

HUMAN RIGHTS COMMITTEE

Muteba v. Zaire

Communication No. 124/1982

24 July 1984

VIEWS

Submitted by: Nina Muteba, on behalf of her husband, Tshitenge Muteba (also represented by John N. Humphrey) and later joined by Tshitenge Muteba as co-author

Alleged victim: Tshitenge Muteba

State Party concerned: Zaire

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

Date of decision on admissibility: 25 March 1983

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

Meeting on 24 July 1984;

Having concluded its consideration of communication No. R.26/123 submitted to the Committee by Nina and Tshitenge Muteba 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 authors of the communication and noting that no information has been received from the State party concerned;

Adopts the following:

Views under article 5 (4) of the Optional Protocol

1. The initial author of the communication (initial letter dated 30 June 1982; further submission posted 21 September 1982 by the author's legal representative John N. Humphrey) is Nina Muteba, a national of Zaire, at present living in France, writing on behalf

of her husband, Tshitenge Muteba, a Zaire national born in 1950, who at the time of the submission of the communication was detained in Zaire.

2.1 Nina Muteba enclosed a copy of a brief note from her husband, addressed to the International Red Cross and received by her in February 1982. In this note her husband stated that he had been living in France since 1979 as a political refugee from Zaire, that he was arrested on 31 October 1981 by members of the Military Security of Zaire (G 2) when arriving from Paris via Brazzaville (Congo), that he was at that time detained at the prison of "OUA II" in Kinshasa, Zaire. He further stated that he had no contact with the outside world, that he did not receive visits and that food was insufficient. He claimed to be a political detainee.

2.2 Nina Muteba, in her statement, repeated the information given by her husband, adding that he was arrested at Ngobila Beach in Zaire. She also stated that her husband had been granted political asylum in France in June 1980.

2.3 She further added that she had been informed by one of her brothers and by a former detainee that her husband had been subjected to such severe torture that he became unrecognizable and that he continued to be held under inhuman prison conditions. She stated that the authorities of Zaire allege that documents and pamphlets considered subversive were found in her husband's luggage. She claimed, however, that her husband had not been charged or brought before a judge.

2.4 Concerning the exhaustion of domestic remedies, Nina Muteba stated that no such steps could be taken because her husband had never been allowed to establish contact with a lawyer or a judge, and that no member of his family dared to do anything on his behalf because they were afraid of retaliation. She mentions that all the members of her family, still living in Zaire, were under house arrest and that their mail was interfered with. She also mentions that one of her brothers had been arrested and subjected to torture on grounds of his relationship with the alleged victim.

2.5 Nina Muteba stated that the same matter was not being examined under another procedure of international investigation or settlement.

2.6 She claimed that her husband was a victim of violations of articles 9, 10, 14 and 19 of the International Covenant on Civil and Political Rights.

3.1 By its decision of 7 July 1982 the Working Group of the Human Rights Committee transmitted the communication under rule 91 of the provisional rules of procedure. to the State party concerned requesting information and observations relevant to the question of admissibility of the communication.

3.2 The State party was further requested in the decision to inform the Committee whether Tshitenge Muteba had been able to contact a lawyer and whether he had been brought before a court, and to transmit to the Committee any copies of court decisions taken against Mr. Muteba.

3.3 In view of the observations made by Mrs. Muteba on the health of her husband, information on the state of health of Mr. Muteba was also sought from the State party and the latter requested to ensure that Tshitenge Muteba received adequate medical care.

3.4 The time-limit for the observations requested from the State party under rule 91 of the provisional rules of procedure expired on 13 October 1982. No submissions were received from the State party.

4.1 In a further submission on behalf of Mr. Muteba of 21 September 1982, Mr. John N. Humphrey, a British attorney appointed by Mrs. Muteba to represent her husband before the Committee, reiterated and supplemented some of the information already provided by Mrs. Muteba.

4.2 He affirmed, inter alia, that Mr. Muteba arrived in Brazzaville (Congo) on 28 October 1981; that "on or about 31 October 1981 he crossed the river Zaire by ferry and was arrested at the ferry terminal at Ngobila Beach by members of the Military Security (G 2)". He stated that it appeared that Mr. Muteba was arrested for political reasons and accused of being the leader of the Popular and Democratic Union of the Congo (Union populaire et democratique du Congo). From the time of his arrest until about March 1982 he was detained at the "OUA II" detention centre. Mr. Humphrey stated that his client's whereabouts were then unknown.

4.3 Mr. Humphrey stressed that because the powers of the Military Security to arrest and detain do not come within the ambit of the constitutional and legal provisions of Zaire, no court review could be requested and that therefore domestic remedies did not exist in the case of Mr. Muteba.

