

HUMAN RIGHTS COMMITTEE

Bahamonde v. Equatorial Guinea

Communication No. 468/1991

20 October 1993

CCPR/C/49/D/468/1991

VIEWS

Submitted by: Angel N. Oló Bahamonde

Victim: The author

State party: Equatorial Guinea

Date of communication: 11 June 1991 (initial submission)

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

Meeting on 20 October 1993,

Having concluded its consideration of communication No. 468/1991, submitted to the Human Rights Committee by Mr. Angel N. Oló Bahamonde 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

The facts as submitted by the author

1. The author of the communication is Angel N. Oló Bahamonde, a citizen of Equatorial Guinea born in 1944 and a landowner, mining engineer and former civil servant. Until the summer of 1991, he resided in Malabo, Equatorial Guinea. In September 1991, he fled the country for Spain. He

currently resides in Luanco, Spain. The author claims to be a victim of violations by Equatorial Guinea of articles 6, paragraph 1; 9; 12; 14; 16; 17; 19; 20, paragraph 2; 25; 26; and 27, in conjunction with article 2 of the International Covenant on Civil and Political Rights.

2.1 On 4 March 1986, the author's passport was confiscated at the airport of Malabo; on 26 March 1986, the same thing occurred at the airport of Libreville, Gabon, allegedly upon orders of President Obiang of Equatorial Guinea. From 26 May to 17 June 1987, the author was detained by order of the Governor of Bioko. Some of his lands were confiscated in October 1987. The author complained to the authorities and directly to President Obiang, to no avail. A little later, some 22.2 tons of cacao from his plantations were confiscated by order of the Prime Minister, and his objections and recourse of 28 February 1988 were simply ignored. Part of his agricultural crops allegedly were destroyed by the military in 1990-1991. Once again, his requests for compensation were not acted upon.

2.2 On 16 January 1991, the author was granted a personal audience with President Obiang. In its course, the author outlined his grievances and handed to Mr. Obiang a copy of the entire written record in the case, including copies of the complaints addressed to the President. The damage allegedly suffered included the expropriation of several of his farms by virtue of decree No. 125/1990 of 13 November 1990, the destruction of maize and soja crops worth more than 5 million CFA francs, and the exploitation of timberland in the order of approximately 5 million CFA francs. Finally, industrial development and oil exploration projects prepared by him for the Government and valued at approximately 835 million CFA francs have been used by the authorities without any payment to the author.

2.3 According to the author, there are no effective domestic remedies to exhaust or even pursue, as President Obiang controls the State party's judiciary at all levels of the administration.

The complaint

3.1 The author complains that he and other individuals who do not share the views or adhere to the ruling party of President Obiang or who do not at least belong to his clan (the Mongomo clan) are subjected to varying degrees of discrimination, intimidation and persecution. More particularly, the author claims to have been a victim of systematic persecution by the Prime Minister, the Deputy Prime Minister, the Governor of Bioko (North) and the Minister of External Relations, all of whom, through their respective services, have pronounced threats against him, primarily on account of his outspoken views on the regime in place. He further contends that the ambassadors of Equatorial Guinea in Spain, France and Gabon have been instructed to "make his life difficult" whenever he travels abroad.

3.2 The author asserts that his arrest in May-June 1987 was arbitrary, and that no indictment was served on him throughout the period of his detention. During this period, he was not brought before a judge or judicial officer.

3.3 It is further submitted that the author has been prevented from travelling freely within his own country and from leaving it at his own free will.

The State party's information and observations and the author's comments thereon

4.1 The State party notes that the author has failed to exhaust available domestic remedies, since he did not file any action before the local civil or administrative courts. It adds, in general terms, that there is no basis for the author's assertion that the judicial organs in Equatorial Guinea are manipulated by the Government and by President Obiang.

4.2 The State party submits that the author could invoke, before the domestic tribunals, the following laws and/or regulations, which the courts are bound to apply:

(a) The Basic Law of Equatorial Guinea of 15 August 1982;

(b) Law No.10/1984 on the organization of the judiciary;

(c) Decree No. 28/1980 of 11 November 1980, governing the procedure before administrative judicial instances;

(d) Decree No. 4/1980 of 3 April 1980, which regulates the subsidiary application of old Spanish laws and regulations which were applicable in Equatorial Guinea until 12 October 1968.

The State party does not relate this information to the specific circumstances of the author's case.

