



# International Covenant on Civil and Political Rights

Distr.: General  
23 June 2023  
English  
Original: French

## Human Rights Committee

### Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2990/2017\*, \*\*

<i>Communication submitted by:</i>	Moïse Katumbi (represented by counsel, Éric Dupond-Moretti and Antoine Vey)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Democratic Republic of the Congo
<i>Date of communication:</i>	2 June 2017 (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 13 June 2017 (not issued in document form)
<i>Date of adoption of Views:</i>	16 March 2023
<i>Subject matter:</i>	Lack of recourse to compensation
<i>Procedural issues:</i>	Admissibility <i>ratione materiae</i> ; exhaustion of domestic remedies
<i>Substantive issue:</i>	Effective remedy
<i>Articles of the Covenant:</i>	9, 14, 17, 19 and 25
<i>Article of the Optional Protocol:</i>	5 (2) (b)

1.1 The author of the communication is Moïse Katumbi, a national of the Democratic Republic of the Congo, born in 1964. He claims that the State party has violated his rights under articles 9, 14, 17, 19 and 25 of the Covenant. The Optional Protocol entered into force for the State party on 1 February 1977. The author is represented by counsel.

1.2 On 13 June 2017, pursuant to rule 94 of its rules of procedure, the Committee, acting through its Special Rapporteurs on new communications and interim measures, decided to accede to the request for interim measures with regard to the author and requested the national authorities to permit his return to the Democratic Republic of the Congo and his free and safe participation as a candidate in the presidential election scheduled for the end of 2017.

\* Adopted by the Committee at its 137th session (27 February–24 March 2023).

\*\* The following members of the Committee participated in the examination of the communication: Farid Ahmadov, Wafaa Ashraf Moharram Bassim, Rodrigo A. Carazo, Yvonne Donders, Mahjoub El Haiba, Carlos Gómez Martínez, Laurence R. Helfer, Bacre Waly Ndiaye, Hernán Quezada Cabrera, José Manuel Santos Pais, Soh Changrok, Tijana Šurlan, Kobauyah Tchamdja Kpatcha, Teraya Koji, Hélène Tigroudja and Imeru Tamerat Yigezu.



**The facts as submitted by the author**

2.1 The author is a Congolese business owner and politician. As a former deputy and Governor of Katanga Province, he is considered to be the main political rival of then Head of State Joseph Kabila. In September 2015, in protest of President Kabila's attempt to amend the Constitution in order to remain in power beyond his second term as President, the author decided to leave the Parti du peuple pour la reconstruction et la démocratie and to resign as Governor.

2.2 On 30 March 2016, two coalitions of Congolese political parties – the G7 (a coalition of seven parties who had left the presidential majority) and Alternance pour la République (a grouping of 15 opposition parties) – as well as many civil society associations requested the author to be their candidate in the presidential election. On 19 April 2016, the headquarters of the Union nationale des fédéralistes du Congo, one of the members of the G7 who supported the author, was vandalized and shut down by the police. On 22 April 2016, Huit Mulongo, the author's former Chef de Cabinet and adviser, was arrested by officials of the National Intelligence Agency, without a warrant, for calling to insurrection. Mr. Mulongo was sentenced on 30 August 2016 to 3 years' imprisonment for illegal possession of firearms.

2.3 On 24 April 2016, the police used violence to prevent a peaceful protest organized by the author's supporters from taking place. On that occasion, the demonstrators' vehicles were searched, several streets were closed off and the police threw tear gas canisters at the protesters and the author. Live ammunition fire was also heard.<sup>1</sup> Many of those present, including six of the author's employees, were arrested. Among those arrested was a national of the United States of America who was a security adviser to the author.<sup>2</sup> The cities of Bukavu, Kinshasa and Goma, where other opposition movements were gathering, were spared the frenzy of violence, suggesting that the attack specifically targeted the author.

2.4 On 26 April 2016, the headquarters of the Union nationale des démocrates fédéralistes, another member of the G7 represented by the author, was set ablaze. On 4 May 2016, despite the attempted intimidation, the author officially declared his candidacy in the presidential election. That same day, the Minister of Justice announced that an investigation had been opened into the author for allegedly recruiting mercenaries of the United States, including his security adviser. The Embassy of the United States immediately reacted, noting its concern at the Minister's groundless allegations. The next day, the police and officials of the National Intelligence Agency surrounded the author's home with the obvious intention of arresting him. Congolese human rights defenders observing the events were arrested. The author's farm, located in Futuka, was searched by the National Intelligence Agency, in his absence and without a warrant.

2.5 On 9 May 2016, the author was interviewed by the public prosecutor regarding the acts of which he was suspected.<sup>3</sup> On 13 May 2016, on his way to the courthouse in Lubumbashi for a hearing, the author was gassed and intentionally injured in the ribs by the police. He had to be urgently hospitalized.

2.6 On 19 May 2016, when the author was still in hospital, the public prosecutor issued a provisional arrest warrant for him and charged him with undermining the security of the State. On 20 May 2016, the author was authorized by the Attorney General of the Republic to leave the Democratic Republic of the Congo aboard a medical plane owing to serious health problems.

