

HUMAN RIGHTS COMMITTEE

Bwalya v. Zambia

Communication No. 314/1988

14 July 1993

CCPR/C/48/D/314/1988

VIEWS

Submitted by: Peter Chiiko Bwalya

Victim: The author

State party: Zambia

Date of communication: 30 March 1988 (initial submission)

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

Meeting on 14 July 1993,

Having concluded its consideration of communication No. 314/1988, submitted to the Human Rights Committee by Mr. Peter Chiiko Bwalya 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 Peter Chiiko Bwalya, a Zambian citizen born in 1961 and currently chairman of the People's Redemption Organization, a political party in Zambia. He claims to be a victim of violations of the International Covenant on Civil and Political Rights by Zambia.

Facts as submitted

2.1 In 1983, at the age of 22, the author ran for a parliamentary seat in the Constituency of Chifubu, Zambia. He states that the authorities prevented him from properly preparing his candidacy and from participating in the electoral campaign. The authorities' action apparently helped to increase his popularity among the poorer strata of the local population, as the author was committed to changing the Government's policy towards, in particular, the homeless and the unemployed. He claims that in retaliation for the propagation of his opinions and his activism, the authorities subjected him to threats and intimidation, and that in January 1986 he was dismissed from his employment. The Ndola City Council subsequently expelled him and his family from their home, while the payment of his father's pension was suspended indefinitely.

2.2 Because of the harassment and hardship to which he and his family were being subjected, the author emigrated to Namibia, where other Zambian citizens had settled. Upon his return to Zambia, however, he was arrested and placed in custody; the author's account in this respect is unclear and the date of his return to Zambia remains unspecified.

2.3 The author notes that by September 1988 he had been detained for 31 months, on charges of belonging to the People's Redemption Organization - an association considered illegal under the terms of the country's one-party Constitution - and for having conspired to overthrow the Government of the then President Kenneth Kaunda. On an unspecified subsequent date, he was released; again, the circumstances of his release remain unknown. At an unspecified later date, Mr. Bwalya returned to Zambia.

2.4 On 25 March 1990, the author sought the Committee's direct intercession in connection with alleged discrimination, denial of employment and refusal of a passport. By letter of 5 July 1990, the author's wife indicated that her husband had been rearrested on 1 July 1990 and taken to the Central Police Station in Ndola, where he was reportedly kept for two days. Subsequently, he was transferred to Kansenshi prison in Ndola; the author's wife claims that she was not informed of the reasons for her husband's arrest and detention.

2.5 With respect to the requirement of exhaustion of domestic remedies, the author notes that he instituted proceedings against the authorities after his initial arrest. He notes that the district tribunal reviewing his case confirmed, on 17 August 1987, that he was no danger to national security but that, notwithstanding the court's finding, he remained in custody. A further approach to the Supreme Court met with no success.

Complaint

3.1 In his initial submissions, the author invokes a large number of provisions of the Covenant, without substantiating his allegations. In subsequent letters, he confines his claims to alleged violations of articles 1, 2, 3, 9, 10, 12, 25 and 26 of the Covenant.

3.2 The author contends that, since he never participated in any conspiracy to overthrow the Government of President Kaunda, his arrests were arbitrary and his detentions unlawful, and

that he is entitled to adequate compensation from the State party. He submits that following his release from the first period of detention he continued to be harassed and intimidated by the authorities; he claims that he denounced these practices.

3.3 The author states that, as a political activist and former prisoner of conscience, he has been placed under strict surveillance by the authorities, and that he continues to be subjected to restrictions on his freedom of movement. He claims that he has been denied a passport as well as any means of making a decent living.

Issues and proceedings before the Committee

4.1 Before considering any claims 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 During its forty-first session, the Committee considered the admissibility of the communication. It noted with concern the absence of cooperation from the State party which, in spite of four reminders addressed to it, had failed to comment on the admissibility of the communication. It further noted that the author's claim that the Supreme Court had dismissed his appeal had remained uncontested. In the circumstances, the Committee concluded that the requirements of article 5, paragraph 2 (b), of the Optional Protocol had been met.

