



## 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. 2465/2014\*\*\* \*\*

<i>Communication submitted by:</i>	Eugène Diomi Ndongala Nzo Mambu (represented by counsel, Georges Kapiamba)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Democratic Republic of the Congo
<i>Date of communication:</i>	22 September 2014 (initial submission)
<i>Document references:</i>	Special Rapporteur's rule 97 decision, transmitted to the State party on 8 October 2014 (not issued in document form)
<i>Date of adoption of Views:</i>	3 November 2016
<i>Subject matter:</i>	Legal proceedings against a member of an opposition party
<i>Procedural issues:</i>	<i>Ne bis in idem</i> ; failure to exhaust domestic remedies
<i>Substantive issues:</i>	Incommunicado detention; deprivation of health care in prison; fair trial guarantees
<i>Articles of the Covenant:</i>	2 (3), in conjunction with 9; 9 (1); 10 (1); 14 (1); and 14 (3) (b)
<i>Articles of the Optional Protocol:</i>	5 (2) (a) and (b)

\* Reissued for technical reasons (10 May 2017).

\*\* Adopted by the Committee at its 118th session (17 October-4 November 2016).

\*\*\* The following members of the Committee participated in the examination of the communication: Mr. Yadh Ben Achour, Mr. Lazhari Bouzid, Ms. Sarah Cleveland, Mr. Olivier de Frouville, Mr. Yuji Iwasawa, Ms. Ivana Jelić, Mr. Duncan Laki Muhumuza, Ms. Photini Pazartzis, Mr. Mauro Politi, Sir Nigel Rodley, Mr. Fabián Omar Salvioli, Mr. Dheerujlall Seetulsingh, Mr. Yuval Shany, Mr. Konstantine Vardzelashvili and Ms. Margo Waterval.



1.1 The author of the communication is Eugène Diomi Ndongala Nzo Mambu, a national of the Democratic Republic of the Congo born on 24 December 1962. He claims that the State party has violated his rights under articles 9, 10 and 14 of the Covenant. The Democratic Republic of the Congo acceded to the Optional Protocol to the Covenant on 1 November 1976.

1.2 On 8 October 2014, the Committee, acting through its Special Rapporteur on new communications and interim measures, requested that the State party take the author's state of health into consideration and adopt all necessary measures to provide him with proper medical care in order to prevent irreparable harm to his health.

1.3 On 23 February 2015, the Committee, acting through its Special Rapporteur on new communications and interim measures, decided to examine the admissibility of the communication together with the merits.

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

2.1 The author is a corporate director and president of the opposition political party *Démocratie Chrétienne*. In the November 2011 legislative elections, he was elected as a deputy to the National Assembly. Having emerged as the leader among other opposition deputies, he challenged the legitimacy of President Kabila's election and refused to assume his mandate until Étienne Tshisekedi was recognized as the winner of the November 2011 presidential election.

2.2 On 26 June 2012, the police occupied his party's headquarters in Gombe, Kinshasa. This occupation was illegal because it took place without a requisition for information signed by the Attorney General. The police entered all the offices, and several of the author's belongings, along with some documents and other items of property that had been stored there, were removed. It was not until 26 July 2012 that the prosecutor of the regional public prosecution service of Kinshasa/Gombe issued a requisition to cordon off the author's movable and immovable property. On 2 August 2012, the author's wife wrote to the Attorney General to request the withdrawal of the requisition and the departure of the police officers, but the occupation of the premises lasted about two months.

2.3 The author alleges that he was abducted on 27 June 2012 by members of security forces while he was on his way to a signing ceremony for the charter of an opposition political group known as the "Majorité Présidentielle Populaire",<sup>1</sup> which was scheduled to take place at the Cathedral of Our Lady of the Congo in Kinshasa. The author alleges that he was held incommunicado for a period of 3 months and 13 days, during which he was interrogated about his relationship with Mr. Tshisekedi and about the opposition's strategy for taking power, given its challenge of the 2011 elections.

