

Mariam Sankara *et al.*

Author *et al.*

v.

Burkina Faso

State Party

**REPLY COMMENTS OF THE AUTHOR *ET AL.* (29 Sept. 2006) TO BURKINA
FASO'S COMMENTS ON REMEDIES (30 June 2006)**

Mariam Sankara *et al.* are represented by Counsels, forming the

Collectif Juridique International Justice Pour Sankara

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INTRODUCTION

In its Final Views in communication 1159/2003, the Human Rights Committee of the United Nations unanimously determined that the State Party, Burkina Faso was responsible for breaches of Covenant-protected rights under articles 7 and 14, paragraph 1 with respect to Mariam Sankara and her two sons, Auguste and Philippe (the widow and children of the late former President of Burkina Faso, Thomas Sankara).

These violations stem from the ongoing refusal of all competent authorities in Burkina Faso to initiate a judicial inquiry to establish the circumstances of Thomas Sankara's unlawful killing which occurred on 15 October 1987, and to duly proceed to alter a falsified death certificate issued for the latter following said judicial inquiry.

With respect to the violation of article 7, the Human Rights Committee has stated unequivocally at paragraph 12.2 of its Final Views that:

The Committee considers that the refusal to conduct an investigation into the death of Thomas Sankara, the lack of official recognition of his place of burial and the failure to correct the death certificate constitute inhuman treatment of Ms. Sankara and her sons, in breach of article 7 of the Covenant.

The Committee further determined that Burkina Faso was responsible for two incidental violations of article 14, paragraph 1 authored by individual state officials in connection with the ongoing failure to conduct any judicial inquiry into Thomas Sankara's death: one breach authored by Justice Frank Sibila Compaoré of the Supreme Court of Burkina Faso by virtue of his decision no. 46 dated 19 June 2001,¹ and a second breach authored by the Procureur du Faso, M.A. Traoré as of 23 July 2001.²

Burkina Faso's Comments dated 30 June 2006

In accordance with established procedure, Burkina Faso has proffered its comments within 90 days of the issuance of the Committee's Final Views to describe measures, if any, it has undertaken to render effective and enforceable remedies and redress its breaches of article 7 and article 14, paragraph 1 vis-à-vis the victims.

The Committee has specifically stated at paragraph 14 of its Final Views that:

Under article 2, paragraph 3 (a), of the Covenant, the State party is required to provide Ms. Sankara and her sons an effective and enforceable remedy in the form, *inter alia*, of official recognition of the place where Thomas Sankara is buried, and compensation for the anguish suffered by the family. The State party is also required to prevent such violations from occurring in the future.

¹ Final Views in Communication No. 1159/2003, para. 12.5; [the Committee may note that the State Party, Burkina Faso altogether refused to provide any official copy of said judgment in this communication matter, and the Committee based its findings on a copy of the judgment provided by the Author.]

² Final Views in Communication No. 1159/2003, para. 12.6.

The measures referred to in the comments provided by Burkina Faso, dated 30 June 2006 do not meet the international law standard for “effective and enforceable remedies” in respect of article 7 under the Covenant and the Optional Protocol as defined by jurisprudence of the Human Rights Committee, and **do not provide any redress whatsoever** for specific breaches of article 14, paragraph 1 committed by state authorities in respect of members of the Sankara family.

The deficiencies of the measures described in Burkina Faso’s comments dated 30 June 2006 are addressed in detail in the present comments below.

BURKINA FASO’S ONGOING REFUSAL TO INITIATE A JUDICIAL INQUIRY TO ESTABLISH THE CIRCUMSTANCES OF THOMAS SANKARA’S DEATH

In its Final Views in communication 1159/2003, the Committee duly noted that the Procureur du Faso, M.A. Traoré was personally responsible for failing to initiate inquiry proceedings before a military court to establish the circumstances of Thomas Sankara’s unlawful killing. The Committee stated unequivocally in its Views at paragraph 12.6 that:

“... no time bar could invalidate proceedings in a military court, and consequently the failure to refer the matter to the Minister of Defence should be attributed to the Procurator, who alone had the power to do so.”

This previous refusal by the Procureur du Faso, M.A. Traore to refer the matter to the Minister of Defence on 23 July 2001 based on an alleged time bar was unanimously deemed by the Committee to be “**manifestly unfounded**”³ giving rise to a breach of article 14, paragraph 1 of the Covenant.