5.1 In his comments, the author challenges the State party's arguments and forwards copies of his numerous démarches, administrative, judicial or otherwise, to obtain judicial redress, adding that all the avenues of redress that in the State party's opinion are open to him have been systematically blocked by the authorities and President Obiang himself. In this context, it is submitted that the judiciary in Equatorial Guinea cannot act independently and impartially, since all judges and magistrates are directly nominated by the President, and that the president of the Court of Appeal himself is a member of the President's security forces.

5.2 The author contends that, since his departure from Equatorial Guinea in 1991, he has received death threats. He claims that the security services of Equatorial Guinea have received the order to eliminate him, if necessary in Spain. In this context, he argues that his departure from Malabo was only possible with the protection and the help offered by a German citizen. Moreover, since 29 September 1991, all his remaining properties in Equatorial Guinea are said to have been systematically dismantled or expropriated.

The Committee's decision on admissibility

6.1 During its forty-fourth session, in March 1992, the Committee considered the admissibility of the communication. The Committee took note of the State party's contention that domestic remedies were available to the author and of the author's challenge to this affirmation. It recalled that it is implicit in rule 91 of its rules of procedure and article 4, paragraph 2, of the Optional Protocol, that a State party to the Covenant should make available to the Committee all the information at its disposal, including, at the stage of determination of the admissibility of the communication, detailed information about remedies available to the victims of the alleged violation in the circumstances of

their cases. Taking into consideration the State party's failure to link its observations to the specific circumstances of the author's case, and bearing in mind that he had submitted very comprehensive information in support of his contention that he sought to avail himself of remedies under the laws of the State party, the Committee was satisfied that he had met the requirements of article 5, paragraph 2 (b), of the Optional Protocol.

6.2 As to the allegations under articles 16; 17; 19; 20, paragraph 2; 25; and 27, the Committee considered that the author had failed to substantiate them for purposes of admissibility. Similarly, it noted that he had failed to adduce sufficient evidence in support of his claim under article 6, paragraph 1, and concluded that in this respect, he had failed to advance a claim within the meaning of article 2 of the Optional Protocol.

6.3 On 25 March 1992, the Committee declared the communication admissible in so far as it appeared to raise issues under articles 9, paragraphs 1 and 3; 12, paragraphs 1 and 2; 14, paragraph 1; and 26 of the Covenant.

The State party's further observations and comments

7.1 In a submission of 30 July 1992, the State party reaffirms that its earlier submission made in respect of the admissibility of the case was "sufficiently detailed, honest and reflective of the truth on this matter". It admits that its version cannot be reconciled with that of the author.

7.2 The State party notes that it will not add anything further in terms of clarifications or documentation and suggests that if the Committee intends to seek to obtain a clearer picture of the author's allegations, it should investigate in situ the "well-founded submissions of the State party and the allegations of the author". The State party indicates that it is willing to facilitate a fact-finding mission by the Committee and to provide all the necessary guarantees.

7.3 In a further submission dated 30 June 1993, the State party summarily dismisses all of the author's allegations as unfounded and alleges that Mr. Bahamonde suffers from a "persecution complex" ("obsesionado por su manía persecutoria"). It contends that far from being harassed and persecuted, the author owed both his high functions in the civil service of Equatorial Guinea and his promotions to President Obiang himself, and that he left his functions of his own free will. Accordingly, the State party contends that it does not owe the author anything in terms of compensation and submits that on the contrary, it could well prosecute the author for defamation, abuse of office and for treason.

7.4 The State party asserts that there is no basis for the author's contention of systematic political repression and an undemocratic system of government in Equatorial Guinea, nor for the assertion that the administration of justice is at the mercy of the executive and insensitive to considerations, for example, of due process. On the contrary, more than 13 political parties were legalized in March 1993, and they are said to be able to operate without restrictions. In the circumstances, the State party requests the Committee to reject the author's submissions as an abuse of the right of submission, under article 3 of the Optional Protocol.

Examination of the merits

8.1 The Committee has taken note of the State party's observations, which reject the author's allegations in summary terms and invite the Committee to ascertain in situ that there have been no violations of the Covenant.