2.7 In June 2016, the author learned that he had been accused by a Greek national, in a second case before the district court of Lubumbashi/Kamalondo, of signing a false deed of sale for a property located in Lubumbashi. Yet, the property in question had been declared

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<sup>1</sup> See Human Rights Watch, "DR Congo: Crackdown on Presidential Aspirant", 9 May 2016. See also Élise Barthet, "En RDC, la grande marche de Moïse Katumbi trébuche sur la répression policière" ("In DRC, Moïse Katumbi's long march runs into police repression"), *Le Monde*, 25 April 2016.

<sup>2</sup> On 29 July 2016, the former security adviser was released and was able to return to the United States with the help of that country's embassy.

<sup>3</sup> See Human Rights Watch, "DR Congo: Crackdown on Presidential Aspirant", 9 May 2016, where it is reported that at least 27 of the author's supporters were arbitrarily arrested, 11 of whom remained in detention.

by the State as abandoned in 1976 and had been legally allocated to the author's brother over 50 years earlier. The author submits that he has never signed a single document related to the property. In that case, on 22 June 2016, the author was sentenced in absentia to 3 years' imprisonment and a payment of the equivalent of US\$ 1 million in damages. On 21 July 2016, the presiding judge of the district court of Lubumbashi/Kamalondo stated that she had rendered her decision of 22 June 2016 under threat of removal from the bench, imprisonment and physical and emotional coercion by the National Intelligence Agency, the public prosecutor at the Appeals Court of Lubumbashi and the Office of the President.<sup>4</sup> On 25 July 2016, the Minister of Justice stated that, pursuant to his conviction of 22 June 2016, the author would be immediately arrested and imprisoned should he return to the Democratic Republic of the Congo.

2.8 The author challenged the decision of 22 June 2016. The challenge was declared null and void due to the author's failure to appear, noting that he could not be represented given the severity of the penalty incurred. Meanwhile, the Supreme Court, with whom the author had filed a petition, acknowledged the filing of an application for change of jurisdiction on grounds of reasonable suspicion. The purpose of the application was to obtain the referral of his challenge to a different court than the Appeals Court of Lubumbashi. The application was based on the author's reasonable suspicion concerning the attitude of the presiding judge of the district court of Lubumbashi/Kamalondo, who disregarded the decision of the Regional Court of Lubumbashi notifying the district court of the change of jurisdiction application, reiterating the accusations against the author.<sup>5</sup>

2.9 The presidential election scheduled for 27 November 2016 did not take place, and President Kabila remained in power beyond 19 December 2016, end date of his second term of office, in breach of the Constitution. Under the aegis of the Episcopal Conference of the Democratic Republic of the Congo, the presidential majority and the opposition signed an agreement on 31 December 2016 governing the transition period until presidential, legislative and provincial elections could be held by the end of 2017. In keeping with the agreement's aim of diffusing political tensions, the Conference conducted an inquiry to gather information on the legal cases against the author and Jean-Claude Muyambo, an opponent of President Kabila who had been sentenced to 26 months' imprisonment. The inquiry uncovered a significant number of irregularities in the proceedings brought against the author.

2.10 The author notes that the matter is not being examined under another procedure of international investigation or settlement. He submits that there are no domestic remedies available to him and that a judicial decision by the national courts would therefore have no effect on the violations of which he and his supporters have been the victims.

### **Complaint**

3.1 The author claims that he is the victim of a violation of his rights under articles 9, 14, 17, 19 and 25 of the Covenant. He submits that the police brutality and unjustified attacks he suffered, the arrest of several of his supporters and the ransacking of a number of premises held by his supporters undermined his physical integrity and safety, in violation of article 9 of the Covenant.

3.2 With regard to article 14 of the Covenant, the author submits that the proceedings brought against him in connection with the recruitment of foreign mercenaries had no objective basis whatsoever. As for the other suit based on accusations made by a Greek national, the author considers it to have been a sham trial at which his lawyers were prevented from representing him. He denounces his conviction in absentia by the district court of Lubumbashi/Kamalondo at a time when the Attorney General himself had authorized him to leave the country for health reasons. He also submits that he was never notified of the decision of 22 June 2016, thus preventing him from learning the reasoning for his conviction. The author states that the commission of inquiry led by the Episcopal Conference of the

<sup>4</sup> Radio France Internationale, "RDC : une juge dénonce des pressions lors d'un jugement contre Katumbi" ("DRC: Judge claims she was pressured into ruling against Katumbi"), 28 July 2016.

<sup>5</sup> See, in this regard, the decision of the Supreme Court of 26 May 2017.

Democratic Republic of the Congo called into question the proper conduct of the proceedings against him and denounced the pressure exerted on the judges.<sup>6</sup>

3.3 The author submits that the surrounding of his home by police on 5 May 2016 and the search of his farm in Futuka by the National Intelligence Agency, in his absence and without a warrant, constitute breaches of his right to privacy enshrined in article 17 of the Covenant. He also submits that the serious charges laid against him call into question his integrity, reputation and honour.

3.4 The author further submits that the State party violated his right to freedom of expression under article 19 of the Covenant by, *inter alia*, subjecting his supporters to violence, arbitrary judicial proceedings and inhuman conditions of detention and questioning. He considers that the provisional arrest warrant issued against him on 19 May 2016 is consistent with this political persecution, which is neither necessary nor proportionate.<sup>7</sup>

3.5 The author claims that, by keeping him outside the country and taking reprisals against his supporters, the State party deprived him of his right to participate in the conduct of his country's political affairs, in violation of article 25 of the Covenant. The author further claims that both suits filed against him are aimed at discrediting him and preventing him from taking part in the electoral process.

