

HUMAN RIGHTS COMMITTEE

Jaona v. Madagascar

Communication No. 132/1982

1 April 1985

VIEWS

Submitted by: Monja Jaona (represented by Maitre Eric Hammel)

Alleged victim: Monja Jaona

State party concerned: Madagascar

Date of communication: 30 December 1982 (date of initial letter)

Date of decision on admissibility: 6 April 1984

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

Meeting on 1 April 1985,

Having concluded its consideration of Communication No. 132/1982 submitted to the Committee by Monja Jaona 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 by the State party concerned;

Adopts the following:

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

1. The author of the communication (initial letter dated 30 December 1982, further letters dated 12 May and 15 August 1983 and 18 January 1984) is Monja Jaona, a 77-year-old Malagasy national, former "Doyen du Conseil Suprême de la Révolution malgache" and candidate in the presidential elections held in Madagascar on 7 November 1982, at present Member of the National People's Assembly in Madagascar. He is represented by Maitre Eric

Hammel, who was a lawyer in Madagascar until his expulsion on 11 February 1982 and who now resides in France.

2.1 Maitre Hammel states that on 15 December 1982 Mr. Monja Jaona was arrested at his residence in Tananarive and that, although according to an official announcement Mr. Jaona was subjected only to house arrest, he was actually taken to the military camp of Kelivondrake, 600 km south of Tananarive, where he was detained until his release before the elections to the National People's Assembly held on 28 August 1983. Mr. Jaona was arrested under government decree, without any reasons being given for his arrest, for an unlimited period of time and without the possibility of being brought before a judge. His arrest took place subsequent to the following events. Mr. Jaona was a candidate in the 1982 presidential elections against the incumbent President. During his campaign he denounced the allegedly corrupt policies of the Government. It is claimed that election fraud caused Mr. Jaona's defeat, that he publicly denounced the alleged abuses and called for new elections. Maitre Hammel states that Mr. Jaona was then arrested on the Pretext that demonstrations organized in his support were endangering public order and security.

2.2 Maitre Hammel also refers to a previous arrest of his client under similar conditions in December 1980. Maitre Hammel sought before the courts repeal of the governmental decree and compensation for the damages suffered by Mr. Jaona, who was subsequently released on 9 March 1981, by Governmental decree, no reasons being given. Mr. Jaona maintained his complaints before the courts. Maitre Hammel claims that his own expulsion by order of the Ministry of Justice of Madagascar on 11 February 1982 was, inter alia, a consequence of his involvement in that case.

2.3 Maitre Hammel claims that Mr. Jaona is a victim of breaches by Madagascar of article 9, paragraphs 1 and 2, article 18, paragraph 1, and article 19, paragraph 1, of the International Covenant on Civil and Political Rights.

3. By its decision of 17 March 1983, the Working Group of the Human Rights Committee transmitted the communication under rule 91 of the provisional rules of procedure to the State party, requesting information and observations relevant to the question of admissibility of the communication. The Working Group also requested the State party to provide the Committee with copies of any court orders or decisions relevant to the case and to inform the Committee of the state of health of Mr. Monja Jaona.

4.1 In a further letter dated 12 May 1983, Maitre Hammel submitted additional information concerning the state of health of his client and alleged that the Malagasy Government was refusing to give Mr. Jaona the necessary medical care and that it had not authorized specialist professors, including the Dean of the Faculty of Medicine of Tananarive, to see and examine Mr. Jaona.

4.2 Maitre Hammel also enclosed a copy of a letter by Mrs. Monja Jaona, dated 19 April 1983, referring to her husband's two hunger-strikes, from 10 to 14 January and again from 15 to 23 January 1983.

4.3 In an annexed statement dated 12 January 1983, Monja Jaona explained his hunger-strike as follows:

"It is the fact that I have been arrested and detained at Kelivondrake: that is arbitrary, and that is why I oppose it. There was no investigation and I was never informed of the grounds for my arrest: that is what I take exception to. I know very well that I have been arrested because of the elections. It was stated that any candidate sponsored by a party belonging to the Front could stand for election and that candidates outside the Front were not allowed to stand. The MONIMA party nominated me and I accepted. Subsequently, the way in which the elections were held made it clear to me that fraud had been committed at my expense. Those responsible were the persons in charge of the decentralized collectives and the ministers, whose departure I have long been demanding. Then, when I gave a press conference, I was totally censored. I stated that the Malagasy people had not elected Ratsiraka for the next seven years. As the press conference was censored, I reacted by calling a strike to demand the holding of new elections, the transmission by radio of my press conference and the abolition of the censorship which affects the entire press. During this period I was never summoned anywhere but was immediately placed under arrest. The aim of this arbitrary arrest is to conceal the truth. Moreover, since I stood for election to the highest office in the country, my arrest is entirely unjust."

