

## HUMAN RIGHTS COMMITTEE

### Kalenga v. Zambia

Communication No 326/1988

27 July 1993

CCPR/C/48/D/326/1988

### VIEWS

*Submitted by: Henry Kalenga*

*Victim: The author*

*State party: Zambia*

*Date of communication: 18 November 1988 (initial submission)*

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

Meeting on 27 July 1993,

Having concluded its consideration of communication No. 326/1988, submitted to the Human Rights Committee by Mr. Henry Kalenga 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 its

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

1. The author of the communication is Henry Kalenga, a Zambian citizen currently residing in Kitwe, Zambia. He claims to be a victim of violations by Zambia of articles 9, 14 and 19 of the International Covenant on Civil and Political Rights.

Facts as submitted

2.1 On 11 February 1986, the author was arrested by the police of the city of Masala; he was forced to spend the night in a police lock-up. On 12 February 1986, a statement was taken from him. The following day, a police detention order was issued against him pursuant to Regulation 33 (6) of the Preservation of Public Security Act. This order was revoked on 27 February 1986 but immediately replaced by a Presidential detention order, issued under Regulation 33 (1) of the said Act.

2.2 The author notes that the Preservation of Public Security Regulations allow the President of Zambia to authorize the administrative detention of persons accused of political offences for an indefinite period of time, "for purposes of preserving public security". The author was informed of the charges brought against him on 13 March 1986, that is over one month after his arrest. He was subsequently kept in police detention, on charges of (a) being one of the founding members and having sought to disseminate the views of a political organization, the so-called People's Redemption Organization - an organization considered illegal under Zambia's (then) one-party Constitution -and (b) of preparing subversive activities aimed at overthrowing the regime of (then) President Kenneth Kaunda. The author was released on 3 November 1989, following a Presidential order.

2.3 After his release, the author was placed under surveillance by the Zambian authorities. The latter allegedly denied him his passport, thereby depriving him of his freedom of movement. Moreover, he claims that as a former political prisoner, he was subjected to harassment and intimidation by the authorities, which also reportedly denied him access to governmental and private financial institutions.

### Complaint

3.1 Mr. Kalenga contends that at the time of his arrest, he was not engaged in any political activities aimed at undermining the government. Instead, he had been promoting campaigns protesting the government's national education, military and economic policies. He adds that the subversive activities he was accused of amounted to no more than burning the card affiliating him with President Kaunda's party, UNIP. He claims that, as a prisoner of conscience, he was subjected to unlawful detention, because he was formally informed about the reasons for his detention more than a month following his arrest, contrary to the Regulations mentioned in paragraph 2.1 above and article 27, paragraph 1 (a), of the Zambian Constitution. The latter provision stipulates that the grounds of detention must be supplied within fourteen days following the arrest. In this connection, the author asserts that the charges against him had no basis in fact at the time of his arrest and that they were "fabricated" by the police in order to justify his detention.

3.2 The author further affirms that throughout his detention, he was not brought before a judge or judicial officer to establish his guilt. This allegedly was attributable to the fact that under Zambian legislation regulating public security issues, individuals may be detained indefinitely without being formally charged or tried.

3.3 The author contends that he was subjected to inhuman and degrading treatment during his detention. He claims that he was frequently deprived of food, of access to recreational

activities as well as medical assistance, despite the continuing deterioration of his state of health. Moreover, he claims to have been subjected to various forms of "psychological torture". This treatment is said to be prohibited under articles 17 and 25 (2) and (3) of the Zambian Constitution.

3.4 With respect to the requirement of exhaustion of domestic remedies, the author states that he instituted proceedings against the State during his detention. Initially, he filed an application for writ of habeas corpus with the High Court of Zambia. On 23 June 1986, the High Court dismissed his application, on the ground that the author's detention was not in violation of domestic laws. The author then filed another request for writ of habeas corpus with the High Court of Justice, in which he (a) challenged the legality of his detention, (b) complained about the inhuman and degrading treatment suffered during detention, and (c) requested compensation and damages. On 14 April 1989, the application was dismissed by the Court, which declared itself incompetent to deal with the matter on the basis of res judicata. The author then petitioned a special tribunal established under the Preservation of Public Security Regulations; this tribunal has the mandate to review periodically the cases of political prisoners and is authorized to recommend either continued detention or release. The tribunal sits, however, in camera, and the President is not obliged to implement its recommendations, made confidentially. On 29 and 30 December 1988, the author was heard by this tribunal. As the State prosecutor could not adduce evidence in support of the charges against the author, the tribunal recommended Mr. Kalenga's immediate release. None the less, release did not occur until 10 months later, as President Kaunda did not follow up on the recommendation.