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

4.1 On 17 August 2017, the State party submitted its observations on the admissibility of the communication. It recalls that the Independent National Electoral Commission has not yet published the electoral calendar and therefore the author cannot claim to be a candidate. It considers that the author does not appear to meet the constitutional and legal requirements to stand for election as President. The State party underscores that the author freely admitted to acquiring Italian nationality in 2011, then renouncing it in 2016. It also recalls that the author has not presented any official document issued by the competent Italian authorities indicating whether he still holds Italian nationality. It further recalls that, under the Congolese Constitution and law, acquiring another nationality entails forfeiting Congolese nationality<sup>8</sup> and that it is for the Independent National Electoral Commission to decide, in due course, the admissibility of candidacies. The State party cannot assume the outcome of that independent body's decisions.

4.2 The State party is of the view that putting in place interim measures with regard to the author would constitute interference in the activities of the Independent National Electoral Commission and that, in the absence of a calendar published by the Commission, the author does not risk irreparable harm. The State party requests the Committee's agreement for the interim measures granted in respect of the author to be lifted.

4.3 The State party contends that the author's claims are not sufficiently substantiated for the purposes of admissibility and that the evidence submitted along with the communication consists chiefly of newspaper articles and other items of a partisan nature. The State party is of the view that the communication is an abuse of the right of submission within the meaning of articles 2 and 3 of the Optional Protocol and is incompatible with the Covenant under rule 99 (c) of the Committee's rules of procedure. It stresses that the author is claiming to be a candidate in the presidential election in order to argue a violation of article 25 of the Covenant. The State party adds that the author is seeking to provoke the Committee's interference with national elections in his favour as well as State interference in proceedings before the national courts with a view to later contesting the rulings.

4.4 The State party underlines that the author has not exhausted all available domestic remedies. It clarifies that, pursuant to the suit brought by a Greek national against the author,

<sup>6</sup> See Adrien Seyes, "RDC, Juge Chantal Ramazani : 'Sous la menace, nous avons violé la loi pour condamner Moïse Katumbi'" ("DRC, Judge Chantal Ramazani: 'Under threat, we broke the law in convicting Moïse Katumbi'"), *Afrik.com*, 5 January 2017. See also Radio France Internationale, "RDC : une juge dénonce des pressions lors d'un jugement contre Katumbi" ("DRC: Judge claims she was pressured into ruling against Katumbi"), 28 July 2016.

<sup>7</sup> *Surgan v. Belarus* (CCPR/C/114/D/1969/2010), para. 9.5.

<sup>8</sup> Constitution, art. 10.

the author was tried by default before the district court of Lubumbashi/Kamalondo, was found guilty of forgery of documents and use of forged documents with intent to defraud and was sentenced to 36 months' imprisonment, with immediate arrest, and to paying the equivalent of \$1 million in Congolese francs (CGF) in damages to the complainant. The State party recalls that, after a number of appeals of this decision,<sup>9</sup> on 26 May 2017, the Supreme Court, acting as Court of Cassation in matters of referrals to other jurisdictions, declared the appeal unfounded and sentenced the author to a fine of CGF 500,000. The State party also recalls that, on 14 July 2017, after submitting his communication to the Committee, the author, as part of his appeal, filed an application for recusal with the registrar of the Regional Court of Lubumbashi against the Regional Court's 28 judges, except its president, accusing them of bias during the first-instance proceedings. The State party further recalls that the second criminal case brought against the author and others for breach of the State's internal and external security,<sup>10</sup> forgery of documents, use of forged documents with intent to defraud<sup>11</sup> and unlawful operation of a security agency<sup>12</sup> remains pending.<sup>13</sup> The State party considers that the author has not in any way demonstrated that the remedies he is seeking will be ineffective or arbitrary. Consequently, it requests the Committee to find that the author has not exhausted domestic remedies and that the present communication is therefore inadmissible.

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

5.1 In his comments of 16 October 2017, the author requests the Committee to maintain the interim measures granted in his respect because, given the violations already experienced, he could be arbitrarily arrested and detained if he returns to the Democratic Republic of the Congo to take part in the next presidential election. The risk of irreparable harm is therefore real and well-founded.

5.2 The author is of the view that the violations committed against him have been sufficiently substantiated. He clarifies that at his and his brother's hearing by the prosecution at the Appeals Court of Lubumbashi in May 2016, clashes broke out with police officers during which he was pricked in the side, causing severe pain and dizziness, and was hit, injuring his neck. He also inhaled tear gas and, due to chest pain and difficulty breathing, went to the hospital. The author notes that a medical report drawn up on 16 May 2016 following his admission to the emergency department of the Lubumbashi medical centre describes chest and neck pain and respiratory distress. The medical report also states that, after three days under observation, the persistent pain required urgent, in-depth examinations at a specialized centre. The author adds that, at the request of the Attorney General of the Republic at the Supreme Court, a forensic medical report was drawn up on 18 May 2016, according to which the author presented with an array of illnesses that required appropriate care. The author further adds that, after his medical evacuation from the country, he was treated first in South Africa, where doctors noted that he had chest pain and bruising along the chest wall, probably caused by an injection, and, recalling in that regard a similar poisoning in 2014, recommended that the author urgently see doctors in the United Kingdom.<sup>14</sup>

5.3 In rebuttal of the State party's argument that he is not a candidate for President, the author recalls that article 73 of the Constitution requires a presidential election to be called three months before the end of the incumbent President's term of office<sup>15</sup> and that the political

<sup>9</sup> Challenge of 29 June 2016 and appeal of 26 July 2016 concerning the judgment of 14 July 2016 against the decision of the district court of Lubumbashi/Kamalondo.

