and specifically the right not to be arbitrarily detained and imprisoned. Consequently, the Committee finds that article 9 of the Covenant has been violated.

6.3 The Committee takes note of the authors' complaint that the alleged victims were not notified of the grounds for the charges against them until two days before the trial, depriving them of sufficient time to prepare their defence and making it impossible for them to select their defence lawyers, that the court was partially composed of military personnel and that they were forcibly compelled to sign their confessions. In the absence of a reply from the State party contradicting these allegations, the Committee finds that the facts described disclose a violation of article 14, paragraphs 1 and 3 (a), (b), (d) and (g), in conjunction with article 2, paragraph 3 (a) and (b) of the Covenant.

7. Accordingly, the Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts before it disclose a violation of articles 7, 9, 14, paragraph 3 (a), (b), (d) and (g), and article 2, paragraph 3 (a) and (b), of the Covenant.

8. In accordance with article 2, paragraph 3, of the Covenant, the State party is required to provide the victims with an effective remedy that entails their immediate release and includes adequate compensation, and also to make the same solution available to other detainees and convicted prisoners in the same situation as the authors and to take steps to ensure that the violations cease and that similar violations do not occur in future.

9. Bearing in mind that, by becoming a State party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant or not 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 if a violation has been established, the Committee wishes to receive from the State party, within 90 days, information about the measures taken to give effect to the Committee's Views.

[Adopted in English, French and Spanish, the Spanish text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]

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

The text of an individual opinion by Committee member Mr. Nisuke Ando is appended to the present document.

Appendix

Individual concurring opinion by Committee member Mr. Nisuke Ando

I do not oppose the adoption by the Committee of the Views in this case. However, I would like to express the following concern of mine:

The case concerns two communications coming from different authors. The second author is acting on behalf of her husband who is currently imprisoned incommunicado in Black Beach Prison, Malabo. Since the Committee has in the past admitted an author acting on behalf of his/her close family member, I do not have any problem in this regard. However, the first author is acting on behalf of not only himself but also four other inmates in the same prison.

These five alleged victims claim that they are victims of violations of their rights under article 7 of the Covenant, and the Committee recognizes it by referring to "various instances of ill-treatment ... such as being deprived of food and drink for five consecutive days" (6.1). In my opinion, the types and severity of such ill-treatment may not be the same with all of the five and instances of ill-treatment need to be separately identified with each one to constitute a violation of their rights under article 7.

In this connection, the Committee is of the view that the first and second authors "have justified their authority to act on behalf of the alleged (other) victims in the incommunicado situation in which they are apparently being held" and that all "the authors have locus standi, under ... the Optional Protocol" (5.2). I could agree to the Views only on the assumption that

the first author and his four inmates were sharing in common the information about concrete cases of their ill-treatment.

(Signed): Nisuke Ando

Notes

1. On 15 October 2002, relatives of Felipe Ondó Obiang and Guillermo Ngema Elá confirmed the validity of the complaint submitted to the Committee on their behalf.

2. Newspaper reports obtained subsequently by the Committee reveal that Plácido Micó Abogo, the alleged victim in the second communication, was released on 2 August 2003.

3. See, inter alia, communications 5/1977, *Massera v. Uruguay*, decision of 15 August 1979, para. 5 (a); 8/1977, *Perdomo v. Uruguay*, decision of 3 April 1980, para. 6 (a); 161/1983, *Herrera Rubio v. Colombia*, decision of 2 November 1987, para. 5; 194/1985, *Miango v. Zaire*, decision of 27 October 1987, para. 3; 1138/2002, *Arenz v. Germany*, decision of 26 September 2002, para. 8.4. With regard to persons held in pretrial detention, see 1090/2002, *Rameka v. New Zealand*, decision of 15 December 2003, para. 6.2.