Following the issuance of the Final Views of the Human Rights Committee, the Author’s counsel reiterated the request by letter dated 17 May 2006 to the office of the Procureur du Faso recalling the unfulfilled obligation to refer the matter to the Minister of Defence as no time bar could invalidate proceedings in a military court (as duly noted by the Human Rights Committee), the whole of which appears from **Exhibit A**.

Yet, following receipt of the request letter from the Author’s counsel, the Procureur du Faso, Adama Sagnon has once again categorically refused to fulfill his public order duty to refer the matter to the Minister of Defence to commence a judicial inquiry to establish the circumstances of Thomas Sankara’s unlawful killing, re-arguing an alleged “time bar,” the whole of which appears from the text of his reply, **Exhibit B** (pg. 2 at para. 1).

This *de novo* refusal by the Procureur du Faso, Adama Sagnon on 21 June 2006 following the issuance and publication of the Final Views of the Committee demonstrates

³ Final Views in Communication No. 1159/2003, para. 6.7.

Burkina Faso's bad faith and manifest failure to meet its obligations under the Covenant towards surviving members of the Sankara family.

Whereas the Human Rights Committee has specifically called upon Burkina Faso "to prevent such violations from occurring in the future" in respect of both articles 14 (1) and 7 as regards Mariam Sankara and her sons, Burkina Faso has failed to do so.

It is settled law under the Covenant that **the only effective remedy** available in respect of unlawful killings is an impartial judicial inquiry to establish the circumstances of the unlawful death concerned;⁴ Burkina Faso, and its authorities cannot continue to feign ignorance of the Human Rights Committee's jurisprudence under the Covenant in this regard.

Nor can Burkina Faso, or any of its authorities, continue to rely on any alleged "time bar" or "prescription" arguments to preclude a judicial inquiry from proceeding in Burkina Faso to establish the circumstances of Thomas Sankara's death. The Human Rights Committee has already categorically rejected Burkina Faso's previous arguments as to any alleged "time bar" to commencing a judicial inquiry in Burkina Faso in respect of Thomas Sankara's unlawful death.⁵

Moreover, it is well-established at international law that a State Party may not invoke the provisions of its internal law as justification for its failure to perform treaty obligations under the Covenant. Article 27 of the *Vienna Convention on the Law of Treaties* is clear on this point.⁶

Thus even in 2006, Burkina Faso's unfounded claims that a "time bar" prevents its state officials from initiating an impartial inquiry to establish the circumstances of Thomas Sankara's unlawful death cannot be opposed to its obligation under the Covenant to do so.

BURKINA FASO'S EX PARTE PROCEEDING TO ALTER THE FALSIFIED DEATH CERTIFICATE OF THOMAS SANKARA HAS FURTHER EXACERBATED BREACHES OF THE SANKARA FAMILY'S RIGHTS UNDER ARTICLES 7 AND 14(1) OF THE COVENANT

Unbeknownst to the Mariam Sankara and her sons - and the membership of the Human Rights Committee - Burkina Faso undertook a clandestine *ex parte* proceeding in Burkina Faso in an attempt to unilaterally modify the known falsified death certificate of Thomas Sankara dated 17 January 1988. This *ex parte* proceeding resulted in a secretive "decision" on 7 March 2006, **before** the Human Rights Committee met for its eighty-sixth session (13 - 31 March 2006) to deliberate and issue its Final Views in communication 1159/2003.

⁴ Communications Nos. 612/1995, *Vicente v. Colombia*, Views of 29 July 1997, and 778/1997, *Coronel et al. v. Colombia*, Views of 24 October 2002.

⁵ Final Views in Communication No. 1159/2003, para. 12.6.

⁶ "VCLT", 23 May 1969. Entered into force on 27 January 1980. UNTS, vol. 1155, p. 331.

The victims, and their counsels only became aware of this clandestine decision by virtue of submission of Burkina Faso's comments dated 30 June 2006 as ANNEX 1 in the present matter. The factual basis upon which Burkina Faso's authorities sought, and obtained the "decision" dated 7 March 2006 is unknown; Burkina Faso has failed to disclose any information, direct evidence or scientific expertise in connection with the "decision" of 7 March 2006.