<sup>10</sup> Criminal Code, art. 198.

<sup>11</sup> Ibid., arts. 124–126.

<sup>12</sup> Act punished under articles 1, 13 and 14 of Ministerial Order No. 25/CAB/MININTERSECDAC/037/2014 of 27 June 2014 on the terms of operation of security agencies in the Democratic Republic of the Congo.

<sup>13</sup> File No. 4355/RMP V/041/PGR/MIM/2016.

<sup>14</sup> See the medical report by the Park Lane Hospital in Johannesburg dated 25 May 2016.

<sup>15</sup> The Independent National Electoral Commission published a calendar on 12 February 2016, setting the elections for 27 November 2016, as President Joseph Kabila's second term was ending on 19 December 2016.

agreement of 31 December 2016 provided for elections to be held no later than December 2017. Consequently, the author submits that it was wholly legitimate to declare himself as candidate and that the State party cannot assume what decision the Independent National Electoral Commission will take regarding his candidacy.

5.4 The author points out that the State party has not presented documents contesting his nationality and that he has provided a copy of the passport issued by the Congolese authorities on 12 February 2015. He adds that he meets the criteria of belonging and filiation established in articles 6, 7, 46, 47 and 48 of the Family Code and article 10 of the Constitution. He recalls that it was as a Congolese citizen that he was admitted to the presidential party – the Parti du peuple pour la reconstruction et la démocratie – and that he was elected as provincial and national deputy in 2006, then Governor of Katanga Province in 2007.

5.5 The author submits that, in relation to the suit brought by a Greek national, domestic remedies within the meaning of article 14 of the Covenant have been exhausted. He stresses that there have been three Supreme Court judgments in this case, terminating the applications for change of jurisdiction on grounds of reasonable suspicion.

5.6 The author is of the opinion that, in the light of the lack of independence of the Congolese justice system, there is no effective domestic remedy for the alleged violations. He recalls that, in keeping with the Committee's jurisprudence, the requirement to exhaust domestic remedies is subordinate to there being a remedy that does not manifestly lack any chance of success.<sup>16</sup> The author also recalls that, in the case *Lumbala Tshidika v. Democratic Republic of the Congo*, the Committee found that the author, having been forced to escape the country and having obtained refugee status in the United Kingdom, could not be expected to pursue judicial remedies in the Democratic Republic of the Congo.<sup>17</sup> The author submits that, since he was forced into exile and although he attempted, through his lawyers, to pursue remedies that appeared to be available, he cannot be expected to exhaust all domestic remedies in the Democratic Republic of the Congo.

5.7 To corroborate his argument about the judiciary's lack of independence, the author draws attention to the practice whereby all judges must have the head of the jurisdiction stamp their ruling before it is rendered, thus giving the authorities the opportunity to influence all judicial decisions. In this regard, the author points out that the judge who should have presided over the appeal hearing in July 2017 in the case opposing him and a Greek national was shot and seriously wounded and had to be transferred to Johannesburg for treatment. The author reports that this assassination attempt at the judge's home by masked individuals is tied to the judge's refusal to give in to threats aimed at forcing the adoption of a pre-established verdict. The author stresses that the main registrar of the district court of Lubumbashi/Kamalongdo and the registrar for one of his cases were forced into exile following threats made by the judicial authorities and the National Intelligence Agency. In addition, the author notes that the challenge he filed against the decision of 22 June 2016 was declared null and void because he failed to attend the hearing despite the seriousness of the penalty incurred, even though the conviction he was challenging was handed down in absentia. Accordingly, the author is of the view that the requirement to exhaust domestic remedies is not an obstacle to the consideration of the present communication.

5.8 The author opposes the State party's request for a confidential procedure, arguing that he is an important figure in Congolese public life and that this communication raises issues of interest to the Congolese people, the fate of whom the author is in a position to influence. The author requests the Committee to maintain the interim measures granted in his favour.

#### **State party's additional observations on admissibility and the merits**

6.1 On 27 March 2018, the State party submitted its observations on admissibility and merits. It repeats that the present communication is inadmissible and constitutes an abuse of the right of submission and that the author is instrumentalizing the Committee for political ends.

<sup>16</sup> See *T.K. v. France* (CCPR/C/37/D/220/1987).

<sup>17</sup> *Lumbala Tshidika v. Democratic Republic of the Congo* (CCPR/C/115/D/2214/2012), para. 5.3.

6.2 The State party also reiterates that the author has not exhausted domestic remedies, as he is a party in a number of ongoing judicial proceedings.<sup>18</sup> The State party refutes the author's argument that the domestic remedies were ineffective. It submits that, on 19 June 2017, the author applied to the Supreme Court in Kinshasa for damages against three judges of the district court of Lubumbashi/Kamalondo for misuse of their authority and for the decision of 22 June 2016 to be quashed.<sup>19</sup> The consideration of the application was scheduled for 20 April 2018.