2.4 On 28 June 2012, the Minister for the Media and official government spokesperson announced publicly that a high-profile figure had been arrested on charges of rape. On that same day, the Attorney General reported to the media that the author had become a fugitive following the issuance of an arrest warrant against him for the rape of two minor girls, which was alleged to have occurred in June 2012. On 16 August 2012,<sup>2</sup> his wife lodged a complaint against persons unknown for kidnapping and incommunicado detention before the Attorney General of the Republic in Kinshasa/Gombe. The complaint was never investigated.

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<sup>1</sup> Political platform created by the author in order to proclaim Mr. Tshisekedi's victory in the presidential election.

<sup>2</sup> A copy is contained in the case file. The complaint was also submitted, for information purposes, to the Minister of Justice and Human Rights.

2.5 The author claims that he was released on the night of 10 October 2012 and was left on the side of the road on Avenue de Matadi in Kinshasa. On 15 October 2012, he lodged a complaint for kidnapping, incommunicado detention and ill-treatment before the Judge Advocate of the Armed Forces; however, the complaint, which was registered as No. 5576/017, was never investigated.

2.6 On 13 October 2012, three members of his political party were also abducted in Gombe, Kinshasa by members of security forces and were held incommunicado for one month on the premises of the National Intelligence Agency.

2.7 On 8 January 2013, the author was given notice of a decision to withdraw his parliamentary immunity in order to allow the public prosecutor to initiate proceedings against him in connection with accusations that he had committed rape.

2.8 On 18 January 2013, the author's press secretary and three other supporters of the Majorité Présidentielle Populaire platform were also abducted from their respective homes during the night and driven by members of security forces to an unknown location before reappearing in public at the time of their presentation to the press by the Minister of the Interior as members of a group that the author was purported to have formed in order to overthrow the current regime.

2.9 On the evening of 8 April 2013, the author was arrested by the police on orders from Colonel K. and held in a secret location overnight. The next day he was taken to the Attorney General's Office and informed that an arrest warrant had been in effect against him since 18 January 2013 for "rape and sustaining an insurrectionist movement known as 'Imperium'". On 17 April 2013, the Attorney General brought the author's case before the Supreme Court.

2.10 While the author was in pretrial detention, the Court issued an order for his placement under house arrest on 15 April 2013. The order was renewed three times, but the prosecutor failed to execute it, and the author remained in custody at the Makala central prison in Kinshasa. By letter of 29 August 2013, the author requested the president of the Supreme Court to intervene in obtaining his transfer to house arrest, but to no avail.

2.11 On 15 June 2013, the author's parliamentary mandate was revoked by the National Assembly on the grounds of his unexcused and unauthorized absences.

2.12 The author claims to have been subjected to ill-treatment during his detention, following which he underwent medical tests at the prison hospital on 18 July 2013. A recommendation was made to transfer him to a better-equipped facility for treatment. By letters of 19 July 2013 to the prison director and 18 September 2013 to the public prosecutor, the author requested to be transferred to a medical facility in order to obtain proper treatment. In addition, on 16 September 2013, the Court of Cassation ordered the author's trial to be postponed by 45 days in order to allow him to receive the appropriate treatment for his health condition. By letter dated 29 October 2013, the author filed a request for provisional release, in which he stated that he continued to be held in detention even though he was entitled to placement under house arrest and that no steps had been taken by the prison administration to allow him access to medical care.

2.13 The author notes that he suffered a stroke on 27 December 2013 and was admitted urgently to a clinic in Kinshasa. Nevertheless, he was forcibly returned to prison by uniformed men who pulled him out of his bed and took him back to his cell before he could undergo the prescribed tests or obtain the necessary treatment.

2.14 In its judgment of 26 March 2014, the Supreme Court, sitting as a court of cassation of sole instance, sentenced the author to a term of imprisonment of 10 years for the violent rape of two minor girls, attempted rape and the exposure of children to pornography. According to the author, the judgment was handed down in violation of Acts No. 13/010 of

19 February 2013 on Court of Cassation Procedure and No. 13/011-B of 11 April 2013 on the Organization, Functioning and Jurisdiction of the Ordinary Courts, and in violation of his right to a defence.