5.1 By a note dated 15 July 1983, the State party objected to the admissibility of the communication on the ground that it did not fulfil the requirements of article 5, paragraph 2 (b), of the Optional Protocol, since domestic remedies had not been exhausted. The State party submitted that:

"Order No. 82-453 of 15 December 1982 placing Mr. Monja Jaona under house arrest was issued under statute No. 60-063 of 22 July 1960, relating to the dissolution of certain associations and to the placing under house arrest of persons convicted of subversive activities. Article 5 of the statute provides for the possibility of appeal. Mr. Monja Jaona availed himself of that provision on 15 March 1983, by lodging an appeal with the Administrative Chamber of the Supreme Court to have Order No. 82-453 of 15 December 1982 rescinded. The case is currently pending before that court, and Mr. Monja Jaona should have awaited the decision of the Administrative Chamber before lodging a parallel appeal, if that proved necessary, with an international body."

5.2 The State party further stated that it would transmit information as to the state of health of Mr. Monja Jaona at a later date. No such information has been received yet from the State party.

6.1 On 15 August 1983, Maitre Hammel forwarded his comments in reply to the State party's submission of 15 July 1983. He stated, inter alia:

"The Malagasy Government claims that because an appeal was lodged on 15 March 1983 to the Administrative Chamber of the Supreme Court of Madagascar the petition addressed to the Human Rights Committee is inadmissible. This argument is not, however, well rounded ...

"The Malagasy Government instructed a lawyer in its pay to submit a petition to the Supreme Court and the petition was submitted on 15 March 1983 or two and a half months after the communication to the Human Rights Committee. This late petition cannot constitute an argument against admissibility ...

"Possibilities for appeal are indeed provided by Malagasy law, but it has already been reported that these possibilities are purely symbolic and have been paralysed by the action of the President of the Malagasy Republic.

"During the earlier internment of Mr. Monja Jaona on 10 December 1980, his counsel submitted his petition to the Administrative Chamber of the Supreme Court of Madagascar on 15 December 1980; on 3 January 1981, the Court in summary procedure issued him with a permit to communicate by visiting his client detained in Kelivondrake ..., but the defence counsel was turned back by the camp guards who told him that, by order of the Office of the President of the Republic, permits to communicate were invalid.

"The file at the Supreme Court was complete in respect of substance at the end of June 1981, but on the instructions of the President of the Malagasy Republic, the First President of the Supreme Court decided to preside himself over the court which was going to hear this case ...

"Fifteen days later, the President of the Republic decided to retire the First President of the Supreme Court and it was therefore necessary to await the appointment and installation of a new First President, whose appointment was greatly delayed; to cut short any claims, the Malagasy Government expelled the defence counsel in February 1982 before rearresting Mr. Monja Jaona on 15 December 1982.

"The appeal against the first arrest on 7 July 1980 is thus still pending.

"On 15 December 1980 defence counsel lodged a complaint against 'X' for violation of the freedom of Mr. Monja Jaona, and by letter dated 9 January 1981 the President of the Court at Ihosy advised defence counsel that the file had been asked for and monopolized by the Minister of Justice on the orders of the Office of the President and that he could do nothing without it. The many written reminders that I sent have remained unanswered and now, almost three years later, the preliminary investigation has not yet started, while the time-limit on public action is approaching (article 4, Malagasy Code of Criminal Procedure) even before the beginning of the investigation ...

"This is clearly a case coming under ... article 5, paragraph 2 (b), of the Optional Protocol; the existing remedies are being drawn out over an unreasonable period of time and are being rendered ineffective by the Office of the President of the Malagasy Republic."

6.2 Maitre Hammel also forwarded to the Committee a report prepared at the end of July 1983 on the conditions of detention of Mr. Jaona "in the Chinese hospital of Mahitzy (30 km from Tananarive), to which he was transferred at the beginning of July and where he is interned and detained under particularly severe and inhuman conditions for a sick person

aged over 75 years". The text of the report reads in part:

"State of health

"(1) At the beginning of July, following a consultation with Prof. Andrianjatovo, who had finally been authorized to go to Kilivondrake ... the elderly detainee was hospitalized at Mahitzy ... The cataract from which he is suffering will require an operation, more than two months late.

"(2) His family and his friends are however very concerned, for two reasons:

"Although his physical health is good, the conditions of hospitalization (of detention as he calls it) are very trying for him and might affect his intellectual faculties (for example, he is prevented from walking during the day, and even the X-rays which he has to have are taken only at night so that he has no contact with anyone ...).

"His wife, who asked to visit him as soon as she knew officially of his hospitalization, has so far (14 July) not been authorized to do so ..."