6.3 The State party clarifies that the appeal hearing in cases No. RPA 4774 and No. 4782 was indeed held on 19 July 2017, in other words after decisions No. RR 3308, No. 3309 and No. 3352 were issued in May 2017, and that the author was represented by counsel at this hearing. It adds that, at this hearing, cases No. RPA 4774 and No. 4782, which were opened following proceedings No. RP 7652 and No. RPO 7685/7652, were combined in agreement with all the parties. The State party notes that it is because domestic remedies are available that the author was able to obtain the suspension of the appeal proceedings by lodging a suit with the Constitutional Court, even after his change of jurisdiction application, on which action was taken,<sup>20</sup> and his application of 14 July 2017 for the recusal of the judges of the Regional Court of Lubumbashi, whose processing has been suspended due to the author's constitutionality suit. Consequently, as neither ordinary nor extraordinary remedies have been exhausted, the State party is of the opinion that the present communication is inadmissible.

6.4 The State party underscores that the author cannot claim unreasonable delays, denial of justice or ineffective domestic remedies. It points out that, contrary to his interpretation of the Committee's findings in the case *Lumbala Tshidika v. Democratic Republic of the Congo*, the author of the present communication has not been prevented from continuing the judicial proceedings in which he is a party and has been represented by several lawyers. Furthermore, the State party contests that the decision of 20 June 2016 was arbitrary and that the hearing was held by default, as the author was duly represented by his lawyers who were free to present their arguments at the hearing.

6.5 The State party emphasizes that the suit between the author and a Greek national is a procedure known as a "direct summons", where the action is brought by the complainant, over which the public prosecution service has no influence, which is different from the proceedings undertaken in the mercenary case. It recalls that, in the mercenary case, the travel authorization granted to the author on 20 May 2016 for health reasons included a duty of confidentiality with regard to the events having given rise to the judicial investigation. The State party also recalls that, in a decision of 20 June 2017, the Attorney General of the Republic revoked the authorization for non-compliance with established conditions and ordered the resumption of the investigation in the case against the author concerning the mercenaries. The State party underscores that, contrary to the author's claims, there is nothing in the decision revoking the travel authorization to seek medical treatment to indicate that any other proceedings would be suspended between 20 May 2016 and 20 June 2017. The State party notes that, in any event, the prosecution service does not have the power to suspend direct summons proceedings before a district court. The State party considers that the author should respect the confidential nature of all parts of the procedure.<sup>21</sup>

6.6 Concerning the violation of article 9 of the Covenant, the State party recalls that, article 4 of Decree Law No. 196 of 29 January 1999 regulating public gatherings and demonstrations requires the organizers of public demonstrations to give prior notice to the

<sup>18</sup> See cases No. RPA 4774 and No. 4782 registered at the Regional Court of Lubumbashi concerning proceedings No. RP 7652 and No. RPO 7685/7652 respectively; the application for change of jurisdiction outside Lubumbashi Province, as well as Supreme Court decision No. RR 3309 of 26 May 2017 finding the application unfounded; and the recusal application filed with the registrar of the Regional Court of Lubumbashi on 14 July 2017 against that Court's 29 judges [RP 7652, RPO 7685/7652, RP 7664 and RP 7689 (items 3 to 6)].

<sup>19</sup> Organic Act No. 13/010 of 19 February 2013 concerning proceedings before the Court of Cassation, art. 59.

<sup>20</sup> See decisions No. RR 3308, No. 3309 and No. 3352.

<sup>21</sup> Rule 111 (4) of the Committee's rules of procedure on the confidentiality of the individual communication procedure.

competent political and administrative authorities. Prior notice enables the competent administrative authority to assess whether the planned demonstration complies with the law and public order.

6.7 The State party points out that the relevant authorities were not informed in advance of the protest held in Lubumbashi on 24 April 2016. Consequently, the police intervened and arrested six demonstrators who had broken through a police barrier and physically assaulted officers stationed there. The State party adds that the arrest and identity verification of some of these individuals led to the opening of the mercenary case. It underlines that the author does not claim to have himself been arrested, detained or otherwise arbitrarily deprived of his liberty on 24 April 2016.

6.8 The State party clarifies that the situation that led to the author's hospitalization was due to his medical history and stress. It emphasizes that the medical report submitted by the author does not mention that he received any blows or that these blows would have had the effects described in the report. Furthermore, the Human Rights Watch report to which the author refers does not corroborate his claims, and he merely states that the Attorney General of the Republic authorized him to leave the country for health reasons. The State party points out that the forensic medical report ordered by the Attorney General links the author's state of health to his medical history and his psychological state. The reports drawn up in South Africa do not add anything specific in the light of the forensic medical report.

6.9 The State party notes that the issuance of an arrest warrant does not in itself constitute a violation of article 9 of the Covenant and recalls that the author was never arrested, detained or otherwise deprived of his liberty. It also notes that the right to security of person does not address all risks to physical or mental health and is not implicated in the indirect health impact of being the target of civil or criminal proceedings.<sup>22</sup> The State party underscores that the author has not substantiated the allegations that he was hit by police officers during protests in April 2016. Therefore, it is of the opinion that the author's allegations as to a violation of article 9 of the Covenant have not been sufficiently substantiated for the purposes of admissibility.