4.3 As to the claims relating to articles 7 and 10 of the Covenant, the Committee considered that the author had failed to substantiate his claim, for purposes of admissibility, that he had been subjected to treatment in violation of these provisions. Accordingly, the Committee found this part of the communication inadmissible under article 2 of the Optional Protocol.

4.4 With respect to the author's claims that he: (a) had been subjected to arbitrary arrest and unlawful detention; (b) had been denied the right to liberty of movement and arbitrarily denied a passport; (c) had been denied the right to take part in the conduct of public affairs; and (d) had been discriminated against on account of political opinion, the Committee considered that they had been substantiated, for purposes of admissibility. Furthermore, the Committee was of the opinion that, although articles 9, paragraph 2, and 19 had not been invoked, the facts as submitted might raise issues under these provisions.

4.5 On 21 March 1991, the Committee declared the communication admissible in so far as it appeared to raise issues under articles 9, 12, 19, 25 and 26 of the Covenant.

5.1 In a submission dated 28 January 1992, the State party indicates that "Mr. Peter Chiiko Bwalya has been released from custody and is a free person now". No information on the substance of the author's allegations, nor copies of his indictment or any judicial orders concerning the author, have been provided by the State party, in spite of reminders addressed to it on 9 January and 21 May 1992.

5.2 In a letter dated 3 March 1992, the author confirms that he was released from detention

but requests the Committee to continue consideration of his case. He adds that the change in the Government has not changed the authorities' attitude towards him.

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 of the author's release, the State party has failed to cooperate on the matter under consideration. It further recalls that it is implicit in article 4, paragraph 2, of the Optional Protocol that a State party examine in good faith all the allegations brought against it, and that it provide the Committee with all the information at its disposal, including all available judicial orders and decisions. The State party has not forwarded to the Committee 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 considers that the uncontested response of the authorities to the attempts of the author to express his opinions freely and to disseminate the political tenets of his party constitute a violation of his rights under article 19.

6.3 The Committee has noted that when the communication was placed before it for consideration, Mr. Bwalya had been detained for a total of 31 months, a claim that has not been contested by the State party. It notes that the author was held solely on charges of belonging to a political party considered illegal under the country's (then) one-party constitution and that on the basis of the information before the Committee, Mr. Bwalya was not brought promptly before a judge or other officer authorized by law to exercise judicial power to determine the lawfulness of his detention. This, in the Committee's opinion, constitutes a violation of the author's right under article 9, paragraph 3, of the Covenant.

6.4 With regard to the right to security of person, the Committee notes that Mr. Bwalya, after being released from detention, has been subjected to continued harassment and intimidation. The State party has not contested these allegations. 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 violated Mr. Bwalya's right to security of person under article 9, paragraph 1.

6.5 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 authorities have refused to issue a passport to him. This, in the Committee's opinion, amounts to a violation of article 12, paragraph 1, of the Covenant.

6.6 As to the alleged violation of article 25 of the Covenant, the Committee notes that the author, a leading figure of a political party in opposition to the former President, has been prevented from participating in a general election campaign as well as from preparing his

candidacy for this party. This amounts to an unreasonable restriction on the author's right to "take part in the conduct of public affairs" which the State party has failed to explain or justify. In particular, it has failed to explain the requisite conditions for participation in the elections. Accordingly, it must be assumed that Mr. Bwalya was detained and denied the right to run for a parliamentary seat in the Constituency of Chifubu merely on account of his membership in a political party other than that officially recognized; in this context, the Committee observes that restrictions on political activity outside the only recognized political party amount to an unreasonable restriction of the right to participate in the conduct of public affairs.

6.7 Finally, on the basis of the information before it, the Committee concludes that the author has been discriminated against in his employment because of his political opinions, contrary to article 26 of the Covenant.

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 1 and 3, 12, 19, paragraph 1, 25 (a) and 26 of the Covenant.

8. Pursuant to article 2 of the Covenant, the State party is under an obligation to provide Mr. Bwalya 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 90 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.]

Notes

a/ Views on communication No. 195/1985 (Delgado Páez v. Colombia), adopted on 12 July 1990, paras. 5.5 and 5.6.