7. By a note dated 10 November 1983, the State party commented on Maitre Hammel's memorandum of 15 August 1983. It denied that the Government of Madagascar had deliberately lodged an appeal with the local courts on behalf of Monja Jaona so as to render Jaona's petition to the Human Rights Committee inadmissible. It pointed out in this connection that "defence counsel has neither the right nor the power to compel Mr. Monja Jaona to lodge an appeal with any court or, to that end, to force him to accept a court-appointed counsel". It also Questioned whether Maitre Hammel had sought the necessary information from his client. Without indicating the exact date of Mr. Jaona's release, the State party informed the Committee that Mr. Jaona had stood in the elections of 28 August 1983 in the electoral district of the city of Tananarive and that he had been elected deputy of Madagascar and thus a member of the National People's Assembly.

8.1 The State party's note of 10 November 1983 was transmitted to Monja Jaona and to his counsel, Maitre Hammel, on 7 December 1983 and Mr. Jaona was asked whether he wished the Committee to continue or discontinue consideration of his case.

8.2 By letter dated 18 January 1984 Maitre Hammel informed the Committee that Mr. Jaona had requested him to continue the procedure before the Committee and, in a memorandum of the same date, Mr. Hammel confirmed that Mr. Jaona was released on 15 August 1983. He alleged, however, that in "Madagascar, such releases tend to mean very brief periods at liberty. Mr. Monja Jaona had, in fact, been released from his previous detention on 10 March 1981, only to be arrested again on 15 December 1982 after no more than 21 months of freedom. In Madagascar, detention is nothing more than an administrative police measure, involving no indictment, investigation or judicial inquiry. Anyone who inconveniences or displeases the regime in power is detained on the basis of a mere order, issued by the Minister of the Interior, which is valid for an unlimited period until such time as the Minister sees fit to release him'... Mr. Monja Jaona is therefore living under the constant threat of

being detained again, as he was in the past. Accordingly, he wants the present procedure to be continued until a decision is taken on the detention (or rather detentions) he has suffered. The purpose of the petition of 30 December 1982 was to establish that Mr. Monja Jaona's arrest of 15 December 1982 and his detention, in the strictest solitary confinement, at a military camp 600 km from Tananarive constituted breaches of the International Covenant on Civil and Political Rights. Fortunately, he has been released, but that fact in no way affects the legal issue raised in the petition of 30 December 1982 ...

"In his memorandum of 15 August 1983, the undersigned established that the procedures theoretically possible in Madagascar were rendered ineffective by the authorities, which refused to part with the files (as confirmed in the note from the President of the Court at Ihosy) and instructed the First President of the Supreme Court to preside over the court that was to hear the case (while, at the same time, sending the First President into retirement).

"The appeals lodged in Madagascar at the time of the previous detention of Mr. Monja Jaona on 15 December 1980 with the Court at Ihosy (complaint in respect of violation of freedom) and with the Administrative Chamber of the Supreme Court (against the detention order) remained unanswered and are still pending. On his release in March 1981, the undersigned notified the courts that it was his intention to ensure that both cases were continued and ruled on.

"The offence of violation of freedom (article 114 of the Penal Code), punishable by loss of civil rights together with detention for a period of up to five years (article 34 of the Penal Code), is now statute-barred (three years, as stipulated in article 4 of the Malagasy Code of Criminal Procedure) since the file has remained for more than three years with the Ministry of Justice, i.e. before even starting the preliminary police inquiry.

"Hence it is evident that in Madagascar political matters involve indefinite time-limits and are therefore unreasonably prolonged.

"In these circumstances, Mr. Monja Jaona's petition is certainly admissible and it is also rounded on arbitrary orders for indefinite detention without any form of indictment or legal proceedings, contrary to the articles of the Covenant cited in the petition of 30 December 1982.

"Moreover, in its memorandum of 10 November 1983, the Malagasy Government did not reply to the arguments set forth by the undersigned in his memorandum of 15 August 1983, particularly those relating to the outcome of the proceedings instituted in Madagascar in December 1980 (at the time of Mr. Monja Jaona's previous detention). Its silence presumably signifies that it cannot produce any argument."

9.1 When considering the admissibility of the communication, the Committee noted, that it had not received any information that the subject-matter had been submitted to another procedure of international investigation or settlement. Accordingly, the Committee found that the communication was not inadmissible under article 5, paragraph 2 (a), of the Optional Protocol.