The manner in which the State Party, Burkina Faso undertook this clandestine proceeding in an attempt to modify the falsified death certificate of the *de cuius*, Thomas Sankara - and the utter and complete failure to disclose the proceeding and the resulting "decision" on 7 March 2006 to the victims and the Committee itself - constitutes an independent and further violation of article 14(1) of the Covenant for Mariam Sankara and her two sons. This State-sponsored conduct cannot even be reconciled with existing provisions of law in Burkina Faso⁷ and cannot go without comment by the Human Rights Committee, if the guarantee under article 14, paragraph 1 is to be fully upheld.

Moreover, this deliberate State-sponsored conduct has had the effect of exacerbating the anguish and psychological pressure that members of the Sankara family have suffered, and continue to suffer.

The Sankara family still does not know the full circumstances surrounding the death of Thomas Sankara despite the illicit *ex parte* conduct to modify of the latter's death certificate. The intentional and injurious conduct of Burkina Faso in clandestinely altering the death certificate cannot go un-commented upon by the Human Rights Committee if the rights engendered in article 7 are to be respected and given true meaning under the Covenant.

Failure to establish the circumstances of Thomas Sankara's death by judicial inquiry prior to the clandestine alteration of his falsified death certificate does not qualify as an adequate and effective remedy for ongoing article 7 violations.

The subject matter of the 7 March 2006 "decision" in Burkina Faso does not judicially establish the circumstances of Thomas Sankara's unlawful killing in 1987- even though it attempts to *prima facie* modify the latter's falsified death certificate.

⁷ Articles 119 et 124 of the *Code des Personnes et de la Famille* in Burkina Faso state:

Article 119 : Lorsqu'il y a des signes ou indices de mort violente ou d'autres circonstances qui donnent lieu de le soupçonner, on ne pourra faire l'inhumation qu'après qu'un officier de police judiciaire, assisté d'un médecin, aura dressé procès-verbal de l'état du cadavre et des circonstances relatives au décès, ainsi que des renseignements qu'il aura pu recueillir sur les nom, prénoms, âge, profession, lieu de naissance et domicile de la personne décédée.

Article 124 : Le procureur du Faso peut procéder à la rectification des erreurs ou omissions purement matérielles des actes de l'état civil. A cet effet, il donne directement les instructions utiles aux dépositaires des registres. Il lui est rendu compte de l'exécution.

As such, the “decision” dated 7 March 2006 cannot qualify as an adequate and effective remedy for Mariam Sankara and her sons under the Covenant in respect of judicially establishing the circumstances of Thomas Sankara’s unlawful death to which they are entitled under article 7.

BURKINA FASO’S INADEQUATE RECOGNITION OF THE PLACE WHERE THOMAS SANKARA IS ALLEGEDLY BURIED

In its comments dated 30 June 2006, Burkina Faso makes reference to a place where the remains of Thomas Sankara are allegedly buried. Yet Burkina Faso provides no record, direct witness evidence, burial record, DNA analysis, autopsy or forensic report which would constitute an “official record” in relation to the burial of the remains of Thomas Sankara.

Similar to the “decision” dated 7 March 2006 which illegitimately modifies Thomas Sankara’s death certificate, Burkina Faso’s provision of mere unsubstantiated “notice” of where the remains of Thomas Sankara are alleged to be buried cannot qualify as an adequate and effective remedy for Mariam Sankara and her sons under the Covenant.

For members of the Sankara family, true “official recognition” of the place where Thomas Sankara’s remains are buried can only come **after** a judicial inquiry establishes the circumstances of Thomas Sankara’s unlawful death and burial by direct witness evidence, burial record, DNA analysis, autopsy or forensic report to which they are entitled under article 7 of the Covenant.

THE INADEQUACY OF COMPENSATORY SCHEMES DESCRIBED BY BURKINA FASO

In its comments of 30 June 2006, Burkina Faso has referenced so-called compensatory measures currently available to members of the Sankara family in Burkina Faso; these measures include both a military pension to which surviving members of the Sankara family are entitled, as well as compensation from the existing *Compensation Fund for Victims of Political Violence* in Burkina Faso.

The military pension

The issue of an outstanding military pension owed to the Sankara family was not the subject matter of communication 1159/2003.

Burkina Faso’s reference to a military pension to which the members of the Sankara family are entitled is entirely irrelevant to the issue of Burkina Faso’s provision of an adequate, effective and enforceable remedy in the context of grave breaches of article 7 rights of the victims under the Covenant, and remedies to other breaches under article 14, paragraph 1.

