

Dorothy Kakem Titiahonjo v. Cameroon

Communication 1186/2003

Decided at the 91st session, 26 October 2007
CCPR/C/91/D/1186/2003

1.1. The author of the communication is Dorothy Kakem Titiahonjo, wife of the alleged victim, Mathew Titiahonjo, a citizen of Cameroon born in 1953. She claims that her husband was the victim of violations by Cameroon of his rights under article 6(1), article 7; article 9(1), (2), (3) and (4); article 19(1) and (2); article 22(1); and article 27 of the International Covenant on Civil and Political Rights. While the author alleges a violation of article 3(a) and (b), it transpires that she means article 2(3)(a) and (b), of the Covenant, read in conjunction with the above articles. She also claims to be a victim herself of violation by Cameroon of article 7 of the Covenant. The Optional Protocol entered into force for Cameroon on 27 September 1984.

1.2. The communication was sent to the state party for comments on 2 June 2003. Reminders were sent on 30 October 2006 and 31 May 2007. On 11 July 2007, the state party indicated that a response would be forthcoming without delay. At the time of the adoptions of the Views, the Committee had not received any response from the state party.

The facts as submitted by the author

2.1. On 19 May 2000, at 5:30 a.m., while the author and Mr Titiahonjo were sleeping, a group of police officers (gendarmes) broke into their house and began beating Mr Titiahonjo with an iron rod.

2.2. The author herself was at the time in an advanced state of pregnancy; she was also mistreated by the officers. She was dragged out of bed and pushed into the gutter and also slapped. The police officers stated that they were looking for a gun. While they were in the house they took 300 000 Frs that the family had saved in view of the forthcoming childbirth. No gun was found, but the officers promised to return.

2.3. On 21 May 2000, the same police officers, including one Captain Togolo, came in a car which stopped in front of the author's house. They took Mr Titiahonjo to the Gendarmerie cell. There, he was beaten and forced to sleep on the bare floor naked. He was beaten on the soles of his feet and on his head. As a result of his swollen feet, he could not stand up. The Captain refused to give him any food and the author was not allowed to bring him any. Mr Titiahonjo asked why he was arrested but he received no answer.

2.4. On several occasions in June 2000 she went to the police station to give her husband some food but she was 'chased' away. On 24 June 2000 the author went to the police station and saw Captain Togolo beat her husband but she was not allowed to visit him. The gun that the officers were looking for was found in the street on or about 25 June 2000. Mr Titiahonjo, however, continued to be held incommunicado and to be ill treated. As an answer to the author's question why Mr Titiahonjo was still being beaten after they had found the gun, Captain Togolo replied that it was because the victim belonged to the Southern Cameroon National Council ('SCNC'), which he qualified as a 'secessionist organization'.

2.5. On an unspecified date, after a complaint filed by the author, a prosecutor ordered the release of Mr Titiahonjo, but Captain Togolo refused to comply. Following this incident the author was taken to hospital where she prematurely gave birth to twins. Mr Titiahonjo was transferred to Bafoussam military prison. In Bafoussam, physical ill-treatment stopped but Mr Titiahonjo continued to suffer moral and psychological torture. Captain Togolo told him that he would never see the twins for he was going to be killed. He also had to provide for himself and live on his own supplies.

2.6. In Bafoussam prison, meningitis, cholera and cerebral malaria claimed the lives of 15 inmates between 10 September and 15 September 2000. The cells were unventilated and were infested with bedbugs and mosquitoes.

2.7. In the morning of 14 September 2000, Mr Titiahonjo complained of a stomach ache and asked for medication. However, the prison nurse could not enter his cell as no guard on duty had a key to the cell. Mr Titiahonjo continued to call for help throughout the day, but when his cell was finally opened at 9 pm the same day, he was already dead. His remains were taken to the mortuary and he was buried in his home town, but no post-mortem was allowed by the police officers who supervised his detention. The family requested an autopsy of the body but instead the coffin was sealed and the request was denied; no one was permitted to see the body.

The complaint

3.1. The author alleges a violation of article 2(3)(a) and (b) of the Covenant, read together with articles 6 and 7 on the grounds that Cameroon does not provide any remedy for acts such as torture and subsequent death, as in the case of her husband.

3.2. She alleges a violation of article 6 of the Covenant, as her husband was arbitrarily deprived of his life while in custody.

3.3. She alleges a violation of article 7 of the Covenant on account of the treatment she and her husband were subjected to between 19 May and 14 September 2000, and during her husband's detention in the Gendarmerie cell and at Bafoussam military prison.

3.4. The author alleges a violation of article 9(1), (2), (3), and (4) as her husband was never served with an arrest warrant. Charges were never brought against him, and he was never tried. In addition, Captain Togolo disregarded the release order issued by the prosecutor.

3.5. The author alleges a violation of article 19 in that Captain Togolo maintained that Mr Titiahonjo belonged to the SCNC, an allegedly 'secessionist organization'. There is no law that prohibits membership in the SCNC and for this same reason the author also alleges violations of articles 22 and 27, as the SCNC is a linguistic minority in the state party and suffers persecution on that account.

3.6. The author claims that because her husband's detention involved the executive and the military, she could not sue or take action domestically, as required under article 5(2)(b) of

the Optional Protocol. To file a civil suit, she would have had to pay costs in addition to the five percent deposit of the award claimed in a civil suit.

