RR. Communication No. 1587/2007, *Mamour v. Central African Republic* (Views adopted on 20 July 2009, Ninety-sixth session)[*]

Submitted by:	Mr. Junior Mackin Mamour (represented by counsel, Maixent Lequain)
Alleged victim:	His father, Bertrand Mamour
State party:	Central African Republic
Date of communication:	19 February 2007 (initial submission)
Subject matter:	Arbitrary detention of the author's father by the security services of the State party
Procedural issue:	State party's failure to cooperate
Substantive issues:	Arbitrary detention; freedom of movement
Articles of the Covenant:	9 and 12
Article of the Optional Protocol:	None

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

Meeting on 20 July 2009,

Having concluded its consideration of communication No. 1587/2007 submitted to the Human Rights Committee by Junior Mackin, on behalf of his father Bertrand Mamour, under the Optional Protocol to the International Covenant on Civil and Political Rights,

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[*] The following members of the Committee participated in the consideration of the present communication: Mr. Abdelfattah Amor, Mr. Prafullachandra Natwarlal Bhagwati, Mr. Lazhari Bouzid, Ms. Christine Chanet, Mr. Ahmad Amin Fathalla, Mr. Yuji Iwasawa, Ms. Hellen Keller, Ms. Iulia Antoanella Motoc, Mr. Michael O'Flaherty, Mr. José Luis Pérez Sánchez-Cerro, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Fabián Omar Salvioli and Mr. Krister Thelin.

The text of a dissenting opinion signed by Mr. Abdelfattah Amor is appended to the present document.

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

Adopts the following:

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

1. The author of the communication, dated 19 February 2007, is Junior Mackin Mamour, acting on behalf of his father Bertrand Mamour, a Central African citizen born in 1956 and currently under "house arrest" in the Central African Republic. He claims that his father, Bertrand Mamour, is a victim of violations by the Central African Republic of articles 9 and 12 of the Covenant. The Central African Republic has been a party to the Covenant and the Protocol thereto since 8 August 1981. The author is represented by counsel, Maixent Lequain.

The facts as submitted by the author

2.1 On 18 November 2006 at 11 a.m., a presidential decree published by the National Radio appointed Colonel Bertrand Mamour, previously Field Commander, to the post of Special Adviser in the Ministry of the Civil Service. On the same day, at 3 p.m., he was arrested on undisclosed grounds by the presidential security services and taken to Camp Roux in Bangui. Another decree appointed Lieutenant Colonel Ludovic Ngaïfeï to the post of Field Commander. The Government and the military hierarchy appear to accuse Colonel Mamour of colluding with the rebels of the Union des Forces Démocratiques pour le Rassemblement (UFDR). He is suspected of being a UFDR informer. He was probably arrested as a result of a report accusing him of informing the rebels about the positions of the Forces Arméés Centrafricaines (FACA) and of divulging their strategies.

2.2 Under the regime of President Ange Félix Patassé, Colonel Mamour had already been detained on 16 May 2002 at the Ngaragba prison, on the charge of collusion with the rebellion led by General François Bozizé. The Working Group on Arbitrary Detention had issued an opinion (No. 18/2002) addressed to the Government of the Central African Republic in December 2002. In that opinion, the Working Group had expressed the view that Colonel Mamour had been held in arbitrary detention from 15 June 2002. Colonel Mamour was released at the time of the coup d'état on 15 March 2003. The period of detention in 2002–2003 does not form part of the present communication.

2.3 During his detention between 18 November 2006 and April 2007, Colonel Mamour was deprived of all contact with his family and subjected to inhuman and degrading treatment which had an impact on his health. Moreover, a member of his family died in October 2006 in similar conditions.

2.4 On 24 April 2007, counsel informed the Committee that Mr. Mamour's detention had ended, but that he was nevertheless not authorized to leave the country and was "in a manner of speaking, 'under house arrest'".

The complaint

3.1 The author considers that his father was detained in the absence of a court decision or any legal document, and that he was therefore a victim of a violation of article 9 of the Covenant. Regarding the exhaustion of domestic remedies, the author argues that, since his father was deprived of all contact with the outside world, he had been unable to have access to a lawyer for the purpose of defending his rights and, thus, exhausting domestic remedies.

3.2 The author states that his father's case was also referred to the United Nations Working Group on Arbitrary Detention.

3.3 The author also considers that his father is the victim of a violation of article 12 of the Covenant, inasmuch as he is not authorized to leave his country.

State party's failure to cooperate

4. On 22 August 2007, 14 May and 29 July 2008 and 12 February 2009, the Committee requested the State party to provide it with information on the admissibility and merits of the communication. The Committee notes that this information has not been received. The Committee regrets the State party's failure to provide any information regarding the admissibility or substance of the author's claims. It recalls that, under the Optional Protocol, the State party concerned is required to submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that it may have provided. In the absence of a reply from the State party, due weight must be given to the author's allegations, to the extent that these have been properly substantiated.

Issues and proceedings before the Committee

Consideration of admissibility

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

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

5.3 In the light of the author's arguments concerning the exhaustion of domestic remedies and the lack of cooperation from the State party, the Committee considers that the provisions of article 5, paragraph 2 (b), of the Optional Protocol are not an impediment to examination of the communication.

5.4 With regard to article 12, the Committee notes that the author provides no evidence to show that his father is not able to leave his country. Consequently, the Committee considers that the author has not sufficiently substantiated his claims under article 12 for the purposes of admissibility, and finds that this part of the communication is inadmissible under article 2 of the Optional Protocol.

5.5 The Committee considers that, in the absence of information from the State party, the claim of a violation under article 9 has been sufficiently substantiated and is therefore admissible.

