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HUMAN RIGHTS COMMITTEE
Sixty-eighth session
13 - 31 March 2000

VIEWS

Communication Nº 711/1996

Submitted by:	Carlos Dias
Alleged victims:	The author and Carolina de Fatima da Silva Francisco
State party:	Angola
Date of communication:	28 March 1996 (initial submission)
Documentation references:	- CCPR/C/62/D/711/1996, admissibility decision, dated 20 March 1998
Date of adoption of Views	20 March 2000

On 20 March 2000, the Human Rights Committee adopted its Views, under article 5, paragraph 4, of the Optional Protocol in respect of communication No. 711/1996. The text of the Views is appended to the present document.

[ANNEX]

**Made public by decision of the Human Rights Committee.
Views 711

ANNEX*

VIEWS OF THE HUMAN RIGHTS COMMITTEE UNDER ARTICLE 5, PARAGRAPH 4, OF THE OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS
- Sixty-eighth session -

concerning

Communication Nº 711/1996

Submitted by:	Carlos Dias
Alleged victims:	The author and Carolina de Fatima da Silva Francisco
State party:	Angola
Date of communication:	28 March 1996 (initial submission)
Date of decision on admissibility:	20 March 1998

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

Meeting on 20 March 2000

Having concluded its consideration of communication No. 711/1996 submitted to the Human Rights Committee by Mr. Carlos Dias under the Optional Protocol to the International Covenant on Civil and Political Rights,

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

Adopts the following:

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*The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Nisuke Ando, Mr. Prafullachandra Natwarlal Bhagwati, Lord Colville, Ms. Elizabeth Evatt, Ms. Pilar Gaitán de Pombo, Mr. Louis Henkin, Mr. Eckart Klein, Mr. David Kretzmer, Mr. Rajsoomer Lallah, Mr. Martin Scheinin, Mr. Hipólito Solari Yrigoyen, Mr. Roman Wieruszewski and Mr. Maxwell Yalden.

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

1. The author of the communication is Mr. Carlos Dias, a Portuguese national. He submits the communication on his own behalf and of that of Carolina de Fátima da Silva Francisco, an Angolan national, killed on 28 February 1991. He does not invoke any articles of the Covenant. The Covenant and the Optional Protocol thereto entered into force for Angola on 9 February 1992.

Fact as submitted by the author

2.1 The author has a business in Angola, with a head office in Luanda. In February 1991, he was away on business and his business partner and companion Carolina da Silva stayed at the premises in Luanda. She was killed in the night of 28 February 1991. The author arrived back from his trip the following morning. The guard on duty was found severely wounded and later died of his injuries. The safe was found open and a large sum of money removed.

2.2 The author states that the murder was never seriously investigated by the Angolan police, despite several urgent requests made by him. The author then decided to start his own investigations and, in the beginning of 1993, published a series of advertisements in newspapers in Angola and in other countries, despite the fact that the Angolan authorities refused to give permission for these publications and actually threatened him if he would do so. Following the advertisements, the author came in contact with an eye witness to the crime.

2.3 This eye witness, an Angolan national born on 16 June 1972, in a statement made on 23 November 1993 in Rio de Janeiro, stated that at the time she was the girlfriend of one Victor Lima, adviser to the President of Angola in charge of international affairs. In the evening of 27 February 1991, Mr. Lima came to pick her up to go for a drive in his car. Later that night they picked up four friends of his. According to the witness the five men started to complain about Angolans who worked for white men, and said that they would eliminate 'this black girl who is working with the whites'. After a while they stopped at a house, and a black woman, whom the witness did not know, but who apparently knew Mr. Lima and his friends, opened the door. They went inside, took drinks, and then the men said that they wanted to speak to the woman alone, upon which they retired to a side room. The witness remained behind. After a while she heard loud voices, and then the woman started to scream. The witness became afraid and wanted to flee, but was prevented from leaving by the security guard. She then took up a position in the room from where she could see what was happening, and saw the woman being raped by the men. Mr. Lima, the last one to rape her, then took her neck and twisted it. Upon leaving the premises, the witness was threatened by the men and told never to reveal what she had seen. Soon thereafter the witness left Angola out of fear.

2.4 The witness' sister was married to an inspector for secret services of the Angolan Ministry of the Interior. In a statement, made on 15 September 1993 in Rio de Janeiro, he confirms that Carolina da Silva was being kept under surveillance by the secret police, officially for being suspected of furnishing political-military information to the South African Government, through her contacts with whites, but according to the statement, in reality because she had rejected the amorous proposals of the Chief of the Security Services of the Cabinet of the President and National Director of the Secret Service, Mr. Jose Maria.

2.5 The author states that the eye witness' brother-in-law, the inspector who gave the statement referred to above, disappeared on 21 February 1994, while in Rio de Janeiro.

2.6 The author informed the President of Angola about his discoveries in a letter sent by his lawyer, pointing out that the perpetrators of the crime belonged to his inner circle. On 8 March 1994, a meeting was held with the Angolan consul in Rio de Janeiro, who informed the author that the Government might send a mission to Rio de Janeiro. However, nothing happened. On 19 April 1994, the judicial adviser of the President, in a letter to the author's lawyer, stated that he was aware of the urgency of solving the case, and on 26 June 1994, a meeting took place in Lisbon between the judicial adviser and the Secretary of the Council of Ministers on the one side and the author and his lawyer on the other. However, no further progress seems to have been achieved, and on 8 September 1994 an official communique was issued by the Angolan Minister of the Interior, stating that the police contested declarations on the death of Carolina da Silva and accusing the author of trying to bribe the Government.