2.15 The author challenged his conviction by letter of 2 September 2014, which was addressed to the first president of the Court, listing as complaints his lack of any means of defence during the trial and the chamber's irregular composition, lack of jurisdiction and bias with regard to his case.<sup>3</sup>

### **The complaint**

3.1 The author alleges several breaches of the Covenant by the State party in his regard, vis-à-vis his rights under articles 9, 10 and 14.

3.2 The author claims that his abduction on 27 June 2012 and his incommunicado detention by security agents until 10 October 2012 constitute a violation of article 9 of the Covenant. He alleges that he was abducted because of his political affiliation with Mr. Tshisekedi. The complaints that were lodged with the authorities have never been investigated, and the Congolese authorities have never responded to the appeals issued by various organizations.

3.3 The author also claims that the State party violated article 10 of the Covenant by depriving him of adequate medical care during his detention. In this regard, he provides the Committee with a copy of a report from the Makala central prison hospital, dated 17 July 2013, which notes a pain in his right shoulder and the loss of function of his arm — conditions for which he had already been treated in the past. A prescription was issued for hospitalization, consultation with an internist and a scan. Despite his lawyers' petitions to the judicial authorities, no action was taken in response to this request for care. He also provides the Committee with a copy of a request from the Ngaliema Clinic, dated 28 December 2013, for the performance of a brain scan following an episode of sudden collapse. No action was taken in response to this request either. The author further provides the Committee with a copy of a report prepared by the Sino-Congolese Friendship Hospital on 29 October 2012 that notes the existence of a strangulated inguinal hernia on his right side and a contusion on his left elbow, along with the treatment administered, as well as a certificate from the Baraka Clinic, dated 4 December 2012, indicating that his condition requires toxicological exploration and specialized gastroduodenal tests that should be carried out in a country with the appropriate technical means to perform them.

3.4 Concerning his trial and conviction, the author claims to be the victim of violations of his rights under article 14 (1) of the Covenant, in view of the fact that he was not tried by an independent and impartial court of law. As a member of the National Assembly, he was judged at sole instance by the Court of Cassation. Yet, the composition of chambers was not in conformity with the Organic Act No. 13/010 of 19 February 2013 on Court of Cassation Procedure<sup>4</sup> or with Organic Act No. 13/011-B of 11 April 2013 on the Organization, Functioning and Jurisdiction of the Ordinary Courts. In particular, article 34 of the latter Act stipulates that the Court of Cassation, sitting in sole instance in joint

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<sup>3</sup> Several non-governmental organizations such as Amnesty International, the World Organization against Torture, Human Rights Watch and the Inter-Parliamentary Union denounced the author's situation, but these appeals were ignored. On 11 July 2013, the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo also reportedly denounced the author's imprisonment on Radio France Internationale.

<sup>4</sup> According to article 89 of Organic Act No. 13/010 (transitional provision) "cases that fall within the jurisdiction of the Court of Cassation and that are pending before the Supreme Court ... are transferred, as they stand, to the Court of Cassation, as from the time the latter is constituted". A similar transitional provision is contained in article 153 of Organic Act No. 13/011-B.

chambers, must be composed of at least seven judges, namely, the presidents of the four chambers and the three most senior judges of those chambers. Yet, there were five, instead of seven, judges sitting in his trial.<sup>5</sup>