Consideration of the merits

6.1 The Human Rights Committee has considered the communication in the light of all the information made available to it, as provided for in article 5, paragraph 1, of the Optional Protocol.

6.2 With regard to the alleged violation of article 9, the Committee takes note of the author's claim that his father was not informed of the reasons for his arrest at the time of arrest, and that he had been unable to have access to a lawyer for the entire period of detention. In the absence of any pertinent information from the State party which would contradict the author's allegations, the Committee considers that the facts before it reveal a violation of article 9 of the Covenant.

7. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International

Covenant on Civil and Political Rights, is of the view that the facts before it reveal a violation by the State party of article 9 of the Covenant.

8. In accordance with article 2, paragraph 3, of the Covenant, the State party is under an obligation to provide the author's father with an effective remedy, including appropriate compensation. The State party is also under an obligation to take measures to prevent similar violations in the future.

9. 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 or subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy in case a violation has been established, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee's Views. The State party is also requested to publish the Committee's Views.

[Adopted in English, French and Spanish, the French text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the present report.]

Appendix

Dissenting opinion of Committee member Mr. Abdelfattah Amor

This communication was submitted by Mr. Junior Mackin Mamour, represented by counsel, on behalf of his father, Bertrand Mamour. The latter was detained by the Central African authorities on 18 November 2006. During his detention, he was deprived of all contact with his family. On 24 April 2007, counsel informed the Committee that Bertrand Mamour's detention had ended, but that he was nevertheless not authorized to leave the country and was "in a manner of speaking, 'under house arrest'". The author, who produced no evidence to show that his father was not able to leave his country (para. 5.4), was no more forthcoming about the situation of being "in a manner of speaking, 'under house arrest'". In fact there is no evidence that his father was unable, as from 24 April 2007, to submit the communication himself or to give his son power of attorney for this purpose. This raises the question of whether the son had the *locus standi* to act on behalf of his father. The Committee has not sought to answer

this question, in a change from its settled jurisprudence. I cannot endorse this position.

The Committee ought to have raised this question as a matter of course, even though the State party did not cooperate or provide any information regarding either the admissibility or the merits, despite being contacted three times.

Only an individual with standing can bring a case before the Committee. While the author may have been entitled to represent his father between 19 November 2006 and April 2007 — when his father was deprived of all contact with his family — this was no longer the case after April 2007. Although it is not required to do so, the Committee, through its secretariat, could have asked the author for evidence of his standing once his father had been released. In communication No. 1012/2001, *Brian John Lawrence Burgess v. Australia*,[1] the Committee notes that a reading of the file shows that, after receiving the initial submission, the secretariat asked counsel, on 19 July 2001, "to provide (...) written authorization from Mr. Burgess himself and from his family members if you also wish them to appear as victims" (para. 6.3). After receiving an authorization to act on behalf of Mr. Burgess only, and not on behalf of his wife and children, the Committee declared that counsel had no standing before the Committee with respect to Mrs. Burgess or the Burgess children (para. 6.3). The part of the communication concerning them was therefore declared inadmissible.

I believe that the Committee ought to have declared the present communication inadmissible as a matter of course, or at least to have asked the author for evidence that he was entitled to act on behalf of his father before the Committee. The Committee's position in the present communication with regard to the author's standing is at odds with its settled jurisprudence.

In communication No. 915/2000, *Darmon Sultanova v. Uzbekistan*,[2] the Committee notes the following, in paragraph 6.2: "... the author has not provided any proof that she is authorized to act on behalf of her husband, despite the fact that *by the time of consideration of the Communication* by the Committee *he should have already served his sentence. Neither has she substantiated why it was impossible for the victim to submit a communication on his own behalf*. In the circumstances of the case and in the absence of a power of attorney or other documented proof that the author is authorized to act on his behalf, the Committee must conclude that as far as it relates to her husband, the author has no

[1] Views adopted on 19 November 2005.
[2] Views adopted on 19 April 2006.

standing under article 1 of the Optional Protocol" (emphasis added).

The same concern is raised in communication No. 946/2000, *L.P. v. Czech Republic*, (para. 6.4): "The Committee notes that the author in his submissions also alleged that his son's rights had been violated. However, since he does not claim that he is representing his son, the Committee finds that this part of the communication is inadmissible under article 1 of the Optional Protocol."[3] The same approach by the Committee can be found in several other communications, including No. 565/1993, *H. v. Italy*;[4] No. 1163/2003, *Umsinai Isaeva v. Uzbekistan*;[5] and No. 1510/2006, *Dušan Vojnović v. Croatia*.[6] This jurisprudence is only qualified if there are special circumstances, as in the case of communication No. 397/1990, *P.S. v. Denmark*,[7] where it is pointed out in paragraph 5.2 that: "The Committee has taken notice of the State party's contention that the author has no standing to act on behalf of his son, as Danish law limits this right to the custodial parent. The Committee observes that standing under the Optional Protocol may be determined independently of national regulations and legislation governing an individual's standing before a domestic court of law. In the present case, it is clear that T.S. [a minor] cannot himself submit a complaint to the Committee; the relationship between father and son and the nature of the allegations must be deemed sufficient to justify representation of T.S. before the Committee by his father."

In sum, the present communication (*Mamour v. Central African Republic*) deserved closer attention from the Committee.

(*Signed*) Mr. Abdelfattah **Amor**

[Done in English, French and Spanish, the French text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the present report.]

[3] Views adopted on 25 July 2002.
[4] Inadmissibility decision of 8 April 1994.
[5] Views adopted on 20 March 2009.
[6] Views adopted on 30 March 2009.
[7] Inadmissibility decision of 22 July 1992.