

HUMAN RIGHTS COMMITTEE

Luyeye v. Zaire

Communication No. 90/1981*

21 July 1983

VIEWS

Submitted by: Luyeye Magana ex-Philibert (represented by Michael P. D. Ellman)

Alleged victim: The author of the communication

State party concerned: Zaire

Date of communication: 30 March 1981 (date of first letter)

Date of decision on admissibility: 21 October 1982

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

Meeting on 21 July 1983,

Having concluded its consideration of communication No. 90/1981 submitted to the Committee by Luyeye Magana ex-Philibert, through his legal representative, Michael P. D. Ellman, under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all the written information made available to it by the author of the communication and by the State party concerned,

Adopts the following:

Views under article 5(4) of the Optional Protocol

1. The communication, initial letter dated 30 March 1981 and further letter dated 15 February 1982, is submitted by Luyeye Magana ex-Philibert through his legal representative, Michael P. D. Ellman. The alleged victim, a civil servant born on 22 February 1929, is a citizen of Zaire domiciled in that country. It is claimed that Mr. Luyeye is a victim of

breaches by Zaire of articles 2 (3), 9, 10 and 17 of the International Covenant on Civil and Political Rights.

2.1 It is alleged that, on 3 June 1967, Mr. Luyeye was arrested by the Surete Nationale, deported to the island of Mbula-Mbemba in Lower Zaire and then transferred to the prison Osio in Upper Zaire where he was detained until 30 August 1968 without ever being charged or informed of the reason for his detention. He was rearrested on 24 March 1977 when, at 4.30 a.m., three agents of the Centre Nationale de Documentation, furnished with a search warrant, came to his house to carry out a search for no apparent reason. They seized documents written by the alleged victim, cinematographic films and magnetic tapes. Following the search, though without any warrant of arrest or summons, they requested him to accompany them to the Centre Nationale de Documentation to provide further information. Once there, he was introduced to Citizen Kisangani, one of the directors who, without any further proceedings, simply ordered him to be kept in detention. While in detention, he was kept in a cell, locked in from morning to night, sleeping on the ground; he was deprived of all contact with his family and provided with only 200 g of rice and/or 100 g of chikwangue and a ladle of beans from midday to midday; he was refused all medical attention. On 6 April 1977, without his knowledge or that of his family, the Centre National de Documentation sent three agents to the village of his birth, Kintambu in Lower Zaire, to search his country house where they removed his Scout's Certificate. His detention continued until 9 January 1978 when he was released following an amnesty pronounced by the President of the Republic, without ever having been interrogated or given any document relating to the detention, though a decree of 22 April 1961 (l'arrete ministeriel No. 05/22) provided that the agents of the Surete Nationale can detain people for inquiry for five days only, after which they must be served with an internment order. It is further alleged that, during his detention, five members of his immediate family died and were buried without his having been able to be present at the funeral. His children were expelled from school because of the lack of finance while he was detained.

2.2 It is maintained that by the aforesaid, the alleged victim's rights to liberty and security of person, to freedom from arbitrary arrest or detention, to be informed at the time of arrest of the reasons for his arrest and of any charges against him and to be brought promptly before a judge or other officer authorized by law to exercise judicial power and to compensation for unlawful arrest or detention (art. 9 of the Covenant) have been infringed; that his rights not to be subjected to arbitrary or unlawful interference with his privacy, home or correspondence nor to unlawful attacks on his honour and reputation but to have the right of protection of the law against such interference or attacks (art. 17 of the Covenant) have been infringed and that he was not treated with humanity while in *detention* (art. 10).

2.3 As to the exhaustion of domestic remedies, it is claimed that Mr. Luyeye has brought an appeal against his detention by writing to the Administrateur general who interviewed him on 20 September 1979, i.e., after his release. His appeal during detention had been without result. It is alleged that there is no other provision of any appeal in the law of Zaire, though Mr. Luyeye did in fact write to the Head of State by letter of 9 January 1978 (to which he did not receive a reply), as the only extrajudicial remedy open to him. He has therefore attempted to bring his complaint before the domestic tribunals of Zaire without success and

claims that, accordingly, the Republic of Zaire is in breach of its obligations under article 2 (3) of the Covenant, namely to ensure that if any person's rights or freedom as therein recognized are violated, he shall have an effective remedy notwithstanding that the violation has been committed by persons acting in an official capacity.

2.4 It is further stated that the same matter has not been submitted for examination under another procedure of international investigation or settlement.