3.5 The author also claims that he had no opportunity to put forward a defence. He was prevented from submitting his arguments with regard to the charges brought against him, given that he was in very bad health and physically incapable of addressing the Court. At the hearing of 12 March 2014, at which the case was taken under advisement, his lawyers left the bar in protest against the joinder to the merits of the public policy objections that they had raised, including the one challenging the paternity of the alleged father of the minor girls who were purported to have been the victims of rape.<sup>6</sup> The author's lawyers had planned to demonstrate that the man who had introduced himself as the girls' father and who had reported the rapes was not their father, that the girls were not minors and that all three had been paid by Colonel K. to bring accusations against the author. During his lawyers' absence, the author was present in the courtroom but was at some distance from the bar following a choking fit that had overcome him when he had tried to address the Court. In these circumstances, he had been unable to argue his case, and the judge had denied him a short suspension in order to have his lawyers return.<sup>7</sup> The next day his lawyers addressed the Court in order to request the reopening of the arguments and pleadings, so as to demonstrate the lack of incriminating evidence against the author and produce evidence of his innocence, but this request was denied.<sup>8</sup>

3.6 The decisions reached in all of the proceedings were politically motivated and aimed at the elimination of a political adversary by all possible means. The revocation of the author's mandate as deputy without recognition of his right to defend himself, the police occupation of his party's headquarters and his conviction following a summary, harsh and political trial were all part of the regime's strategy to crush him as a troublesome political opponent. His political persecution also extended to the members of his family. For example, on 1 January 2013, his 19-year-old daughter was apprehended at the Ndjili airport and her documents were confiscated without any valid reason, following which she was allowed to board the plane. On 11 November 2013, his 18-year-old son, who was returning to Kinshasa, was detained at the airport for an hour without being given any explanation. On 16 and 17 July 2014, his wife was shadowed by security agents. One of the author's sisters was abducted by police and released the following day without being notified of any charges against her.

<sup>5</sup> According to the judgment, this question was raised by the author's lawyers during the trial as an interlocutory incident and was declared to be unfounded by the Court, without any reasons given (p. 15).

<sup>6</sup> The author cites in this connection article 640 of the Family Code, which provides that: "Any court before which a challenge to a person's filiation is brought as secondary proceedings shall defer its decision until the competent civil court has settled the issue of filiation by means of a judgment that has the force of 'res judicata'." The Court nevertheless overruled the objection on the grounds that the offences of which the author was accused did not give rise to questions concerning a person's filiation as one of their constituent elements.

<sup>7</sup> The judgment of 26 March 2014 notes the following in relation to the issue raised by the author during the hearing in which the filiation of the two minor girls was challenged: "While the prosecution was presenting its submissions, the defendant had protested vehemently before collapsing onto the floor but then got up in order to separate himself, while his lawyers were withdrawing from the bar. After the prosecutor finished speaking, the judge, noticing that no one on the side of the defence was requesting to speak, closed the arguments and pleadings and took the matter under advisement."

<sup>8</sup> According to the judgment, the Court rejected the request on the grounds that it was a delaying tactic, "noting that, since the beginning of the examination of the case, the defendant has continuously — by means of various tactics that obstruct the normal flow of the hearings and by defences raised in order to gain time — delayed the conclusion of the trial, in spite of numerous reprimands".

3.7 The author further contends that he has exhausted all domestic remedies, given that the Court of Cassation judged and convicted him at sole instance. He wrote to the first president of the Court to complain of the unlawfulness of his conviction and to request his release, but to no avail.

3.8 The author urges the Committee to request that the State party unconditionally reverse the judgment handed down against him and release him from prison; provide him with adequate reparation for the harm he suffered as a result of his abduction, incommunicado detention and conviction; publicly acknowledge the violations he suffered and issue a formal apology for them; adopt legislative measures to effectively punish and prevent violations of the independence of the judiciary by other branches of government, notably the executive; effectively punish members of the judiciary who deliberately violate the right to a lawfully established court; and guarantee the non-repetition of such violations in future.