4.4 Mr. Humphrey concluded that Mr. Muteba was a victim of breaches by Zaire of articles 2, 7, 9, 14 and 16 of the International Covenant on Civil and Political Rights.

5. The submission from the legal representative of Mr. Muteba was transmitted to the State party for information on 17 December 1982. No comments from the State party were received.

6. The Committee found, on the basis of the information before it, that it was not precluded by article 5 (2) (a) of the Optional Protocol from considering the communication. The Committee was also unable to conclude that, in the circumstances of the case, there were domestic remedies available to the alleged victim. Accordingly, the Committee found that the communication was not inadmissible under article 5 (2) (b) of the Optional Protocol.

7. On 25 March 1983 the Human Rights Committee therefore decided:

1. That the communication was admissible;

2. That, in accordance with article 4 (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 (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. The State party was again requested to enclose copies of any court orders or decisions of relevance to the matter under consideration and to inform the Committee whether the alleged victim had effective contacts with a lawyer and whether he had been brought before a court;

4. That the State party again be requested to provide the Committee with information about Mr. Muteba's state of health and to ensure that Mr. Muteba received adequate medical care.

8.1 By a letter dated 28 March 1984 Mr. Tshitenge Muteba informed the Committee that pursuant to an amnesty of 19 May 1983 he was released from imprisonment and that he joined his family in France in August of 1983. He enclosed a detailed report on his detention substantiating the allegations made by his wife and legal representative.

8.2 With regard to his arrest and subsequent treatment he states, inter alia:

"I was arrested at Ngobila Beach on 31 October [1981] and taken to 'G 2', the service responsible for military security ... I was interrogated for nine days ... All kinds of methods were used to torture me and force me to speak. On the first day I was beaten up at the 'OUA' prison on orders given by Mr. Nsinga, Mr. Bolozi and Mr. Seti and executed by Colonel Zimbi. I was arrested in the very early morning, when I still had an empty stomach, so that by about 5 p.m. I was hungry and tired. This was the very time that was chosen for the first session of interrogation and beatings. Mr. Zimbi was accompanied by his officers and by ordinary soldiers who did the dirty work. I was stripped and subjected for an hour or more (I don't know how long) to a hail of blows from cords, slaps and kicks administered by officers to a solitary defenceless individual. Only the Colonel kept his hands off me ... After this session I was taken back naked to my cell, which they took care to soak with water, and Sergeant-Major Lisha, a friend of Zimbi's, assured me that I would not survive for more than two days. He then expressed the hope that I would refresh my memory in my flooded cell and would be able to give them all the information they wanted.

After this there were mock executions ... First comes the mock execution in order to extract confessions from the prisoner and then the genuine execution once there is no further purpose in keeping him. The 'typist' -another form of torture which consists of squeezing the prisoner's fingers after pieces of wood have been placed between them - electric shocks and withholding of food were also used during the interrogation.

After nine days of questioning, I was returned to my cell - I had been taken out a few days after my arrest and transferred to a secret villa in a rich area of Kinshasa, where members of the various security services came and interrogated me as a committee, the celebrated Committee of Analysts which prepared a consolidated report for submission to the National

Security Council (CNS) that was to meet to take a decision on my case. I would recall that the National Security Council is a body which meets to deal with serious cases and includes the President of the Republic among its membership. Mr. Seti, his special security adviser, co-ordinates the activities of CNS ...

Major Buduaga, who is the legal adviser to Colonel Bolozi, the chief of 'G 2', personally escorted me back to the 'OUA II' prison. My long struggle against death then commenced.

My committal order specified my crime, namely an attack on the internal and external security of the State. I was accused of having established a clandestine political party and of having, while abroad, sought ways of changing the established institutions - acts which are provided for and punished by death under Zairian law. However, they had very little evidence. Special instructions were given on how I was to be treated: no contact with the outside world; no family visits; solitary confinement; lashings morning, noon and night; no food. This special treatment is expected to result in death by torture, starvation or sickness. The regime also hopes that the prisoner will go mad.

However, they failed to take into account the solidarity among the prisoners and the discontent among the soldiers of the Presidential guard, who are very unhappy with their material situation. Some of these soldiers also came to prison and sometimes shared my cell. I did not miss an opportunity to talk politics with them and show them how aberrant it was to serve a regime that exploited them. I established contact with these young soldiers, and today I have friends among them who will support me to the end. Paradoxically, it was these young soldiers who fed me - very sporadically, it is true, but they enabled me to survive ...

After being cut off from the outside world for nine months, I received visits from some members of my family without the Zairian authorities' knowledge, thanks to those young soldiers. My relatives and I were not able to see each other, but they brought me food which the soldiers passed on to me. This game of hide-and-seek continued for the last four months of my detention in the 'OUA'.

Thanks to these contacts, I was able to smuggle out letters to my wife, who had stayed in Europe, to the French Embassy and to other bodies that were already helping me.