8.2 As to the State party's suggestion that the Committee should investigate the author's allegations in Equatorial Guinea, the Committee recalls that pursuant to article 5, paragraph 1, of the Optional Protocol, it considers communications "on the basis of all written information made available to it by the individual and by the State party concerned". The Committee has no choice but to confine itself to formulating its views in the present case on the basis of the written information received. Article 4, paragraph 2, of the Optional Protocol enjoins a State party to investigate thoroughly, in good faith and within the imparted deadlines, all the allegations of violations of the Covenant made against it, and to make available to the Committee in written form all the information at its disposal. This the State party has failed to do; in particular, it has not addressed the substance of the author's claims under articles 9, 12, 14 or 26, the provisions in respect of which the communication had been declared admissible. Rather, it simply rejected them in general terms as unfounded. Accordingly, due weight must be given to the author's allegations, to the extent that they have been substantiated.

9.1 With respect to the author's allegation that he was arbitrarily arrested and detained between 26 May and 17 June 1986, the Committee notes that the State party has not contested this claim and merely indicated that the author could have availed himself of judicial remedies. In the circumstances, the Committee considers that the author has substantiated his claim and concludes that he was subjected to arbitrary arrest and detention, in violation of article 9, paragraph 1. It further concludes that as the author was not brought promptly before a judge or other officer authorized by law to exercise judicial power, the State party has failed to comply with its obligations under article 9, paragraph 3.

9.2 With regard to the author's claim that he was subjected to harassment, intimidation and threats by prominent politicians and their respective services on a number of occasions, the Committee observes that the State party has dismissed the claim in general terms, without addressing the author's well- substantiated allegations against several members of the Government of President Obiang Nguema. The first sentence of article 9, paragraph 1, guarantees to everyone the right to liberty and security of person. The Committee has already had the opportunity to explain that this right may be invoked not only in the context of arrest and detention, and that an interpretation of article 9 which would allow a State party to ignore threats to the personal security of non-detained persons within its jurisdiction would render ineffective the guarantees of the Covenant. a/ In the circumstances of the case, the Committee concludes that the State party has failed to ensure Mr. Oló Bahamonde's right to security of person, in violation of article 9, paragraph 1.

9.3 The author has claimed, and the State party has not denied, that his passport was confiscated on two occasions in March 1986, and that he was denied the right to leave his country of his own free will. This, in the Committee's opinion, amounts to a violation of article 12, paragraphs 1 and 2, of the Covenant.

9.4 The author has contended that despite several attempts to obtain judicial redress before the courts of Equatorial Guinea, all of his démarches have been unsuccessful. This claim has been refuted summarily by the State party, which argued that the author could have invoked specific legislation

before the courts, without however linking its argument to the circumstances of the case. The Committee observes that the notion of equality before the courts and tribunals encompasses the very access to the courts, and that a situation in which an individual's attempts to seize the competent jurisdictions of his/her grievances are systematically frustrated runs counter to the guarantees of article 14, paragraph 1. In this context, the Committee has also noted the author's contention that the President of the State party controls the judiciary in Equatorial Guinea. The Committee considers that a situation where the functions and competences of the judiciary and the executive are not clearly distinguishable or where the latter is able to control or direct the former is incompatible with the notion of an independent and impartial tribunal within the meaning of article 14, paragraph 1, of the Covenant.

9.5 Finally, on the basis of the information before it, the Committee concludes that Mr. Oló Bahamonde has been discriminated against because of his political opinions and his open criticism of, and opposition to, the Government and the ruling political party, in violation of article 26 of the Covenant.

10. 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 reveal violations of articles 9, paragraphs 1 and 3; 12, paragraphs 1 and 2; 14, paragraph 1; and 26 of the Covenant.

11. Pursuant to article 2 of the Covenant, the State party is under an obligation to provide Mr. Oló Bahamonde with an appropriate remedy. The Committee urges the State party to guarantee the security of his person, to return confiscated property to him or to grant him appropriate compensation, and that the discrimination to which he has been subjected be remedied without delay.

12. The Committee would wish to receive information, within 90 days, on any 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.]

Notes

a/ Official Records of the General Assembly, Forty-fifth Session, Supplement No. 40 (A/45/40), annex IX.D, Communication No. 195/1985 (Delgado Páez v. Colombia), views adopted on 12 July 1990, paras. 5.5 and 5.6; and *ibid.*, Forty-eighth Session, Supplement No. 40 (A/48/40), annex XII.I, communication No. 314/1988 (Bwalya v. Zambia), views adopted on 14 July 1993, para. 6.4.