#### **State party's observations on admissibility**

4.1 On 9 December 2014 and 26 May 2015, the State party submitted its observations on admissibility.

4.2 The State party invokes the rule according to which the matter before the Committee cannot be the same as a matter that is being examined under another procedure of international investigation or settlement. It notes in this connection that, in 2013, the author submitted a complaint to the Inter-Parliamentary Union (IPU) against the State party for arbitrary arrest, unlawful detention, ill-treatment, spurious prosecutions and violation of the right to a fair trial. As part of its investigations, IPU raised the matter with several authorities of the Democratic Republic of the Congo in order to obtain their comments on the complaint and sent fact-finding missions to the country. On 20 March 2014, the IPU Governing Council adopted an initial resolution concerning the complaint in which it invited the Committee on the Human Rights of Parliamentarians to keep the case under review and to report back to it. The Governing Council considered the case again on 16 October 2014 and recommended once more to its Committee on the Human Rights of Parliamentarians to keep the case under review and to report back to it in due course. On the basis of the foregoing, the State party considers that the communication submitted to the Human Rights Committee by the author is inadmissible, since the acts constituting the basis for the communication are being examined by another international procedure. The Inter-Parliamentary Union constitutes an international procedure whose efforts are directed towards, among other things, defending and promoting human rights; to this end, it works in close collaboration with the United Nations, whose objectives it shares and whose efforts it supports. This means that the Inter-Parliamentary Union is in fact a procedure of international investigation and settlement.

4.3 As to the exhaustion of domestic remedies, the State party submits that, on 22 September 2014, the date of the author's initial submission to the Committee, all domestic remedies had not been exhausted. It claims that, although the author had, in fact, lodged a constitutional challenge before the Supreme Court of the Democratic Republic of the Congo on 11 November 2012 against both the Attorney General's submissions and the special commission on withdrawal of parliamentary immunity, as at the date of the State party's submission of its observations, these proceedings were still pending. Therefore, the communication is also inadmissible on this ground.

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

5.1 The author submitted his comments on the State party's observations on 20 December 2014 and on 12 October 2015.

5.2 With reference to the State party's argument concerning the examination of the matter by another international procedure, the author points out, first of all, that the IPU Committee on the Human Rights of Parliamentarians should not be considered to be a procedure of international investigation or settlement but rather an interparliamentary body whose mission is simply to promote through dialogue the settlement of cases involving the violation of parliamentarians' human rights. The decisions of the IPU Committee and Governing Council are merely advisory in nature, and their implementation is governed primarily by the principle of parliamentary solidarity. The fact of a case being brought to the attention of the Inter-Parliamentary Union has never been considered to be an obstacle to its admissibility by the Human Rights Committee or by other mechanisms such as the African Commission on Human and Peoples' Rights, the Inter-American Commission on Human Rights or the Inter-American Court of Human Rights.

5.3 The author also rejects the State party's observations regarding the exhaustion of domestic remedies. The petition he lodged before the Supreme Court challenged the constitutionality of the Attorney General's submissions, which were addressed to the National Assembly with the aim of obtaining the withdrawal of the author's parliamentary immunity. The petition also challenged the manner in which the special commission on withdrawal of parliamentary immunity had been constituted; it was intended to prevent the withdrawal of his parliamentary immunity and his indictment by the Attorney General before the Court of Cassation. However, those unconstitutionality proceedings were rendered moot by the fact that the Supreme Court never advanced the scheduling of the proceedings and by the fact that the author's immunity was effectively withdrawn prior to his criminal trial and conviction. They therefore did not constitute a remedy challenging the decision that found the author guilty, the legality of which is being contested before the Committee. The author therefore requests the Committee to reject this argument as irrelevant.

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

6.1 On 26 May 2015, the State party submitted its observations on the merits.

6.2 Regarding the acts that formed the basis of the author's prosecution and conviction, the State party is of the view that the author is seeking to sow confusion in the minds of Committee members by repeatedly referring to his status as a leader of opposition movements. Yet, the political party that the author represents is very much in the minority, and as a result, does not attract the attention of the State authorities, at least not as an opposition party that would create undue disturbance. Many protesters in the Democratic Republic of the Congo strongly criticize the existing regime, and yet they are not harassed by the authorities for doing so.