6.10 With regard to the violation of article 14 of the Covenant, the State party clarifies that the six mercenaries of the United States who were arrested during the protest of 24 April 2016 in Lubumbashi were going to attack the army or the national police on the author's behalf and that it is the responsibility of the State to undertake all investigations necessary to prevent the formation of new armed groups in its territory. Concerning the suit brought against the author by a Greek national, the State party rejects the argument that its judicial system lacks impartiality. It recalls that the author applied for damages against three judges, including the judge whom the author mentions in his comments of 16 October 2017, for misuse of their authority in adjudicating and ruling on case No. RP 7652. It also recalls that the consideration of this application was postponed to 20 April 2018 and that its outcome is not yet known. The State party denies the author's statement that the judge who should have presided over the appeal hearing in July 2017 was shot and seriously wounded and had to be transferred to Johannesburg for treatment after refusing to give in to threats and pressure to render a pre-established judgment. The State party specifies that the judge to whom the author refers was not on the bench, nor was he scheduled to be so, in the case under discussion; the hearing took place on 19 July 2017 as planned.

6.11 The State party rejects the information provided by the author that reprisals were taken against the registrars of the district court of Lubumbashi/Kamalondo in connection with his case. It emphasizes that the main registrar was being prosecuted for offences<sup>23</sup> committed in connection with the case involving a Greek national and that, after being conditionally released, she absconded on 1 March 2018. The State also emphasizes that the other registrar whom the author mentioned brought his situation to the African Commission on Human and Peoples' Rights. It notes that the two cases are unrelated.

6.12 The State party underscores that the protection afforded by article 17 of the Covenant does not allow persons to engage in illicit activities, in this case to use foreign mercenaries.

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<sup>22</sup> Human Rights Committee, general comment No. 35 (2014), para. 9.

<sup>23</sup> Including offences under articles 21, 23 and 145 bis of the Criminal Code.



It is of the view that the information regarding the foreign mercenaries recruited by the author is sufficiently serious that the investigative steps taken by the competent authorities, including property searches, do not amount to arbitrary or illegal interference in the author's privacy within the meaning of article 17 of the Covenant. The State party points out that the author does not claim to have contested the search he describes or to have exhausted domestic remedies in that connection. The State party considers that, if this element of the present communication is deemed admissible, the allegation of a violation of article 17 of the Covenant should be dismissed.

6.13 The State party submits that the author claims a violation of article 19 of the Covenant without specifying the nature of the violation. It recalls that only six people, considered to be mercenaries, were arrested in connection with the protest on 24 April 2016. The arrest warrant issued for the author is part of ongoing proceedings before the national courts that are unrelated to his political activities. For this reason, the State party considers that there has been no violation of article 19 of the Covenant. It submits that the safeguards under article 19 of the Covenant do not authorize citizens to recruit foreign mercenaries with a view to imposing their agenda through the use of weapons. The State party is of the opinion that it is the executive's duty to execute an arrest warrant issued by the judicial authorities. Accordingly, it denies any violation of article 25 of the Covenant with regard to the author.

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

7.1 In his additional comments of 25 July 2018, the author stresses that the fact of seeking a remedy does not entail recognition of its effectiveness. He considers that there is a definite urgency to the settlement of the present case which justifies not waiting until all domestic remedies have been exhausted and that he cannot be blamed for the slowness of the proceedings. He also considers that he should not have to choose between speedy proceedings and the protection of his rights to the point of accepting all procedural violations without raising a complaint.

7.2 Regarding the merits, the author points out that several reports indicate that it is practice in the Democratic Republic of the Congo to arbitrarily detain persons for political reasons and to use excessive force, in violation of article 9 of the Covenant.<sup>24</sup> In this case, the author notes that, although no physical injuries were observed, he nonetheless experienced an initial series of acts of violence that at the very least caused breathing difficulty and stress.

7.3 The author underscores that the Committee has denounced the discrepancy between articles 24 and 25 of the Constitution on the prior notification system for demonstrations and the legal framework, which still provides for an authorization system, thus enabling the Congolese authorities to systematically refuse to issue protest permits to the political opposition, all the while approving them for pro-Government protests. The author asserts that the fact that a protest has not been authorized does not give the police the licence to use violence against the protesters. The author recalls that, as it has been established that he was subjected to police brutality, the burden of proof rests with the State party, which must show in what way the acts were justified.

7.4 As for the violation of article 14 of the Covenant, the author considers that the fact that the hearing was neither postponed nor delayed is insufficient to prove that the judge who was assaulted the previous evening was not among those scheduled to adjudicate the case. He recalls that this judge was the victim of attempted murder, which is at least indicative of the atmosphere in which justice is administered. The author requests the Committee to ensure his right to liberty and security, to find the present communication admissible and to recognize the alleged violations.

<sup>24</sup> See [CCPR/C/COD/4](#).

## Issues and proceedings before the Committee

### *Consideration of admissibility*

8.1 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.

