

HUMAN RIGHTS COMMITTEE

Mika Miha v. Equatorial Guinea

Communication No. 414/1990

8 July 1994

CCPR/C/51/D/414/1990*

VIEWS

Submitted by: Primo José Essono Mika Miha

Victim: The author

State party: Equatorial Guinea

Date of communication: 28 May 1990 (initial submission)

Date of decision on admissibility: 16 October 1992

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

Meeting on 8 July 1994,

Having concluded its consideration of communication No. 414/1990 submitted to the Human Rights Committee by Mr. Primo José Essono Mika Miha 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 Primo José Essono Mika Miha, a citizen of Equatorial Guinea born in 1940. He also holds a Spanish passport and currently resides in Madrid. The author claims to be a victim of violations by Equatorial Guinea of articles 3; 6, paragraph

3; 7; 9, paragraphs 1, 2, 4 and 5; 10, paragraph 1; 12, paragraphs 1 and 2; 14, paragraphs 1, 3(b) and 5; 16; 17, paragraphs 1 and 2; 19, paragraphs 1 and 2; 21 and 22, paragraphs 1 to 3, of the International Covenant on Civil and Political Rights. The Optional Protocol entered into force for Equatorial Guinea on 25 December 1987.

The facts as presented by the author:

2.1 The author is a former official of past governments of the Republic of Equatorial Guinea. In 1968, he was elected Deputy of the First Assembly of the Republic; in 1971, he was appointed Permanent Representative of his country to the United Nations. In 1974, he was nominated Ambassador of Equatorial Guinea to Cameroon and the Central African Republic. After the election and the installation of President Macias, the author resigned from his post and left the country together with his family for Spain, where he requested political asylum.

2.2 After the death of President Macias, the author returned to his country and took up the post of Director of Administrative, Cultural and Consular Affairs in the new government's Ministry of Foreign Affairs. In 1982, he once again left the country and sought refuge in Spain, as he feared persecution at the hands of the clan of Mongomo, to which President Obiang Nguema (who had replaced President Macias) belongs.

2.3 On an unspecified date in the summer of 1988, the author returned to Equatorial Guinea, so as to actively support the activities of the opposition party (Partido de Progreso) of which he is a member. At around 11:30 p.m. on 16 August 1988, he was abducted by members of the security forces in a street of Malabo, the country's capital. He claims that he was handcuffed, blind-folded, and that a handkerchief was pushed into his mouth in order to silence him. He was told that President Obiang had ordered his arrest, but no further explanations were given; the author contends that he was arrested solely because of his activities for the Partido de Progreso.

2.4 After his arrest, the author was detained on board of a ship and allegedly deprived of drink and food for one week. He was then transferred to the prison of Bata on the mainland, where he allegedly was tortured for two days. The author provides detailed information about the ill-treatment he was subjected to and explains that torture is practised in an open field close to the beach at night, and that not only police officers but also members of the Government attend these sessions. It appears that several other individuals who had been arrested at approximately the same time as the author, and who also belonged to the Partido de Progreso, suffered the same fate as the author. a/

2.5 The author does not specify the nature of the injuries sustained during torture but claims that he was subsequently kept in detention for well over one month without any medical assistance. He adds that the conditions of detention at the prison of Bata are deplorable, that detainees hardly receive any food unless it is brought to them by relatives, and that they must sleep on the floor.

2.6 On 10 January 1990, while still in detention, the author underwent surgery on his right elbow, made necessary to prevent the development of a serious infection and a tumor, which

according to him can be causally linked to the ill-treatment sustained during the summer of 1988. In support of his contention, he submits copies of medical reports, X-rays and the results of medical analyses carried out by a Spanish laboratory. On 1 March 1990, he was released, without any explanations being offered; the authorities did not return to him all the personal belongings (money, plane tickets, jewellery) taken from him after his arrest. He then returned to Spain, where he currently teaches in a public school.

2.7 As to the requirement of exhaustion of domestic remedies, the author submits that such judicial remedies as exist in Equatorial Guinea are totally ineffective. According to the author, the judiciary is directly controlled by President Obiang Nguema himself, who also has his say in the appointment of the judges. As a result, local courts and tribunals are neither independent nor impartial; in this context, the author dismisses the trial against him and a number of co-defendants as summary ("procedimiento sumarísimo"), which did not meet the criteria for a fair hearing. He does not, however, provide further information about the date, venue or circumstances of the trial.

2.8 According to the author, recourse to appellate instances is impossible, as they either do not exist or have fallen into disuse. The author adds that regardless of whether a criminal offence may be tried only after a formal indictment or summarily, trials are conducted summarily, as in his own case. He submits that frequently, it is not the tribunal but the President himself who decides on the sentence to be imposed on the accused.

The complaint:

3. The author submits that the facts as described above constitute violations of articles 3; 6, paragraph 3; 7; 9, paragraphs 1, 2, 4 and 5; 10, paragraph 1; 12, paragraphs 1 and 2; 14, paragraphs 1, 3(b) and 5; 16; 17, paragraphs 1 and 2; 19, paragraphs 1 and 2; 21 and 22, paragraphs 1 to 3, of the Covenant.

The State party's observations:

4.1 In its submission under rule 91 of the rules of procedure, dated 12 October 1991, the State party challenges the admissibility of the communication, arguing that it violates elemental norms of international law and constitutes an interference into domestic affairs of Equatorial Guinea ("esta comunicación viola las normas elementales del derecho internacional y constituye una ingerencia en los asuntos del Estado ecuatoguineano"). 4.2 In this context, the State party explains that the author voluntarily relinquished his Equatorial-Guinean citizenship in 1982 and instead opted for Spanish nationality. As there is neither an agreement nor a treaty between Spain that governs the acquisition of double nationality, and as the author is currently a Spanish civil servant, he is not, in the State party's opinion, subject to its own jurisdiction.