6.3 The State maintains that the facts adduced by the author to the Committee are false. Important details concerning the abduction that he alleges to have taken place are missing, such as indications of the number of agents who allegedly participated in it, the means of transport used, the route taken, the place and conditions of detention, the identity of the persons who purportedly interrogated him, the reason for his release on 12 October 2012, etc. Upon realizing the seriousness of the acts of rape that he was accused of having committed on 20 and 26 June 2012, the author chose to go into hiding. The author came out of hiding on 12 October 2012 on the eve of the Summit of la Francophonie, given his belief that the arrival of several foreign representatives at the Summit could help advance his cause. The State party adds that the author has not proved his political affiliation with Mr. Tshisekedi. Given that he has not provided additional information on the circumstances of his abduction, the author fails to sufficiently substantiate his claim. Accordingly, there has been no violation of article 9 of the Covenant.

6.4 The author's claim that he did not have access to adequate medical care during his detention is contradicted by the very medical records that he himself provides, which show the transfers that he received for medical reasons to the best hospitals in Kinshasa. In view of the fact that the author does not attribute his illness to the Democratic Republic of the Congo and that it has been established that he was able to obtain treatment, there has been no violation of article 10 of the Covenant.

6.5 Just as with the alleged violation of article 9 of the Covenant, the author fails to sufficiently substantiate his claim that there has been a violation of article 14. The State party considers that the author advances a confusing mixture of arguments that relate to judicial failures, the revision of the method used to appoint judges to the Supreme Court and the instances in which members of his family were apprehended.

6.6 Lastly, the State party considers that the pieces of evidence submitted by the author are inconclusive and that some are devoid of objectivity. With regard to the judicial proceedings, the State party underscores that the outcome of the present case will either be instructive for potential rapists or will deal a fatal blow to the State's tireless efforts to counter violence against women. The State intends to establish a policy of zero tolerance in this area.

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

7.1 On 12 October 2015, the author submitted his comments on the State party's observations. At the outset, he stresses that the Democratic Republic of the Congo has never implemented the interim measures requested by the Human Rights Committee on 8 October 2014.

7.2 The author reiterates the facts as set out in his initial submission and reaffirms that the alleged rapes of the minor girls were fabricated in an attempt to crush him politically. The State party has done nothing more than reject the facts presented and has not produced a single element that carries any evidential weight.

7.3 With regard to his abduction and his incommunicado detention by State security agents from 27 June to 10 October 2012, the author stresses that the complaints lodged by his wife before the competent judicial authorities were never investigated, in violation of article 9 of the Covenant. He also points out that the State party has violated article 10 (1) of the Covenant by denying him access to the medical testing and treatment required by his health condition.

7.4 Regarding article 14 of the Covenant, the author adds that the date of the entry into force of Organic Act No. 13/010 of 19 February 2013 on Court of Cassation Procedure was 20 March 2013. This Act was strengthened by the Act of 11 April 2013, which contained a new code on the organization and jurisdiction of the courts. According to article 34 of the latter Act, a chamber of at least seven judges should have tried the author, in view of his status as a member of the National Assembly. The five-judge chamber that tried him pursuant to the Supreme Court Procedural Code of 31 March 1982 was therefore unlawful under the new provisions. The author therefore argues that he did not enjoy the right to be tried by a competent tribunal — a right set forth under article 14 of the Covenant.

7.5 The author also notes the comparative difference between the treatment of his case and that of another member of the National Assembly, namely Jean Bernard Ewanga, who had been tried by the Supreme Court the same year that he was, but whose case had reportedly been adjudicated by a chamber of seven judges, as required under article 34 of the Act of 11 April 2013, even though the requirement that it be composed of the four chamber presidents and three most senior judges had not been enforced.



7.6 The author reiterates that he never had the opportunity to prepare his defence. Despite the fact that he was very ill and incapable of addressing the Court, the judge denied him a short suspension to prepare his arguments and to have his lawyers return to the 12 March 2014 hearing. The request to reopen the arguments and pleadings at that hearing was also denied.