The inadequacy of the *Compensation Fund for Victims of Political Violence*

The comments of Burkina Faso, dated 30 June 2006 make reference to a Presidential Decree n° 2006-307/PRES/PM, enacted by Blaise Campaoré⁸ on 29 June 2006, whereby an indemnity is made available to the Sankara family pursuant to the non-contentious *Compensation Fund for Victims of Political Violence* in Burkina Faso.

As regards the *Compensation Fund for Victims of Political Violence*, the Human Rights Committee has previously rejected bare compensation through this non-contentious victim's fund in Burkina Faso as an inadequate and ineffective remedy under the Covenant with regards to the serious breaches of article 7 rights at issue.

The Working Group of the Human Rights Committee specifically addressed this issue in its Views at the admissibility stage of the present communication (9 March 2004), and the Committee as a whole adopted the position that the pursuit of an application through the existing *Compensation Fund for Victims of Political Violence* in Burkina Faso does not qualify as an effective and enforceable remedy under the Covenant given the context of the grave breaches of article 7 rights concerned. The Committee's Final Views, at para.6.4, state:⁹

As to the exhaustion of domestic remedies, and the State party's argument of inadmissibility based on failure to make use of non-contentious remedies, the Committee recalled that domestic remedies must be not only available but also effective, and that the term "domestic remedies" must be understood as referring primarily to judicial remedies. The effectiveness of a remedy also depended, to a certain extent, on the nature of the alleged violation. In the present case, the alleged violation concerned the right to life, and was linked primarily to the alleged failure to conduct an inquiry and to initiate proceedings against the guilty parties, and secondarily to the alleged failure to correct the victim's death certificate, as well as to the failure of the appeals initiated by the authors in order to remedy the situation. In these circumstances, the Committee considered that the non-contentious remedies mentioned by the State party in its submission could not be considered effective for the purposes of article 5, paragraph 2 (b), of the Optional Protocol. [notes omitted]

Following issuance of the Final Views of the Human Rights Committee on this very point of law under the Covenant, Burkina Faso cannot now be permitted to re-argue that an *ex post facto* indemnity available pursuant to the non-contentious *Compensation Fund for*

⁸ The Committee may duly recall that Blaise Campaoré is now alleged to bear certain responsibility in relation to Thomas Sankara's unlawful death in 1987 (while he served as Minister of Justice in Burkina Faso) according to the testimony given by Brigadeer General John Tarnue, former commander of the Armed Forces of Liberia before the UN- sponsored *Special Court for Sierra Leone*, <http://www.sc-sl.org/Transcripts/RUF-100404.pdf> [TRANSCRIPTS OF THE RUF ACCUSED TRIAL, Second Session, 4 October 2004, pgs. 82-85]

⁹ In **footnote # 20**, at paragraph 6.4 of the Committee's Final Views in communication 1159/2003. the non-contentious *Compensation Fund for Victims of Political Violence* is specifically addressed and rejected by the Committee as a means to achieve an effective remedy in respect of art. 7 Covenant violations.

Victims of Political Violence qualifies as an “effective remedy” under the Covenant to meet its obligations towards the Sankara family!

In any event, any application through the existing non-contentious *Compensation Fund for Victims of Political Violence* would require the Sankara family to altogether abandon their rights to have the circumstances of Thomas Sankara’s death established by judicial inquiry, as article 8 of the Decree of 8 June 1991 requires the discontinuance of judicial proceedings, and waiver of all legal rights to seek remedies before the courts of Burkina Faso.

While the Human Rights Committee did not explicitly address this point in its Final Views in communication 1159/2003, it may be inferred that such a requirement is *de jure* incompatible with substantive article 7 rights under the Covenant, and the corresponding guarantee for an effective remedy pursuant to the Optional Protocol.

OUTSTANDING EFFECTIVE REMEDIES DUE TO THE SANKARA FAMILY UNDER THE COVENANT

Un-redressed breaches of article 7

Bare offers of compensation through the *Compensation Fund for Victims of Political Violence* cannot legally qualify under article 7 of the Covenant as an effective and enforceable remedy or substitute for the judicial inquiry to lawfully establish the circumstances of Thomas Sankara’s death, and subsequent prosecution of those responsible for his unlawful killing.