3. By its decision of 7 April 1982, 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. The State party was in particular requested, if it contended that domestic remedies had not been exhausted, to give details of the effective remedies available to the alleged victim in the particular circumstances of his case and, if it objected that the same matter is being examined under another procedure of international investigation or settlement, to give details including information on the stage reached in such proceedings. The State party was also requested to provide the Committee with copies of any court orders or decisions relevant to the case. The State party was informed that its reply should be furnished to the Committee not later than 18 July 1982. No reply was received from the State party

4. The Human Rights Committee took note that no submission had been received from the State party concerning the question of the admissibility of the communication. On the basis of the information before it, the Committee found 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 this case, there were effective remedies available to the alleged victim which he had failed to exhaust. Accordingly, the Committee found that the communication was not inadmissible under article 5 (2) (b) of the Optional Protocol.

5. On 21 October 1982, the Human Rights Committee therefore decided:

(a) That the communication was admissible in so far as it related to events said to have occurred on or after 1 February 1977, the date on which the Covenant and the Optional Protocol entered into force for Zaire;

(b) That, in accordance with article 4 (2) of the Optional Protocol, the State party should 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 to enclose copies of any court orders or decisions relevant to the case.

6. On 22 May 1983, the time-limit for the observations requested under article 4 (2) of the Optional Protocol expired. No submission has been received from the State party. The Committee observes that, in accordance with article 4 (2), 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 then to submit its explanations and statements to the Committee. In operative

paragraph 2 of the Committee's decision on admissibility of 21 October 1982, the State party was also requested to furnish to the Committee copies of any court orders or decisions relevant to the case. The Committee notes with regret that it has not received the information requested. In the absence of any submission from the State party, the Committee cannot but draw its conclusions on the basis of information before it from other sources.

7.1 The Human Rights Committee, having examined the present communication in the light of all the information made available to it as provided in article 5, paragraph 1, of the Optional Protocol, hereby decides to base its views on the following facts, which, in the absence of any observations by the State party, are uncontradicted by it.

7.2 Luyeye Magana ex-Philibert was arrested on 24 March 1977 when three agents of the Centre Nationale de Documentation furnished with a search warrant, came to his house to carry out a search for no apparent reason. They seized documents written by the alleged victim, cinematographic films and magnetic tapes. Following the search, though without any warrant of arrest or summons, they requested him to accompany them to the Centre Nationale de Documentation to provide further information. Once there, he was introduced to Citizen Kisangani, one of the directors who, without any further proceedings, simply ordered him to be kept in detention. While in detention, he was kept in a cell, locked in from morning to night, sleeping on the grounds he was deprived of all contact with his family and he was refused all medical attention. On 6 April 1977, without his knowledge or that of his family, the Centre Nationale de Documentation sent three agents to the village of his birth, Kintambu in Lower Zaire, to search his country house where they removed his Scout's Certificate. His detention continued until 9 January 1978 when he was released following an amnesty pronounced by the President of the Republic, without ever having been interrogated or given any document relating to the detention, though a decree of 22 April 1961 (l'arrete ministeriel No. 05/22) provided that the agents of the Surete Nationale can detain people for inquiry for five days only, after which they must be served with an internment order. During his detention he appealed without result to the Administrateur general and, by letter, to the Head of State. No other remedy was available to him. It is further alleged that during his detention, five members of his immediate family died and were buried without his having been able to be present at the funeral. His children were expelled from school because of the lack of finance while he was detained.

8. 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 the facts as found by the Committee, in so far as they continued or occurred after 1 February 1977 (the date on which the Covenant and the Optional Protocol entered into force for Zaire), disclose violations of the International Covenant on *Civil* and Political Rights, particularly:

of article 9 (1), because Luyeye Magana ex-Philibert has been subjected to arbitrary arrest *and* detentions;

of article 9 (2), because he was not informed, at the time of his arrest, of the reasons for his arrest and of any charges against him;

of article 9 (3) and (4), because he was not brought promptly before a Judge and no court decided within a reasonable time on the lawfulness of his detention;

of article 10 (1), because, while in detention, he was not treated with humanity;

of article 2 (3), because there was no effective remedy under the domestic law of Zaire against the violations of the Covenant complained of.

9. The Committee, accordingly, is of the opinion that the State party is under an obligation (a) to investigate the complaints made and to provide Luyeye Magana ex-Philibert with effective remedies for the violations he has suffered, including compensation and the return of his property to him, and (b) to take steps to ensure that similar violations do not occur in the future.

*/ Mr. Walter Suma Tarnopolsky did not participate in the adoption of the views of the Committee under article 5 (4) of the Optional Protocol in this matter.