7.7 On 12 May 2016, the author informed the Committee that he had had to be hospitalized because of serious heart problems.<sup>9</sup>

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

#### *Consideration of admissibility*

8.1 Before considering any claim contained in a communication, the Human Rights Committee must decide, in accordance with rule 93 of its rules of procedure, whether the communication is admissible under the Optional Protocol to the Covenant.

8.2 The Committee takes note of the State party's argument that the communication should be declared inadmissible pursuant to article 5 (2) (a) of the Optional Protocol, given that the acts constituting the basis for the communication are pending before the Inter-Parliamentary Union. The author brought the case to the attention of this organization, which, in response, contacted several authorities of the State party to request their comments and sent fact-finding missions to the country. The Committee also notes the author's comments to the effect that the IPU Committee on the Human Rights of Parliamentarians should not be considered to be a procedure of international investigation or settlement but rather an interparliamentary body whose mission is to promote through dialogue the settlement of cases involving the violation of parliamentarians' human rights and to the effect that the decisions of the IPU Committee and those of the IPU Governing Council are merely advisory in nature. The Human Rights Committee considers that the Inter-Parliamentary Union is not an intergovernmental organization and that the aim of its bodies is not to establish whether or not a State has fulfilled its obligations under an international human rights convention to which that State is a party — in this case, the Covenant and its Optional Protocol — and therefore that the Committee is not precluded, under article 5 (2) (b) of the Optional Protocol, from considering the communication submitted by the author.

8.3 The Committee also takes note of the State party's argument that the author has not exhausted domestic remedies because he lodged a constitutional challenge before the Supreme Court, which, at the time the State submitted its observations, was still pending. In light of the author's comments, in particular the fact that the challenge had been intended to prevent the withdrawal of his parliamentary immunity and his indictment before the Court of Cassation, that his immunity had ultimately been withdrawn and that the claims before the Committee primarily concern issues related to his detention and criminal trial, the Committee considers that there is no impediment to its consideration of the communication under article 5 (2) (b) of the Optional Protocol.

8.4 The Committee considers, therefore, that the author has sufficiently substantiated his claims under articles 9, 10 and 14 of the Covenant, for purposes of admissibility, and proceeds to their examination on the merits.

<sup>9</sup> A copy of the medical report dated 30 April 2016 is attached to the letter. It contains the following indication: "In light of the family history of sudden death, an angiography and a thallium scan, which are not available in the Democratic Republic of the Congo, are imperative in order to rule out coronary heart disease, if the patient can have them performed outside the country."

**Consideration of the merits**

9.1 The Human Rights Committee has considered the present communication in the light of all the information made available to it, in accordance with article 5 (1) of the Optional Protocol.

9.2 The Committee notes the author's claim that his rights under article 9 of the Covenant were violated as a result of his abduction on 27 June 2012 and his incommunicado detention by security agents until 10 October 2012. The State party denies these allegations and maintains that the author was not abducted but rather that he went into hiding following the charges of rape that were brought against him. The Committee also notes that, on 16 August 2012, the author's wife lodged a complaint before the Attorney General for kidnapping and incommunicado detention against persons unknown and that, on 15 October 2012, the author himself lodged a complaint before the Judge Advocate of the Armed Forces for kidnapping, incommunicado detention and ill-treatment. The author's contention that none of these complaints was ever investigated is not disputed by the State party. The Committee recalls its general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant (para. 15), which states that a failure by a State party to investigate allegations of violations could in and of itself give rise to a separate breach of the Covenant. In the present case, the Committee takes the view that the lack of any investigation by the authorities into the complaints and the authorities' failure to provide any response to the author and his wife concerning the follow-up given to the respective complaints constitute a violation of article 2 (3), read together with article 9, of the Covenant.

9.3 The Committee also takes note of the author's claim that the prosecutor failed to execute the order for his placement under house arrest, which was issued on 15 April 2013 by the Supreme Court and subsequently renewed while he was in pretrial detention. Given that the facts and observations concerning the prosecutor's reasons for not having complied with the Court's order are not disputed, the Committee considers that the author's pretrial detention in prison beyond the date of the Supreme Court's order was a breach of internal law and constitutes a violation of article 9 (1) of the Covenant.