The Committee's admissibility decision:

5.1 During its 46th session, the Committee considered the admissibility of the communication. It dismissed the State party's contention that the author was not subject to

its jurisdiction, since the author had been detained in Equatorial Guinea from 16 August 1988 until 1 March 1990 and thus had clearly been subject to the State party's jurisdiction. The Committee recalled that article 1 of the Optional Protocol applies to individuals subject to the jurisdiction of the State concerned who claim to be victims of a violation by that State of their rights under the Covenant, regardless of their nationality. It further noted that the State party's acceptance of the Committee's competence under the Optional Protocol implied that considerations of domestic policy could not be advanced to prevent the Committee from considering claims from individuals subject to the State party's jurisdiction.

5.2 On the issue of exhaustion of domestic remedies, the Committee observed that the State party had not indicated which remedies were available and would be effective in the circumstances of the case. It concluded that the requirements of article 5, paragraph 2(b), had been met.

5.3 In respect of the author's claims under articles 3, 6, paragraph 3, 16, 17, 21 and 22, the Committee concluded that they had not been substantiated, for purposes of admissibility, and accordingly concluded that the author had no claim within the meaning of article 2 of the Optional Protocol.

5.4 On 16 October 1992, the Committee declared the communication admissible in so far as it appeared to raise issues under articles 7, 9, 10, 12, 14, and 19 of the Covenant.

Examination of the merits:

6.1 The State party's deadline for the submission of information and observations under article 4, paragraph 2, of the Optional Protocol expired in June 1993. No submission on the merits has been received from the State party, in spite of a reminder addressed to it on 2 May 1994.

6.2 The Committee notes with regret and concern that the State party has not cooperated with it as far as the provision of information on the substance of the author's claims is concerned. 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. Accordingly, due weight must be given to the author's allegations, to the extent that they have been substantiated.

6.3 The Committee has noted the State party's contention that the communication constitutes an interference into its domestic affairs. The Committee strongly rejects the State party's argument and recalls that when ratifying the Optional Protocol, the State party accepted the Committee's competence to consider complaints from individuals subject to the State party's jurisdiction.

6.4 The author has claimed, and the State party has not refuted, that he was deprived of food and water for several days after his arrest on 16 August 1988, tortured during two days after

his transfer to the prison of Bata, and left without medical assistance for several weeks thereafter. The author has given a detailed account of the treatment he was subjected to and submitted copies of medical reports that support his conclusion. On the basis of this information, the Committee concludes that he was subjected to torture at the prison of Bata, in violation of article 7; it further observes that the deprivation of food and water after 16 August 1988, as well as the denial of medical attention after the ill-treatment in the, or outside the, prison of Bata, amounts to cruel and inhuman treatment within the meaning of article 7, as well as to a violation of article 10, paragraph 1.

6.5 As to the author's allegation that he was arbitrarily arrested and detained between 16 August 1988 and 1 March 1990, the Committee notes that the State party has not contested this claim. It further notes that the author was not given any explanations for the reasons of his arrest and detention, except that the President of the Republic had ordered both, that he was not brought promptly before a judge or other officer authorized by law to exercise judicial power, and that he was unable to seek the judicial determination, without delay, of the lawfulness of his detention. On the basis of the information before it, the Committee finds a violation of article 9, paragraphs 1, 2 and 4. On the same basis, the Committee concludes, however, that there has been no violation of article 9, paragraph 5, as it does not appear that the author has in fact claimed compensation for unlawful arrest or detention. Nor is the Committee able to make a finding in respect of article 9, paragraph 3, as it remains unclear whether the author was in fact detained on specific criminal charges within the meaning of this provision.

6.6 The author has claimed a violation of article 12, paragraphs 1 and 2. There is no indication, however, that he was either deprived of his passport or other documents, that the State party restricted his liberty of movement, or that he was denied the right to leave his country. On the basis of the material before the Committee, it appears, rather, that the author left Equatorial Guinea of his own free will, both in 1982 and 1990; nor is there an indication that restrictions were placed on his freedom of movement after his return to Equatorial Guinea in the summer of 1988 and prior to his arrest on 16 August 1988. The Committee thus concludes that there has been no violation of article 12.

6.7 The author has alleged that his trial was summary, and that the judicial system in Equatorial Guinea is neither impartial nor independent. In this context, the Committee has in particular noted the author's contention that the State party's President directly controls the judiciary in Equatorial Guinea. However, the information provided by the author has not been sufficient to substantiate his claim under article 14. The Committee therefore concludes that there has been no violation of article 14, paragraph 1.

6.8 In respect of issues under article 19, finally, the Committee notes that the State party has not refuted the author's claim that he was arrested and detained solely or primarily because of his membership in, and activities for, a political party in opposition to the regime of President Obiang Nguema. In the circumstances of the case, the Committee concludes that the State party has unlawfully interfered with the exercise of the author's rights under article 19, paragraphs 1 and 2.

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 material before it discloses violations of articles 7, 9, paragraphs 1, 2 and 4, 10, paragraph 1, and 19, paragraphs 1 and 2, of the Covenant.

8. Under article 2 of the Covenant, the State party is under an obligation to provide Mr. Mika Miha with an appropriate remedy, including appropriate compensation for the treatment to which he has been subjected.

9. 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.

[Adopted in English, French and Spanish, the English text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]

Footnotes

*/ Made public by decision of the Human Rights Committee.

a/ The author provides a list with the names of these individuals.