8.2 The Committee has ascertained, as required under article 5 (2) (a) of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

8.3 The Committee notes that the State party contests the admissibility of the present communication on the grounds that it is an abuse of the right of submission within the meaning of articles 2 and 3 of the Optional Protocol and claims that it is incompatible with the Covenant under rule 99 (c) of the Committee's rules of procedure. The Committee also notes the State party's position that the author is claiming to be a candidate in the presidential election for the sole purpose of bringing allegations under article 25 of the Covenant. It stresses that article 25 of the Covenant applies to all citizens; therefore, the arguments put forward by the State party to challenge the admissibility of the present communication for abuse of the right of submission are not a barrier to consideration of the merits.

8.4 The Committee notes the State party's argument that the author has not exhausted available domestic remedies since the first case brought against him for breach of the State's internal and external security, forgery of documents, use of forged documents with intent to defraud and unlawful operation of a security agency remains ongoing. The Committee notes that the author does not contest the fact that the proceedings have yet to be completed but alleges that their arbitrary nature is in violation of his rights. The author submits that there have been irregularities in the second proceedings related to the complaint filed against him by a Greek national. The Committee considers that the points raised by the State party regarding the failure to exhaust domestic remedies relate to the merits of the case. Consequently, they will be considered on the merits.

8.5 The Committee notes the author's allegations that the police brutality and attacks to which he was subjected, the arrest of several of his supporters and the ransacking of a number of premises of political parties closely allied with him constitute a violation of article 9 of the Covenant. It also notes the State party's argument that the author's allegations concerning article 9 of the Covenant have not been substantiated inasmuch as he himself was not arrested or detained. In the absence of further details from the author, the Committee notes that he has failed to sufficiently substantiate these claims for the purposes of admissibility and therefore finds them inadmissible under article 9 of the Covenant.

8.6 Concerning article 17 of the Covenant, the Committee notes the author's argument that the surrounding of his home by police on 5 May 2016 and the search of his farm in Futuka by the National Intelligence Agency, in his absence and without a warrant, constitute breaches of his right to privacy enshrined in article 17 of the Covenant. The Committee notes, however, the State party's argument that the author has failed to exhaust domestic remedies in this regard. In the light of the submissions, the Committee considers that the author has not exhausted domestic remedies with regard to the alleged violation of article 17 of the Covenant and therefore finds this part of the communication inadmissible.

8.7 The Committee notes the author's allegations that the State party violated his right to freedom of expression by using violence against him, initiating arbitrary legal proceedings and subjecting his supporters to arbitrary questioning conditions. It also notes the State party's argument that the author does not specify in what manner he was the victim of a violation of article 19 of the Covenant. The Committee finds that, in the light of his submissions, the author has not sufficiently substantiated his claims under article 19 of the Covenant for the purposes of admissibility.

8.8 In the light of the foregoing, the Committee considers that the author has sufficiently substantiated his claims and declares the present communication admissible based on the grievances raised by the author under articles 14 and 25 of the Covenant, and proceeds with its consideration of the merits.

*Consideration of the merits*

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

9.2 With regard to the author's allegations under article 14 (1), the Committee recalls its long-standing jurisprudence according to which the right to be tried by an independent and impartial tribunal is an absolute right that may suffer no exception.<sup>25</sup> The Committee also recalls that this right is a safeguard that applies equally to supervisory judges at the preliminary stages of proceedings.<sup>26</sup> The Committee further recalls that the requirement of impartiality has a subjective element and an objective element.<sup>27</sup> First, judges must not allow their judgment to be influenced by personal bias or prejudice, nor harbour preconceptions about the particular case before them, nor act in ways that improperly promote the interests of one of the parties to the detriment of the other.<sup>28</sup> Secondly, the tribunal must also appear to a reasonable observer to be impartial.<sup>29</sup> That is, judges must not only be impartial, they must also be seen to be impartial, and there are ascertainable objective facts which may raise doubts as to their impartiality.<sup>30</sup> The Committee recalls that the impartiality of a judge must be presumed until there is evidence to the contrary<sup>31</sup> and that partiality may be evidenced by various article 14 irregularities<sup>32</sup> in the actions of the intervening judge.<sup>33</sup>

9.3 The Committee notes the author's claims that, on the eve of the appeal hearing in July 2017 in the case brought against the author by a Greek national, the judge who should have presided over the hearing was shot and seriously wounded at his home due to his refusal to give in to threats aimed at ensuring a pre-established judgment; and that the main registrar of the district court of Lubumbashi/Kamalondo and the registrar for one of his cases were forced into exile following threats made by the judicial authorities and the National Intelligence Agency. The Committee also notes the State party's argument that, contrary to the author's allegations, the judge scheduled to preside over the appeal hearing in July 2017 was not the same person who survived an alleged assassination attempt and that the appeal hearing took place on 17 July 2017 as planned. The Committee further notes the information submitted by the State party according to which the main registrar was prosecuted for offences in connection with the suit brought by the Greek national.

9.4 In the present case, the Committee notes that, according to the author's statements, corroborated by many reports as well as a letter included in the file, the judge named by the author survived an assassination attempt at her home and had to flee the country due to the pressure exerted on her by the authorities and the National Intelligence Agency. The Committee points out that incidents of this type do little to help guarantee the effectiveness of remedies, even where remedies are available, and that, in this context, the justice system cannot be said to be impartial. The Committee also points out that the numerous incidents involving members of the judicial system, in particular incidents endangering the safety not only of one of the judges on the case, but also of the registrars, are symptomatic of a dysfunctional situation that undermines the author's right to a fair trial.