9.4 As to the author's claim with regard to article 10 of the Covenant that he was deprived of adequate medical care during his imprisonment, the Committee takes note of the report of the Makala central prison hospital dated 17 July 2013, which prescribes hospitalization, consultation with an internist and a scan for a problem with the author's right shoulder. The author alleges that, despite his requests, the authorities took no action in response to this report. The Committee also notes the author's allegations to the effect that, during his hospitalization in December 2013 following his sudden collapse, he was forcibly returned to prison and that the authorities totally ignored the prescription for a brain scan that was issued to him by the Ngaliema Clinic. The Committee points out that the State party does not respond to these allegations specifically but merely indicates that the author was granted transfers from one hospital to another. In the absence of detailed information from the State party contesting the alleged failure to follow the prescription set out in the above-mentioned medical reports and the author's forced departure from the hospital in December 2013, the Committee considers that the author's rights under article 10 (1) of the Covenant have been violated.

9.5 The author claims that he was not tried by an independent and impartial tribunal, in violation of article 14 (1) of the Covenant. He notes in particular that the five-judge composition of the chamber that tried him in the Court of Cassation was not in conformity with the Act of 19 February 2013 on Court of Cassation Procedure and the Act of 11 April 2013 on the Organization, Functioning and Jurisdiction of the Ordinary Courts, in accordance with which the chamber should have been composed of at least seven judges. The State party rejects these claims, pointing out that they are too insubstantial to amount to

a violation of article 14. As to the author's claim concerning the composition of the Court of Cassation, the Committee notes that, according to the judgment of 26 March 2014, this issue was raised by the author's lawyers during the trial as an interlocutory incident and was declared to be unfounded by the Court without any reasons given. The Committee also notes that the State party provides no comment on this claim. In these circumstances, the Committee considers there to be a sufficient legal basis for the author's claim and that the facts reveal a violation of the author's right under article 14 (1) to a fair and public hearing by a competent, independent and impartial tribunal established by law.

9.6 As to the author's claim that he was unable to put forward a defence with regard to the charges brought against him, the Committee takes note of his allegations that, at the hearing of 12 March 2014 at which the trial was concluded, the author suffered a choking fit and was physically unable to address the Court in order to challenge the prosecution's submissions, that the judge refused to allow him a short suspension in order to call his lawyers back into the courtroom, and that the proceedings were closed and the matter taken under advisement without the defence having been heard with regard to facts of fundamental importance, such as that the man who claimed to be the father of the minors who were the rape victims was not actually their father or even that the girls were not minors, all of this amounting to a contrivance invented by the police to implicate the author. The Committee also notes that the State party has not submitted any observations in relation to this claim. Given that the accusations of rape formed the basis for the trial, the Committee considers that the Court should have given the author every opportunity to prepare his defence. The restrictions imposed by the Court in this regard therefore constitute a violation of article 14 (3) (b), inasmuch as the author did not benefit from adequate opportunities to prepare his defence or to communicate with his lawyers during the hearing.

10. 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 view that the facts before it disclose violations by the Democratic Republic of the Congo of article 2 (3), read in conjunction with article 9, and articles 9 (1), 10 (1), 14 (1), and 14 (3) (b) of the Covenant.

11. 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. This requires that States parties provide redress to individuals whose Covenant rights have been violated. In the present case, the State party is required, *inter alia*, to take appropriate measures to: (a) immediately release the author; (b) declare the author's conviction null and void and, if necessary, initiate new proceedings that are consistent with the principles of fairness and the presumption of innocence, in addition to other legal safeguards; and (c) provide the author with adequate compensation. The State party must also take measures to ensure that such violations are not repeated in future.

12. 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 or not there has been a violation of the Covenant and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy where a violation has been established, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee's Views. The State party is also requested to publish the present Views, have them translated into the official languages of the State party and to disseminate them widely.