

## [Democratic Republic of Congo: Detention and torture of suspected spy breached ICCPR](#)

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### ***Kitenge v. Democratic Republic of Congo (1890/2009)***

#### **Summary**

In March 2014, the Human Rights Committee was asked to consider whether the Democratic Republic of Congo (the DRC) had violated its obligations under articles 7, 9 and 17 of the International Covenant on Civil and Political Rights in detaining an individual accused of espionage incommunicado and under conditions of physical torture.

This communication was submitted by a Congolese national under the Optional Protocol to the Covenant.



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#### **Background**

The author of the communication, Mr Franck Kitenge, is a national of the DRC where he used to live prior to August 2007. The author alleged that he was captured and detained for several months in 1998 by the Congolese Rally for Democracy, a group of rebels forcefully recruiting men to overthrow the President. The author managed to escape the group and moved to another province of the country, fearing for his life.

In April 2002, the author was arrested by the Presidential Special Police Department who accused him of being a Rwandan spy and assisting to stage a coup against the President.

The author was subsequently taken to the premises of the national intelligence service, where he was mistreated and tortured by officials demanding that he confess that he had planned to kill the President and take power in the capital, Kinshasa. As well as being deprived of food and water, the author also feared that he would be killed at any moment. During his detention, the author was not allowed any contact with his wife and

new-born daughter, who he feared were also in danger.

In July 2002, without prior notice, the author was taken to the Court of State Security, accused of being a Rwandan intelligence officer. Although no evidence was presented against him and the Court did not convict him of any crime, the Court ordered that he be moved to Makala Civilian Prison.

In October 2002, as a result of growing public pressure by human rights organizations, the author was released from Malaka Civilian Prison. Although the author had not been convicted of any crime, the release document from the prison stated that he had been imprisoned for an attempt on the security of the State. Seven days later, the author left for the Republic of Congo.

In August 2007, the author moved to Australia with his family having obtained a humanitarian visa.

According to his trauma counsellor, the author now suffers from long-term problems resulting from his detention and torture, including sleep and appetite problems, as well as physical pain.

On 9 June 2009, the author filed the communication with the Committee under the Optional Protocol to the Covenant. The author claimed that the DRC had violated his rights to freedom from torture and cruel and degrading treatment and from arbitrary detention, and had unlawfully interfered with his privacy and family life in breach of articles 7, 9 and 17 of the Covenant respectively.

On five occasions from 2009 to 2013, the DRC was requested to submit to the Committee information on the admissibility and merits of the author's communication, but never did so.

### **The Committee's decision**

Regarding the complaint's admissibility, the Committee noted that the author had exhausted all available domestic remedies and had sufficiently substantiated his claims. The Committee also observed that the matter was not being examined under another procedure of international investigation or settlement and therefore declared the communication to be admissible.

On the merits, the Committee noted that in the absence of any explanations from the State party due weight should be given to the author's allegations. On the basis of the author's allegations, the Committee observed that:

1. from 23 to 25 April 2002, the author was ill-treated by DRC intelligence officials while in detention;
2. from April to July 2002, he was tortured, deprived of food and water, and was not permitted any contact with his family; and
3. the author continues to suffer from long-term health problems resulting from his detention and torture.

The Committee concluded that such treatment constituted a violation of the prohibition against torture under article 7 of the Covenant.

The Committee then turned to consider whether the DRC had violated article 9 of the Covenant. In the absence of any explanation from the DRC regarding the reasonableness and necessity of the author's detention, the Committee found that the DRC had violated the prohibition against arbitrary detention under article 9(1). The Committee found that the absence of any formal charges, information on the grounds and legal basis of the author's arrest and detention constituted a violation of article 9(2). The Committee recalled its recommendation that the period of police custody before a detained person is brought before a judge should not exceed 48 hours, and concluded that the delay of 3 months in the present case was therefore incompatible with article 9(3). The Committee also noted that no evidence had been presented to the author regarding the accusations against him, and that the author had been prohibited from having any contact with his family and access to a lawyer. The Committee therefore concluded that the State party had prevented the author from challenging the legality of his detention before a court in breach of article 9(4).

Having determined that the DRC had breached articles 7 and 9 of the Covenant, the Committee considered that it was not necessary to examine the author's claims relating to article 17.

In accordance with article 2(3), the DRC was under an obligation to provide the author with an effective remedy, specifically by conducting a thorough and effective investigation into the author's allegations, prosecuting those responsible for the violations committed, and providing the author with adequate compensation.

The DRC must now submit its written response within six months of the Committee's decision, including information on the action taken in light of the Committee's recommendations, and ensure that the Committee's decision is published widely.

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