9.5 The Committee notes the author's claim that, in the suit brought against him by a Greek national, his lawyers were prevented from representing him and that he was convicted in absentia by the district court of Lubumbashi/Kamalondo even though the Attorney General of the Republic himself authorized him to leave the country for health reasons. The Committee also notes that the State party contests the allegation that the decision of 22 June 2016 was arbitrary and that the hearing was held by default, stressing that the author was

<sup>25</sup> Human Rights Committee, general comment No. 32 (2007), para. 19; and *González del Río v. Peru* (CCPR/C/46/D/263/1987), para. 5.2.

<sup>26</sup> *Brewer-Carías v. Bolivarian Republic of Venezuela* (CCPR/C/133/D/3003/2017), para. 9.2.

<sup>27</sup> *Jenny v. Austria* (CCPR/C/93/D/1437/2005), para. 9.3.

<sup>28</sup> Human Rights Committee, general comment No. 32 (2007), para. 21.

<sup>29</sup> *Ibid.*

<sup>30</sup> *Lagunas Castedo v. Spain* (CCPR/C/94/D/1122/2002), para. 9.7.

<sup>31</sup> *Jenny v. Austria*, para. 9.4.

<sup>32</sup> See, for example, *Khostikoev v. Tajikistan* (CCPR/C/97/D/1519/2006), paras. 7.2 and 7.3; and *Saidov v. Tajikistan* (CCPR/C/81/D/964/2001), para. 6.7.

<sup>33</sup> *Lula da Silva v. Brazil* [CCPR/C/134/D/2841/2016 (final proceedings)], para. 8.9.

duly represented by his lawyers who were free to present their arguments at the hearing. The Committee is of the opinion that the State party has not demonstrated in its observations how the author could enjoy a fair trial in such a context. Indeed, it notes that, based on the documents submitted to it, in this case, justice was not administered in such a way as to provide the author with a guarantee of independence or impartiality. Therefore, the Committee finds that the State party has violated article 14 of the Covenant.

9.6 Concerning the claims under article 25 of the Covenant, the Committee recalls that this article recognizes and protects the right of every citizen to take part in the conduct of public affairs, the right to vote and to be elected and the right to have access to public service. Whatever form of constitution or government is in force, the exercise of those rights by citizens may not be suspended or excluded except on grounds which are established by law and which are objective and reasonable.<sup>34</sup> The Committee also recalls that genuine elections must be held at intervals which are not unduly long and which ensure that the authority of government continues to be based on the free expression of the will of electors.<sup>35</sup>

9.7 The Committee notes the author's claims that, by keeping him outside the country and taking reprisals against his supporters, the State party deprived him of his right to participate in the conduct of his country's political affairs, in violation of article 25 of the Covenant, and that the two cases were brought against him for the sole purpose of discrediting him and preventing him from taking part in the electoral process. The Committee also notes the State party's argument that the author cannot be considered to be a candidate in the presidential election, as he does not meet the nationality requirement for this office and the Independent National Electoral Commission has yet to publish a calendar for the election, and that the author has raised the issue in order to have the Committee interfere with national elections in his favour.

9.8 The Committee observes that the period when the author declared his candidacy was strewn with incidents pointing towards persecution of the author by the authorities. It also observes that the attacks and proceedings against the author since he withdrew from the presidential majority – for instance, the closure by the police of the headquarters of the Union nationale des fédéralistes du Congo on 19 April 2016 and the torching of the headquarters of the Union nationale des démocrates fédéralistes on 26 April 2016, two parties closely allied with the author, and the dispersal of the protests of 24 April 2016 – can be interpreted as a series of acts of intimidation aimed at discouraging the author from standing in the presidential election. The Committee notes that the State party has not provided an explanation for the attacks against the premises of opposition political parties closely allied with the author or described its attempts to prevent the commission of such acts or any investigations conducted into these incidents.

9.9 The Committee notes that, according to the author, on the same day he declared his candidacy in the presidential election, the Minister of Justice announced that the author was being investigated for recruiting mercenaries of the United States, and that police officers and officials of the National Intelligence Agency surrounded his home with the aim of arresting him. The Committee also notes that the State party has not explained the timeline or sequence of these proceedings and events, which appear to be closely linked with the author's announcement of his candidacy for President. The Committee is of the view that, in the light of the events whose occurrence the State party has not contested, everything points to the fact that the various acts of intimidation against the author and his supporters, as well as the judicial proceedings brought against him and which have been marred by irregularities, could constitute barriers to his right to participate in the political affairs of his country. In the absence of any information from the State party on these allegations, the Committee finds that article 25 of the Covenant has been violated.

10. 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 the author's rights under articles 14 and 25 of the Covenant.

<sup>34</sup> Human Rights Committee, general comment No. 25 (1996), paras. 3 and 4.

<sup>35</sup> *Ibid.*, para.9.

11. 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 requires it to make full reparation to individuals whose Covenant rights have been violated. Accordingly, the State party is required, *inter alia*, to take the necessary steps to provide the author with adequate compensation for its violation of articles 14 and 25 of the Covenant. The State party is also under an obligation to take the steps necessary to prevent similar violations from occurring in the 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 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 remedy and comprehensive reparation 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. In addition, it requests the State party to publish the present Views.

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