As stated by a unanimous Human Rights Committee in this very case:

Thomas Sankara’s family have the right to know the circumstances of his death, and the Committee points out that any complaint relating to acts prohibited under article 7 of the Covenant must be investigated rapidly and impartially by the competent authorities.¹⁰

Burkina Faso has failed to date to meet its obligations towards the Sankara family in this regard.

Un-redressed breaches of article 14, para. 1

Furthermore, Burkina Faso’s comments dated 30 June 2006 have altogether failed to provide any information whatsoever as regards measures undertaken by the State Party to redress distinct and separate violations of article 14, paragraph 1, committed by its authorities; namely, (a) the breach of the article 14(1) rights of Mariam Sankara and her sons authored by Justice Frank Sibila Compaoré of the Supreme Court of Burkina Faso in his decision no. 46 dated 19 June 2001; (b) the article 14(1) breach authored by the

¹⁰ Final Views in Communication No. 1159/2003, para. 12.2.

Procureur du Faso, M.A. Traoré on 23 July 2001, and now (c) the Procureur du Faso, Adama Sagnon's manifestly unfounded refusal on 21 June 2006 to refer the matter of Thomas Sankara's unlawful death to the Minister of Defence in order to commence the outstanding judicial inquiry.

State-sponsored measures, in the form of sanctions for these specific judicial and prosecutorial authorities for their wilful breaches of these article 14(1) guarantees, and additional compensation for members of the Sankara family for these breaches, are now required to meet the State Party's obligations under the Covenant – in addition to an outstanding inquiry to establish the circumstances of Thomas Sankara's unlawful death.

Failure on the part of Burkina Faso to undertake these decisive and immediate measures can only result in the perpetuation of impunity in the State Party's territory,¹¹ which *ipso facto* is incompatible with all substantive guarantees under Covenant, and *erga omnes* obligations towards other State Parties under the Covenant.

CONCLUSION

For these reasons, Mariam Sankara and her sons, Auguste and Philippe would respectfully request that the Human Rights Committee call for an immediate meeting with the delegate of Burkina Faso to discuss the following:

- (1) the immediate commencement of an impartial judicial inquiry in Burkina Faso to duly establish the circumstances of Thomas Sankara's death to fulfill the State Party's outstanding obligations to remedy ongoing article 7 breaches under the Covenant;
- (2) specific remedies to be provided as regards
 - (a) the wilful breach of art. 14(1) rights of Mariam Sankara and her sons authored by Justice Frank Sibila Compaoré of the Supreme Court of Burkina Faso in his decision no. 46 dated 19 June 2001; and
 - (b) the intentional violation of the article 14(1) guarantee authored by the Procureur du Faso, M.A. Traoré on 23 July 2001, and
 - (c) the refusal by the Procureur du Faso, Adama Sagnon, on 21 June 2006 to refer the matter to the Minister of Defence to commence the judicial inquiry to establish the circumstances of Thomas Sankara's death.

¹¹ The Human Rights Committee may duly note recent widespread allegations of impropriety and impunity in Burkina Faso on the part of credible international non-governmental observers arising from an "Ordonnance de non-lieu" rendered on 18 July 2006 by the courts of Burkina Faso in respect of criminal prosecution for the unlawful death of Norbert ZONGO *et al.*, the subject of which may form the object of yet another communication against the State Party under the Optional Protocol for serious violations of the Covenant.

In the absence of the State Party's immediate cooperation, Mariam Sankara and her sons would urge the Special Rapporteur on Follow-Up to conduct an independent fact-finding mission in Burkina Faso and submit both Burkina Faso's comments to follow-up, and the present Author's reply comments for publication in the Human Rights Committee's annual report to the U.N. General Assembly via the U.N. Secretary-General to ensure compliance on the part of Burkina Faso.

*Submitted on behalf of Mariam Sankara et al,
on September 29, 2006.*

Collectif Juridique International Justice Pour Sankara

- Exhibit A:** Request letter, dated 17 May 2006, to the Procureur du Faso reminding him of his unfulfilled obligation to refer the Sankara matter to the Minister of Defence;
- Exhibit B:** Reply letter by the Procureur du Faso, Adama Sagnon dated 21 June 2006 refusing to refer the Sankara matter to the Minister of Defence.