Absence of state party co-operation

4. On 2 June 2003, 30 October 2006 and 31 May 2007, the state party was requested to submit information on the admissibility and merits of the communication. The Committee notes that this information has not been received, in spite of a note from the state party dated 11 July 2007 to the effect that such information would be submitted forthwith. It regrets the state party's failure to provide any information with regard to the admissibility or substance of the author's claims. It recalls that under the Optional Protocol, the state party concerned is required to submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that it may have taken. In the absence of a reply from the state party, due weight must be given to the author's allegations, to the extent that these have been properly substantiated.

Issues and proceedings before the Committee

Consideration of admissibility

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

5.2. As it is obliged to do pursuant to article 5(2)(a) of the Optional Protocol, the Committee ascertained that the same matter is not being examined under another procedure of international investigation or settlement.

5.3. With respect to the exhaustion of domestic remedies, the Committee recalls that the author filed a complaint on behalf of her husband and that the state prosecutor's order to release her husband was never implemented. In these circumstances, it could not be held against the author if she did not petition the courts again for the release of her husband or for the mistreatment she suffered from herself. In the absence of any pertinent information from the state party, the Committee concludes that it is not precluded from considering the communication under article 5(2)(b), of the Optional Protocol.

5.4. The author has claimed violations of articles 19, 22 and 27, on account of her husband's membership in the SCNC. The Committee considers that the author has not sufficiently substantiated, for purposes of admissibility, how her husband's rights under these provisions were violated by virtue of his detention. The Committee therefore declares them inadmissible under article 2 of the Optional Protocol.

5.5. The Committee finds the author's remaining claims of absence of effective remedies under article 2(3)(a) and (b); of arbitrary deprivation of her husband's life under article 6; of violations of article 9, paragraphs 1 to 4 in her husband's case; and of violations of article 7 in the case of her husband and her own case, admissible.

Consideration of the merits

6.1. The Human Rights Committee has considered the present communication in the light of all the written information made available to it by the parties, as provided in article 5(1) of the Optional Protocol.

6.2. The author contends that her husband's death in custody amounts to a violation of article 6 which requires a state party to protect the right to life of all persons within its territory and subject to its jurisdiction. In the present case, the author claims that the state party failed to protect the right to life of her husband by a) failing to allow a nurse access to his cell when he was clearly severely ill; and b) condoning life threatening conditions of detention at Bafoussam prison, especially the apparently unchecked propagation of life-threatening diseases. The state party has not refuted these allegations. In these circumstances, the Committee finds that the state party did not fulfil its obligation under article 6(1) of the Covenant, to protect Mr Titiahonjo's right to life.

6.3. The author claims that her husband's rights were violated under article 7 of the Covenant, because of a) the general conditions of detention; b) the beatings he was subjected to; c) the deprivation of both food and clothing in detention at the Gendarmerie cell and at Bafoussam prison; and d) the death threats he received and the incommunicado detention he suffered in both the Gendarmerie cell and at Bafoussam prison. The state party has not contested these allegations, and the author has provided a detailed account of the treatment and beatings her husband was subjected to. In the circumstances, the Committee concludes that Mr Titiahonjo was subjected to cruel, inhuman and degrading treatment, in violation of article 7 of the Covenant.

6.4. The author also claims violation of article 7 on her own behalf. She was in an advanced state of pregnancy and she alleges that she suffered from the treatment she and her husband were subjected to. She was mistreated by the police and pushed into the gutter and slapped when they arrested Mr Titiahonjo on 19 May 2000. She was not allowed to visit her husband and was 'chased' away when she visited the police station to give him food. The Committee finds that in the absence of any challenge to her claim by the state party, due weight must be given to the author's allegation. The Committee furthermore understands the anguish caused to the author by the uncertainty concerning her husband's fate and continued imprisonment. The Committee concludes that under the circumstances she too is a victim of a violation of article 7 of the Covenant.

6.5. With regard to the claim under article 9(1), it transpires from the file that no warrant was ever issued for Mr Titiahonjo's arrest or detention. On 25 June 2000, Captain Togolo informed the author that her husband was kept in prison purely because he was a member of the SCNC. There is no indication that he was charged with a criminal offence at any time. In the absence of any relevant state party information, the Committee considers that Mr Titiahonjo's deprivation of liberty was arbitrary and in violation of article 9(1).

6.6. The author claims violations of article 9(2), (3) and (4). Nothing suggests that Mr Titiahonjo was ever informed of the reasons for his arrest, that he was ever brought before a judge or judicial officer, or that he ever was afforded the opportunity to challenge the lawfulness of his arrest or detention. Again, in the absence of relevant state party information on these claims, the Committee considers that Mr Titiahonjo's detention between 21 May and 14 September 2000 amounted to a violation of article 9(2), (3) and (4) of the Covenant.

7. The Human Rights Committee, acting under article 5(4) of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the opinion that the facts before it reveal violations by Cameroon of article 6(1), article 7, article 9(1), (2), (3) and (4) of the Covenant and articles 6 and 7 read together with article 2(3) of the Covenant on account of Mr Titiahonjo and violation of article 7 in regard to the author herself.

8. In accordance with article 2(3)(a) of the Covenant, the state party is under an obligation to provide the author with an effective remedy, including compensation and institution of criminal proceedings against all those responsible for the treatment of Mr Titiahonjo upon arrest and in detention and his subsequent death, as well as against those responsible for the violation of article 7 suffered by the author herself. The state party is under an obligation to prevent similar violations in the 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 in case a violation has been established, the Committee wishes to receive from the state party, within 180 days, information about the measures taken to give effect to the Committee's views.