

HUMAN RIGHTS COMMITTEE

Chambala v. Zambia

Communication No. 856/1999**

15 July 2003

CCPR/C/78/D/856/1999*

VIEWS

Submitted by: Alex Soteli Chambala

Alleged victim: The author

State party: Zambia

Date of communication: 18 April and 30 July 1997(initial submissions)

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

Meeting on 15 July 2003,

Having concluded its consideration of communication No. 856/1999, submitted to the Human Rights Committee by Mr. Alex Soteli Chambala 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 the following:

Views under article 5, paragraph 4, of the Optional Protocol
(Please note that explanatory footnotes will be removed from the final draft)

1. The author of the communication is Alex Soteli Chambala, a Zambian citizen, born in 1948. He claims to be a victim of a violation by Zambia¹ of the International Covenant on Civil and Political Rights (the Covenant) article 9, paragraphs 3 and 5. He is not represented by counsel.

The facts as presented by the author:

2.1 The author was arrested and detained without charge on 7 February 1987. He was served with a Police Detention Order² pursuant to Regulation 33(6) of the Preservation of Public Security Act on 12 February 1987. On 24 February 1987 the Police Detention Order was revoked, but on the same day he was served with a Presidential Detention Order pursuant to Regulation 33 (1) of the Preservation of Public Security Act. The grounds of the detention were served on the author on 5 March 1987; they state that he was being detained for a) receiving and keeping an escaped prisoner, Henry Kalenga, at his house, b) whom the author knew was detained for offences under the Preservation of Public Security Act, c) that he assisted Mr. Kalenga in his attempt to flee to a country hostile to Zambia, and d) that he never reported the presence of Mr. Kalenga to the Security Forces.

2.2 After detention for over one year without any production before a court or a judicial officer, the author applied for release. On 22 September 1988, the High Court of Zambia decided that there were no reasons to keep him in detention. Nevertheless, the author was not released until December 1988, when the President revoked his detention. According to the author, the maximum prison sentence for the offence he was charged with was 6 months.

2.3 The author argues that under Zambian law a person cannot seek compensation for unlawful detention. Furthermore, when he inquired with lawyers about the possibilities to submit a claim, he was told that his case was statute barred under Zambian laws. Thus, no domestic remedies are said to be available. Nevertheless, when the author learned that Peter Chico Bwalya and Henry Kalenga had received compensation after the adoption of decisions by the Human Rights Committee³, he wrote to the Attorney-General's Office seeking compensation. Although the letters were registered at the Attorney General's Office, he received no reply.

The complaint:

3.1 The author claims that the State party, by detaining him arbitrarily for almost two years, without bringing him before a judge or other officer authorized by law to exercise judicial power, has violated his rights under article 9, paragraphs 3 and 5 of the Covenant. These events may also raise further issues under article 9 of the Covenant.

The State party's submission on the admissibility and the merits of the communication:

4. By Note verbale of 26 March 2001, the State party conceded the events described in the communication, and indicated that it would be contacting the complainant with a view to compensating him for the period of detention at issue.

Subsequent communications with the parties:

5.1. In his letters of 20 June and 9 November 2001, and again on 30 January 2002, the author advised the Committee that he had not yet received compensation from the State party. In the last letter, he wrote that he had reminded the Attorney General's Office, which is responsible for the payment, on 9 November 2001.

5.2. By note verbale of 7 March 2002, the Secretariat reminded the State party to fulfil its promise to compensate the author without further delay and requested the State party to inform it of the measures taken. No response was received from the State party.

Issues and proceedings before the Committee:

Consideration of admissibility

6.1 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.

6.2 The Committee has ascertained that the same matter is not being examined under another procedure of international investigation or settlement for the purposes of article 5, paragraph 2(a), of the Optional Protocol.

6.3 The Committee notes with concern that although the State party has conceded the truth of the facts alleged in the communication and has undertaken to compensate the author for the period of detention at issue, and in spite of a reminder from the Secretariat to this effect, the State party has failed to fulfil its undertaking.

6.4 The Committee notes that the State party has not contested the admissibility of the communication. On the basis of the information before it, the Committee therefore concludes that the author has met the requirements under article 5, paragraph 2 (b), of the Optional Protocol, and that there are no other obstacles for his claims to be admissible in respect of possible violations of article 9.

Consideration of the merits

7.1 The Committee has considered the communication in the light of all the information provided by the parties. It notes with concern the lack of information from the State party, and 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. The State party has not forwarded any pertinent information to the Committee other than its note of 26 March 2001. In the circumstances, due weight must be given to the author's allegations, to the extent that they have been substantiated.

7.2 With regard to the author's allegation that he was subjected to arbitrary detention, the Committee has noted that the author was detained for a period of 22 months, dating from 7 February 1987, a claim that has not been contested by the State party. Moreover, the State party has not sought to justify this lengthy detention before the Committee. Therefore, the detention was, in the Committee's view, arbitrary and constituted a violation of article 9, paragraph 1, read together with article 2, paragraph 3.

7.3 The Committee further notes that the author's detention for the further two months following

the High Court's determination that there were no grounds to hold him in detention was, in addition to being arbitrary in terms of article 9, paragraph 1, also contrary to Zambian domestic law, thus giving rise to a violation of the right to compensation under article 9, paragraph 5.

8. 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 before it, disclose violations of article 9, paragraph 1, read together with article 2, paragraph 3, and of article 9, paragraph 5, of the Covenant.

9. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the author with an effective remedy. In view of the fact that the State party has committed itself to pay compensation, the Committee urges the State party to grant as soon as possible compensation to the author for the period that he was arbitrarily detained from 7 February 1987 to December 1988. The State party is under an obligation to ensure that similar violations do not occur in the future.

10. By becoming a State party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant or not. Pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory or subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy in cases in which a violation of the Covenant has been found by the Committee. The Committee wishes to receive from the State party, within 90 days, information about the measures taken to give effect to the Committee's Views. The State party is also requested to publish the Committee's Views.

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

*/ Made public by decision of the Human Rights Committee

**/ The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Prafullachandra Natwarlal Bhagwati, Mr. Maurice Glèlè Ahanhanzo, Mr. Walter Kälin, Mr. Ahmed Tawfik Khalil, Mr. Rajsoomer Lallah, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Martin Scheinin, Mr. Ivan Shearer, Mr. Hipólito Solari Yrigoyen, Ms. Ruth Wedgwood, Mr. Roman Wieruszewski, Mr. Maxwell Yalden.

Notes

1/ The Covenant and the Optional Protocol to the Covenant entered into force for the State party on 10 July 1984.

2/ The Police Detention Order dated 12 February 1987 states that the author should be detained for a period not exceeding 28 days pending a decision whether a Detention Order should be made against him.

3/ See *Bwalya v. Zambia*, Case No. 314/1988, Views adopted on 14 July 1993, and *Kalenga v. Zambia*, Case No. 326/1988, Views adopted on 27 July 1993.