

HUMAN RIGHTS COMMITTEE

Kanana v. Zaire

Communication No. 366/1989

2 November 1993

CCPR/C/49/D/366/1989*

VIEWS

Submitted by: Isidore Kanana Tshiongo a Minanga

Victim: The author

State party: Zaire

Date of communication: 2 May 1989 (initial submission)

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

Meeting on 2 November 1993,

Having concluded its consideration of communication No. 366/1989, submitted to the Human Rights Committee by Mr. Isidore Kanana Tshiongo a Minanga 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 Isidore Kanana Tshiongo a Minanga, a Zairian citizen residing in Kinshasa, Zaire. The author claims to be a victim of violations of his human rights by Zaire.

The facts as submitted by the author:

2.1 The author is a founding member of the Union for Democracy and Social Progress (**Union pour la démocratie et le progrès social** - U.D.P.S.), a political party which was in opposition to the régime of President Mobutu¹. At around 1 p.m. on 1 May 1989, members of the Zairian Defence Forces allegedly took him to the headquarters of the Agence Nationale de Documentation (A.N.D.), a special branch of the Zairian political police. The author contends that he had been told initially that he was to meet the agency's director but that, upon his arrival, he was led to what he refers to as torture chambers. He was left there unattended until around 8 p.m., when several individuals entered the cell. He allegedly was undressed and strapped to the concrete floor of the cell; he was left in this state until around midnight, when five men entered the cell and began torturing him. A sixth man joined them at around 2 a.m. Torture allegedly involved applying electric shocks to the author's genitals as well as heavy beatings, using metal bars with barbed wire wrapped around the end. According to the author, this treatment continued until he lost consciousness, in the early morning hours of 2 May 1989.

2.2 The author was left for dead in bushes along the roadside, in the vicinity of the A.N.D. headquarters. He states that he regained consciousness at around 7 a.m. on 2 May and managed to alert some roadworkers, who transported him to the nearby office of the Red Cross, from where he was brought to the American Hospital to undergo emergency treatment; he remained hospitalized for several days.

2.3 The author asserts that as the executive partly controls the judiciary in Zaire, it would be naive to expect to obtain redress through domestic judicial procedures. Nevertheless, the author filed a complaint with the Supreme Court; it appears that to date, no follow-up has been given to it. He further addressed two letters of complaint to the State Commissioner for National Defence and Security, to no avail.

2.4 The author submits that his health remains precarious, and adds that he suffers from paralysis in the right part of his body since the end of 1990.

The complaint:

3. While the author does not invoke any provision of the Covenant, it transpires from his submission that he claims to be a victim of arbitrary detention and of acts of torture. In particular, he notes that he was at no time notified of the reasons for which he had been apprehended.

The Committee's admissibility decision:

4.1 During its 44th session, in March 1992, the Committee considered the admissibility of the communication. It noted with concern that in spite of four reminders addressed to the State party between April 1990 and November 1991, no information or observations on the admissibility of the communication had been received from the State party; nor did the State party provide information, as had been requested by the Special Rapporteur on New Communications, about the status of investigations into the allegations of Mr. Kanana. Given the complete absence of information from the State party about the availability of

effective domestic remedies, the Committee concluded that there were no obstacles to the admissibility of the communication.

4.2 On 20 March 1992, therefore, the Committee declared the communication admissible.

Examination of the merits:

5.1 The State party did not provide any information in respect of the substance of the author's allegations, in spite of a reminder addressed to it in May 1993. The Committee notes with great concern the total absence of cooperation on the part of the State party, both in respect of the admissibility and the substance of the author's allegations. It is implicit in article 4, paragraph 2, of the Optional Protocol and in rule 91 of the rules of procedure that a State party to the Covenant must investigate in good faith all the allegations of violations of the Covenant against it and its authorities, and furnish the Committee with detailed information about the measures, if any, taken to remedy the situation. In the circumstances, due weight must be given to the author's allegations, to the extent that they have been substantiated.

5.2 The Committee notes that the author claims to have been detained at the headquarters of the Agence Nationale de Documentation between the early afternoon of 1 May 1989 and the early morning hours of the following day. He claims that he was not informed of the reasons for his apprehension and detention; this has not been contested. Furthermore, it is uncontested that no warrant was served on him but, instead, he was brought to the A.N.D. headquarters under false pretexts. These uncontested claims are considered by the Committee to have been substantiated by Mr. Kanana and justify the conclusion that his detention on 1 and 2 May 1989 was arbitrary and contrary to article 9, paragraph 1. The Committee also expresses grave concerns about the circumstances of Mr. Kanana's apprehension and the apparent lack of judicial accountability of the Zairian Defence Forces.

5.3 As to the treatment to which the author was subjected between 8 p.m. on 1 May 1989 and the early morning hours of 2 May 1989, it has remained uncontested that Mr. Kanana remained strapped to the concrete floor of his cell for close to four hours, and that he was thereafter subjected to acts of torture for several more hours. The Committee observes in this context that Mr. Kanana has provided photographic evidence of the consequences of this treatment. In the circumstances, the Committee concludes that the author has substantiated his claim that he was subjected to torture and cruel and inhuman treatment, in violation of article 7 of the Covenant, and that he was not treated with respect for the inherent dignity of his person, in violation of article 10, paragraph 1.

6. The Human Rights Committee, acting under article 5, paragraph 4 of the International Covenant on Civil and Political Rights, is of the view that the facts before it disclose violations of articles 7, 9, paragraph 1, and 10, paragraph 1, of the Covenant.

7. The Committee is of the view that Mr. Isidore Kanana is entitled, under article 2, paragraph 3(a), of the Covenant, to an effective remedy, including appropriate compensation for the treatment suffered. The State party should investigate the events complained of and

bring to justice those held responsible for the author's treatment; it further is under an obligation to take effective measures to ensure that occurrences such as those complained of by the author cease and that similar violations do not occur in the future.

8. 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.]

Footnotes

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

1/ In August 1992, the National Sovereign Conference of Zaire designated UDPS leader Etienne Tshisekedi to be Prime Minister of Zaire; he assumed his duties in late August 1992. His mandate has not been recognized by President Mobutu Sese Seko.