#### Committee's decision on admissibility and the parties' submissions on the merits

4.1 During its forty-third session in October 1991, the Committee considered the admissibility of the communication. It noted with concern the absence of any State party cooperation on the matter, as the State party had failed to make submissions on the admissibility of the case in spite of two reminders. On the basis of the information before it, it concluded that the author had met the requirements under article 5, paragraph 2 (b), of the Optional Protocol, and that he had sufficiently substantiated his allegations, for purposes of admissibility.

4.2 On 15 October 1991, the Committee declared the communication admissible in as much as it appeared to raise issues under articles 7, 9, 10, 12 and 19 of the Covenant.

5.1 In a submission, dated 28 January 1992, the State party indicates that "Mr. Henry Kalenga has been released from custody and is a free person now". No information about the substance of the author's allegations, nor copies of his indictment or of any judicial orders concerning his detention and the alleged legality thereof, have been provided by the State party. The State party did not reply to a reminder addressed to it in February 1993.

5.2 In an undated letter received on 24 March 1992, the author requests the Committee to continue consideration of his case. He adds that he continues to suffer from stomach ulcers and a deplorable financial situation as a result of his detention; he further contends that the

change in Government, in the spring of 1992, has not changed the authorities' attitude towards him.

### Examination of the merits

6.1 The Committee has considered the communication in the light of all the information provided by the parties. It notes with concern that, with the exception of a brief note informing the Committee about the author's release, a fact known to the Committee by the time of the adoption of the admissibility decision, the State party has failed to cooperate on the matter under consideration. It is implicit in article 4, paragraph 2, of the Optional Protocol that a State party investigate in good faith the allegations brought against it, and that it provide the Committee with all the information at its disposal, including all available judicial documents. The State party has failed to provide the Committee with any such information. In the circumstances, due weight must be given to the author's allegations, to the extent that they have been substantiated.

6.2 In respect of issues under article 19, the Committee is of the opinion that the uncontested response of the Zambian authorities to the author's attempts to express his opinions freely and to disseminate the tenets of the People's Redemption Organization constitute a violation of his rights under article 19 of the Covenant.

6.3 The Committee is of the opinion that the author's right, under article 9, paragraph 2, to be promptly informed about the reasons for his arrest and of the charges against him, has been violated, as it took the State party authorities almost one month to so inform him. Similarly, the Committee finds a violation of article 9, paragraph 3, as the material before it reveals that the author was not brought promptly before a judge or other officer authorized by law to exercise judicial power. On the other hand, on the basis of the chronology of judicial proceedings provided by the author himself, the Committee cannot conclude that Mr. Kalenga was denied his right, under article 9, paragraph 4, to take proceedings before a court of law.

6.4 The author has claimed, and the State party has not denied, that he continues to suffer restrictions on his freedom of movement, and that the Zambian authorities have denied him his passport. This, in the Committee's opinion, amounts to a violation of article 12, paragraph 1, of the Covenant.

6.5 As to Mr. Kalenga's claim of inhuman and degrading treatment in detention, the Committee notes that the author has provided information in substantiation of his allegation, in particular concerning the denial of recreational facilities, the occasional deprivation of food and failure to provide medical assistance when needed. Although the author has not shown that such treatment was cruel, inhuman and degrading within the meaning of article 7, the Committee considers that the State party has violated the author's right under article 10, paragraph 1, to be treated with humanity and respect for the inherent dignity of his person.

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 as found by the Committee disclose violations of articles 9, paragraphs 2 and 3; 10, paragraph 1; 12, paragraph 1; and 19, of the Covenant.

8. Pursuant to article 2 of the Covenant, the State party is under an obligation to provide Mr. Kalenga with an appropriate remedy. The Committee urges the State party to grant appropriate compensation to the author; the State party is under an obligation to ensure that similar violations do not occur in the future.

9. The Committee would wish to receive information, within ninety days, on any relevant measures taken by the State party in respect of the Committee's views.

[Done in English, French and Spanish, the English text being the original version.]