2.7 Since then, the author has continued to try in vain to have the perpetrators of the murder brought to justice. In March 1995, he began a civil action against Angola in the civil court of Lisbon, to recover unsettled debts. In July 1995, he applied to the Criminal Court in Lisbon against the perpetrators of the murder, apparently under article 6 of the Convention against Torture.

2.8 According to the author, the murder of his companion was planned by the Head of the Military House of the President, the vice-Minister of the Interior, the Minister of State Security and the Minister of Foreign Affairs. In this connection, he states that Carolina da Silva had been arrested on 6 October 1990 and kept in detention for 36 hours, because she had refused to open the safe of the enterprise owned by the author.

2.9 The author states that since the murder, he has not been able to live and do his business in Angola, because of threats. He has left Angola, leaving his properties (real estate, furniture, vehicles) behind. He has not been able to bring a case in the Angolan courts, since no lawyer wants to take the case, as it involves Governmental officials. In this context, he states that the lawyer who was representing Carolina's mother, withdrew from the case on 15 March 1994.

The complaint

3. The author claims that Angola has violated the Covenant, since it failed to investigate the crimes committed, keeps those responsible for the crimes in high positions, and harasses the author and the witnesses so that they can't return to Angola, with as a consequence for the author that he has lost his property. The author argues that, although the murder occurred before the entry into force for Angola of the Covenant and the Optional Protocol thereto, the above mentioned violations continue to affect the author and the witnesses.

The Committee's admissibility decision

4. By decision of 6 August 1996, the Special Rapporteur on New Communications of the Human Rights Committee transmitted the communication to the State party, requesting it, under rule 91 of the rules of procedure, to submit information and observations in respect of the admissibility of the communication. The State party did not forward such information, despite of several reminders addressed to it, the latest on 17 September 1997.

5.1 At its 62nd session, the Committee considered the admissibility of the communication. It ascertained, as required under article 5, paragraph 2(a), of the Optional Protocol, that the same matter was not being examined under another procedure of international investigation or settlement.

5.2 The Committee noted that it was precluded from considering the claim submitted on behalf of Ms. Carolina Da Silva, ratione temporis. In the absence of observations from the State party, the Committee was not aware of any other obstacles to the admissibility of the communication and considered that the communication submitted on behalf of Mr. Dias might raise issues under the Covenant which should be examined on their merits.

6. Accordingly, on 20 March 1998, the Human Rights Committee decided that the communication was admissible.

Issues and proceedings before the Committee

7. The Committee's decision declaring the communication admissible was transmitted to the State party on 1 May 1998, with the request that explanations or statements clarifying the matter under consideration should reach the Committee at the latest by 1 November 1998. No clarifications were received despite several reminders sent to the State party, the last one on 24 June 1999. The Committee recalls that it is implicit in the Optional Protocol that the State party make available to the Committee all information at its disposal and regrets the lack of cooperation of the State party. In the absence of any reply from the State party, due weight must be given to the author's allegations to the extent that they have been substantiated.

8.1 The Committee has considered the present communication in the light of all the written information before it, in accordance with article 5 (1) of the Optional Protocol.

8.2 The author has provided information to the effect that he has been harassed and threatened by the State party's authorities, when, in the absence of a serious investigation by the police, he started investigating the murder of his companion and found evidence that high ranking Government officials had been involved in the murder. The author's allegations in this respect have never been contradicted by the State party. The Committee notes that it has also not been disputed that one of the witnesses, who gave a statement to the author about the murder of his companion, disappeared shortly afterwards.

8.3 The Committee recalls its jurisprudence that article 9(1) of the Covenant protects the right to security of person also outside the context of formal

deprivation of liberty. An interpretation of article 9 which would allow a State party to ignore threats to the personal security of non-detained persons subject to its jurisdiction would render totally ineffective the guarantees of the Covenant.[1] In the present case, the author has claimed that the authorities themselves have been the source of the threats. As a consequence of the threats against him, the author has been unable to enter Angola, and he has therefore been prevented from exercising his rights. If the State party neither denies the threats nor cooperates with the Committee to explain the matter, the Committee must give due weight to the author's allegations in this respect. Accordingly, the Committee concludes that the facts before it disclose a violation of the author's right of security of person under article 9, paragraph 1, of the Covenant.

9. 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 disclose violations of article 9, paragraph 1, of the Covenant.

10. Under article 2, paragraph 3(a), of the Covenant, the State party is under the obligation to provide Mr. Dias with an effective remedy and to take adequate measures to protect his personal security from threats of any kind. The State party is under an obligation to take measures to prevent similar violations in the future.

11. Bearing in mind that, by becoming a State 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 or not and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy in case a violation has been established, the Committee wishes to receive from the State party, within ninety 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 English text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly]

[1] See the Committee's Views in case No. 195/1985, Delgado Paez v. Colombia, paragraph 5.5, adopted on 12 July 1990, document CCPR/C/39/D/195/1985.