9.2 With regard to article 5, paragraph 2, (b), of the Optional Protocol, the Committee duly took note of the State party's contention in its note of 15 July 1983 that Mr. Jaona had not exhausted domestic remedies. The Committee also noted that Mr. Jaona was released in August 1983. It assumed therefore that the Supreme Court was no longer seized of the case. In the absence of any indication of the existence of another remedy still available to Mr. Jaona in regard to the matters complained of (see para. 2.4), the Committee found that the communication was not inadmissible under article 5, paragraph 2 (b), of the Optional Protocol. It indicated, however, that this point could be reviewed in the light of further explanations which the State party might submit under article 4, paragraph 2, of the Optional Protocol, giving specific details of domestic remedies which it claims to have been available to the alleged victim, together with evidence that there would be a reasonable prospect that such remedies would be effective.

10. On 6 April 1984 the Human Rights Committee decided:

1. That the communication was admissible as regards Mr. Jaona's complaints of violation of article 9, paragraphs 1 and 2, article 18, paragraph 1, and article 19, paragraph 1, arising from his arrest of 15 December 1982 and subsequent detention until 15 August 1983;
2. That, in accordance with article 4, paragraph 2, of the Optional Protocol, the State party be requested to submit to the Committee, within six months of the date of the transmittal to it of this decision, written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by it;
3. That the State party be informed that the written explanations or statements submitted by it under article 4, paragraph 2, of the Optional Protocol must relate primarily to the substance of the matter under consideration. The Committee stressed that, in order to fulfil its responsibilities, it required specific responses to the allegations which had been made, and the State party's explanations of the actions taken by it;
4. That the State party be again requested to provide the Committee with copies of any court orders or decisions relevant to this case.

11. The time-limit for the State party's submission under article 4, paragraph 2, of the Optional Protocol expired on 9 November 1984. The Committee has not received any further explanations or specific responses to the author's allegations, as requested in operative paragraph 3 of the Committee's decision on admissibility. Moreover, the State party has not furnished the Committee with copies of any relevant court orders or decisions, as requested in operative paragraph 4 of the decision on admissibility. NO further explanations were received from the State party concerning the question of availability of domestic remedies.

12.1 The Human Rights Committee, having examined the present communication in the light of all the information made available to it by the parties as provided in article 5, paragraph 1, of the Optional Protocol, hereby decides to base its views on the following facts, which

appear uncontested, except for denials of a general character offering no particular information or explanations.

12.2 Monja Jaona is a 77-year-old Malagasy national and leader of MONIMA, a political opposition party. In the elections held in Madagascar in November 1982 he was the presidential candidate of his party. Following the re-election of President Ratsiraka, Mr. Jaona challenged the results and called for new elections at a press conference. Shortly afterwards, on 15 December 1982, Mr. Jaona was placed under house arrest in Tananarive and subsequently detained at the military camp of Kelivondrake, 600 km south of Tananarive. He was not informed of the grounds for his arrest and there is no indication that charges were ever brought against him or investigated. An appeal against his arrest was lodged on 15 March 1983, but there is no indication that the appeal was ruled on. Mr. Jaona was released on 15 August 1983. He was elected deputy to the National People's Assembly in elections held on 28 August 1983.

13. In formulating its views the Human Rights Committee also takes into account the failure of the State party to furnish the requested information and clarifications necessary for the Committee to discharge its tasks. The State party has submitted that Mr. Jaona was placed under house arrest on the basis of a law relating to the dissolution of certain associations and to the placing under house arrest of persons convicted of subversive activities. It has adduced no evidence, however, that this law was applicable in the case of Mr. Jaona. In the circumstances, due weight must be given to the author's allegation. It is implicit in article 4, paragraph 2, of the Optional Protocol that the State party has the duty to investigate in good faith all allegations of violation of the Covenant made against it and its authorities, and to furnish to the Committee the information available to it. On the basis of the information before it, the Committee therefore cannot conclude that Mr. Jaona was engaged in any activities prohibited by the law in question.

14. 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 these facts disclose violations of the Covenant:

- Of article 9, paragraph 1, because Monja Jaona was arrested in December 1982 and detained until August 1983 on account of his political opinions;
- Of article 9, paragraph 2, because he was not informed of the reasons for his arrest or of any charges against him;
- Of article 19, paragraph 2, because he suffered persecution on account of his political opinions.

15. While giving due weight to the allegations made by the author, the Committee, nevertheless, observes that the claim that Monja Jaona is a victim of a breach by the State party of article 18, paragraph 1, of the Covenant, protecting the right of freedom of thought, conscience and religion, is not sustained by the information which the Committee has before it. The Committee will, therefore, make no finding in this respect.

16. The Committee, accordingly, is of the view that the State party is under an obligation to take effective measures to remedy the violations which Monja Jaona has suffered, to grant him compensation under article 9, paragraph 5, of the Covenant, on account of his arbitrary arrest and detention, and to take steps to ensure that similar violations do not occur in the future.