

HUMAN RIGHTS COMMITTEE

Bwalya v. Zambia

Communication No. 314/1988

21 March 1991

CCPR/C/41/D/314/1988 *

ADMISSIBILITY

Submitted by: Peter Chiiko Bwalya

Alleged victim: The author

State party concerned: Zambia

Date of communication: 3 March 1988 (initial submission)

Documentation references: Decisions - CCPR/C/WG/35/D/314/1988 (Working Group rule 91 decision, dated 15 July 1988)

Date of present decision: 21 March 1991

The Human Rights Committee, acting through its Working Group rule 87, paragraph 2, of the Committee's rules of procedure, adopts the following decision on admissibility.

Decision on admissibility

1. The author of the communication (initial submission dated 3 March 1988 and subsequent correspondence) is Peter Chiiko Bwalya, a Zambian citizen who is currently detained in a Zambian prison. He claims to be the victim of a violation by Zambia of articles 1, 2, 3, 9, 10, 12, 25 and 26 of the International Covenant on Civil and Political Rights.

Background

2.1 The author states that in 1983, at the age of 22, he ran for a parliamentary seat in the Constituency of Chifubu, Zambia. He was, however, prevented from participating in the electoral campaign by the Zambian authorities. That notwithstanding, his popularity grew among the poorer layers of the population, as he promised to fight the Government's policy vis-à-vis marginal people,

in particular the homeless and the unemployed. As a consequence of his opinions and activities, he was subjected to threats and intimidations on the part of the authorities. He submits that, in January 1986, his employer dismissed him, allegedly as a punitive measure. Subsequently, the Ndola City Council expelled him and his family from their house, and the payment of his father's pension was suspended indefinitely by the authorities.

2.2 The author notes that, because of the hardship to which he and his family were subjected, he emigrated to Namibia, where other Zambian citizens had settled. However, upon his return to Zambia, he was arrested and detained by the Zambian police. 1/ By September 1988, he had allegedly been in detention for 31 months, on charges of belonging to the People's Redemption Organization - an organization considered to be illegal under the terms of Zambia's one-party Constitution - and, as such, for having conspired to overthrow the Government of President Kenneth Kaunda. Subsequently, on an unspecified date, he was released. 2/ On 25 March 1990 the author sought the Committee's intercession in connection with alleged discrimination, denial of employment and the refusal of a passport. By letter of 5 July 1990 the author's wife indicates that, on 1 July 1990, her husband was rearrested and taken to the Central Police Station in Ndola, where he was held for two days. He was then transferred to Kansenshi Prison; he apparently remains in custody at this institution. She further claims that he has not been informed of the reasons for his arrest and detention.

Complaint

3.1 The author claims that, at the time of his first arrest and detention, he had not participated in a conspiracy to overthrow the Zambian Government. He therefore claims that his arrest was arbitrary and his detention unlawful and submits that he is entitled to compensation from the State party. He further alleges that after he was released from his first period of detention, the authorities continued to harass him and to intimidate him. He adds that, as a former political prisoner, he has been placed under strict surveillance, and that he has been deprived of his freedom of movement. Furthermore, he claims to have been denied a passport as well as of any means of making a decent living.

3.2 With respect to the requirement of exhaustion of domestic remedies, the author states that he instituted proceedings against the State after his initial arrest. He claims that the tribunal reviewing his case declared, on 17 August 1987, that he was no danger to national security but that, notwithstanding the court's finding, he remain in custody. He further claims that the Supreme Court has dismissed his appeal. 3/

Issues before the Committee

4.1 Before considering any claim contained in a communication, the Human Rights Committee must, in accordance with rule 87 of its rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

4.2 The Committee notes with concern the absence of cooperation from the State party on the matter under consideration. In particular, it observes that the State party has failed to make a submission on the question of admissibility of the communication, in spite of four reminders addressed to it on 11 November 1988, 11 August 1989, 1 May 1990 and 4 December 1990. It further notes that the

author's claim that the Supreme Court dismissed his case has remained uncontested. On the basis of the information before it, the Committee cannot conclude that there are further effective remedies that the author should have pursued or could pursue. It therefore concludes that the requirements of article 5, paragraph 2 (b), of the Optional Protocol have been met.

4.3 With regard to the author's allegation of a violation of article 10 of the Covenant, the Committee notes that the author has failed sufficiently to substantiate his claim, for purposes of admissibility, that he was improperly treated in detention. Accordingly, the Committee finds this aspect of the communication inadmissible under article 2 of the Optional Protocol.

4.4 Several of the author's allegations are sufficiently substantiated, for purposes of admissibility, and should be examined on the merits, namely his claims that (a) he was subjected to arbitrary arrest and unlawful detention; (b) he was denied the right to liberty of movement and freedom to choose his residence through arbitrary denial of his passport; (c) he was denied the right and the opportunity to take part in the conduct of the public affairs; and (d) he was discriminated against on grounds of his political opinions. Moreover, although the author has not invoked article 19 of the Covenant, the Committee considers that his claim may raise issues under this provision. Similarly, the Committee notes that the claim put forth by the author's wife may raise an issue under article 9, paragraph 2, of the Covenant.

5. The Human Rights Committee therefore decides:

(a) That the communication is admissible in so far as it may raise issues under articles 9, 12, 19, 25 and 26 of the Covenant;

(b) That, in accordance with article 4, paragraph 2, of the Optional Protocol, the State party shall 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 measures, if any, that may have been taken by it;

(c) That the State party be a gain requested to forward to the Committee a copy of the author's indictment and of any orders or decisions concerning him, including the Tribunal's decision on 17 August 1987;

(d) That any explanations or statements received from the State party shall be communicated by the Secretary-General under rule 93, paragraph 3, of the Committee's rules of procedure, to the author with the request that any comments that he may wish to submit thereon should reach the Human Rights Committee, in care of the Centre for Human Rights, United Nations Office at Geneva, within six weeks of the date of the transmittal;

(e) That this decision shall be communicated to the State party and to the author.

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

*/ All persons handling this document are requested to respect and observe its confidential nature.

1/ The author's account in this respect is unclear; the date of his return to Zambia is unspecified.

2/ In September 1989, the Secretariat of the Office of the United Nations High Commissioner for Refugees (UNHCR) at Geneva informed the Secretariat that the author had left Zambia and was residing in the United Republic of Tanzania. The circumstances of his release remain unknown. At some later date he returned to Zambia.

3/ The author's account does not clarify the nature of the proceedings instituted against the State, nor is there a chronology of the judicial proceedings.