During my lengthy period of detention, the International Committee of the Red Cross did not succeed in visiting me in my place of imprisonment, but the Kinshasa office received news of me owing to the help of numerous well-wishers. Soldiers of Mobutu did me a lot of personal favours. Whenever the ICE representatives came to see me in prison I would be taken away from the gaol, but the next day they would be informed of what was going on. The regime's official position was that I had been transferred to another prison, and the confusion created on this point was long used in order to whisk me away quietly ...

On 17 November 1982, Major Shaliba, Security Officer for the President of the Republic and Commander of the Battalion of Presidential Bodyguards, came to the prison to carry out an inspection. When he found that I was still alive, he ordered that I should be locked up and relieve myself in the cell. On 20 November the situation took a turn for the worse. They had

apparently received instructions to execute me. At about 10 a.m. they came and took away the clothes with which I had been provided a few days previously by a member of my family. I was also deprived of the blanket which the ICE had managed to send me on a very unofficial basis and was left naked ...

On 5 February [1983] I was banished to my native region, where I remained in a village at Demba, 60 kilometres from the town of Kananga, until 19 May 1983, the date of the amnesty. On 10 June [1983] I left Kananga for Kinshasa and arranged my return to France, where my wife and children had been waiting for me for two years."

9. The time-limit for the State party's submission under article 4 (2) of the Optional Protocol expired on 6 November 1983. A copy of Mr. Muteba's submission of 28 March 1984 was transmitted to the State party on 24 May 1984 with an indication that the Human Rights Committee intended to conclude examination of the case during its twenty-second session in July 1984. No submission was received from the State party.

10.1 The Human Rights Committee, having considered the present communication in the light of all the information made available to it by the authors as provided in article 5 (1) of the Optional Protocol, hereby decides to base its views on the following facts, which, in the absence of any submission from the State party, are uncontested.

10.2 Mr. Tshitenge Muteba was arrested on 31 October 1981 by members of the Military Security of Zaire at Ngobila Beach, Zaire, when arriving from Paris via Brazzaville (Congo). From the time of his arrest until about March 1982 he was detained at the "OUA II" prison. During the first nine days of detention he was interrogated and subjected to various forms of torture including beatings, electric shocks and mock executions. He was kept incommunicado for several months and had no access to legal counsel. After nine months of detention members of his family, who did not see him in person, were allowed to leave food for him at the prison. Although in the prison register he was charged with attempts against the internal and external security of the State and with the foundation of a secret political party, he was never brought before a judge nor brought to trial. After more than a year and a half of detention he was granted amnesty under a decree of 19 May 1983 and allowed to return to France. Mr. Muteba was arrested, detained and subjected to the ill-treatment described above for political reasons, as he was considered to be an opponent of the Government of Zaire.

11. In formulating its views the Human Rights Committee also takes into account the failure of the State party to furnish any information and clarifications necessary for the Committee to facilitate its tasks. In the circumstances, due weight must be given to the authors' allegation. It is implicit in article 4 (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. In no circumstances should a State party fail to duly investigate and to properly inform the Committee of its investigation of allegations of ill-treatment when the person or persons allegedly responsible for the ill-treatment are identified by the author of a communication. The Committee notes with concern that, in spite of its repeated requests and reminders and

in spite of the State party's obligation under article 4 (2) of the Optional Protocol, no submission whatever has been received from the State party in the present case.

12. The Human Rights Committee, acting under article 5 (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, in particular:

- of articles 7 and 10, paragraph 1, because Mr. Tshitenge Muteba was subjected to torture and not treated in prison with humanity and with respect for the inherent dignity of the human person, in particular because he was held incommunicado for several months;

- of article 9, paragraph 3, because, in spite of the charges brought against him, he was not promptly brought before a judge and had no trial within a reasonable time;

- of article 9, paragraph 4, because he was held incommunicado and effectively barred from challenging his arrest and detention;

- of article 14, paragraph 3 (b) (c) and (d), because he did not have access to legal counsel and was not tried without undue delay;

- of article 19, because he suffered persecution for his political opinions.

13. The Committee, accordingly, is of the view that the State party is under an obligation to provide Mr. Muteba with effective remedies, including compensation, for the violations which he has suffered, to conduct an inquiry into the circumstances of his torture, to punish those found guilty of torture and to take steps to ensure that similar violations do not occur in the future.

Appendix

Individual opinion submitted by five members of the Human Rights Committee under rule 94 (3) of the Committee's provisional rules of procedure

Communication No. 124/1982

Individual opinion appended to the Committee's views at the request of Messrs. Aguilar, Cooray, Ermacora, Errera and Mavrommatis:

In our opinion the facts as appearing in the file of the communication are insufficient to sustain a finding of a violation of article 19 of the Covenant.