

HUMAN RIGHTS COMMITTEE

Wight v. Madagascar

Communication No. 115/1982

1 April 1985

VIEWS

Submitted by: John Wight (represented by Maitre Eric Hamel)

Alleged victim: John Wight

State party concerned: Madagascar

Date of communication: 5 January 1982 (date of initial letter)

Date of decision on admissibility: 24 March 1983

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

Meeting on 1 April 1985,

Having concluded its consideration of Communication No. 115/1982 submitted to the Committee by John Wight 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 by the State party concerned:

Adopts the following:

Views under article 5, paragraph 4, of the Optional Protocol

1. The author of the communication (initial letter dated 5 January 1982 and further letters dated 14 February and 22 May 1982 and 31 May 1983, 30 January and 3 July 1984 and a final letter (undated) received on 21 September 1984) is John Wight, a South African national who was imprisoned in Madagascar from January 1977 to February 1984. He is represented by Maitre Eric Hamel, who was a lawyer in Madagascar until his expulsion on

11 February 1982 and is at present in France. The facts of this case are similar to those of Communication No. 49/1979 concerning Dave Marais, Jr., another South African national who was also imprisoned in Madagascar. The Human Rights Committee adopted views under article 5, paragraph 4, of the Optional Protocol concerning Communication No. 49/1979 on 24 March 1983. a/

2.1 Maitre Hamel (who was also the lawyer of Dave Marais, Jr.) alleged at the time of submission that, as in the Marais case, his client Wight was unable to submit a communication himself, as he was not permitted to engage in correspondence from his place of detention in Madagascar.

2.2 Maitre Hamel states that John Wight was a pilot for South African Airways; that on 18 January 1977, on a private flight, he had to make an emergency landing at Mananjary, Madagascar, for technical reasons; that on 22 March 1978 the Military Tribunal of Antananarivo sentenced him, together with Dave Marais, to five years' imprisonment and fined him FMG 500,000 for the offence of unlawfully overflying Malagasy territory; that on 15 May 1981 the Correctional Tribunal of Antananarivo sentenced him to an additional two years' imprisonment and fined him FMG 1 million for the offence of escaping from prison; that he was detained at the prison in Manjakandriana until 27 November 1981 when, by written order of M. Honore Rakotomana, Secretary-General of the Ministry of Justice, he was transferred to the DGID (political police) prison at Ambohibao, purportedly for the protection of his physical integrity.

2.3 It is alleged that the pretext used to justify the transfer to Ambohibao was false, and that John Wight was held there under the same inhuman conditions as Dave Marais, Jr., in a cell measuring 1 m by 2 m, that he could not receive any visitors or communicate with his attorney and that he could not send or receive letters. b/

2.4 Maitre Hamel explains that, pursuant to articles 550 and 551 of the Malagasy Code of Penal Procedure, convicted persons must be detained in the penal establishments under the Ministry of Justice and that detention of a convicted person at a police establishment is illegal.

2.5 Maitre Hamel claims that Mr. Wight is a victim of violations of article 10, paragraph 1, and article 14, paragraph 3, of the International Covenant on Civil and Political Rights.

3. By its decision of 16 March 1982, the Working Group of the Human Rights Committee transmitted the communication under rule 91 of the provisional rules of procedure to the State party, requesting information and observations relevant to the question of admissibility of the communication. The Working Group also requested the State party to provide the Committee with copies of any court orders or decisions relevant to the case.

4.1 By a note dated 11 August 1982, the State party transmitted to the Committee a photocopy of a letter dated 14 July 1982, signed by Mr. John Wight and Mr. Dave Marais and addressed to the Director of the Directorate-General of Investigations and Documentation of the Malagasy Republic. The text of the letter reads as follows:

"We would like to thank you very much for the letters from our families, which were safely received yesterday. It is absolutely wonderful to have news of our wives after so many months..

"In writing, I take the opportunity also to thank you for all the money which you have provided to buy cigarettes, soap and medicine. Also for the food, the room and particularly for the kindness shown to us. We remain in good spirits and, in view of the circumstances, want for almost nothing -except, of course, our freedom.

"I would like to request your permission to write to President Ratsiraka to ask him if he might be so good as to consider a remission of sentence or an amnesty for us. I am extremely eager to return home so as to be able to participate in the struggle against apartheid..."

4.2 The State party further informed the Committee that the relevant Malagasy high authorities were studying the action to be taken on the requests made in the letter referred to above.

5.1 The Human Rights Committee further examined the communication of John Wight at its seventeenth session. In view of the information furnished by the State party, which the Committee welcomed, and in order to give time to the President of Madagascar to respond to the appeal for clemency made to him by Mr. Wight and Mr. Marais, the Committee decided to defer further consideration of their cases until its eighteenth session. The State party was so informed on 25 November 1982 and requested to inform the Committee not later than 31 January 1983 whether the appeal for clemency made by Mr. Wight and Mr. Marais had been granted.

5.2 No further information was received from the State party prior to the Committee's eighteenth session.

6.1 With regard to article 5, paragraph 2 (a), of the Optional Protocol, the Committee noted that it had not received any information that the subject-matter had been submitted to another procedure of international investigation or settlement.

6.2 With regard to article 5, paragraph 2 (b), of the Optional Protocol, the Committee noted that the State party had not contended that there were domestic remedies which had not been exhausted. On the basis of the information before it, the Committee was unable to conclude that there were remedies available to the alleged victim which he could pursue or should have pursued.

6.3 Accordingly, the Committee found that the communication was not inadmissible under article 5, paragraph 2 (a), or (b), of the Optional Protocol.

7. On 24 March 1983, the Human Rights Committee decided:

1. That the communication was admissible;

2. That, in accordance with article 4, paragraph 2, of the Optional Protocol, the State party be requested to submit to the Committee, within six months of the date of transmittal to it of this decision, written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by it;

3. That the State party be informed that the written explanations or statements submitted by it under article 4, paragraph 2, of the Optional Protocol must relate primarily to the substance of the matter under consideration. The Committee stressed that, in order to fulfil its responsibilities, it required specific responses to the allegations which had been made and the State party's explanations of the actions taken by it. The State party was again requested to enclose copies of any court orders or decisions of relevance to the matter under consideration.

8. In a note dated 10 May 1983, the State party informed the Committee that

"the authorities of the Democratic Republic of Madagascar have not deemed it appropriate to respond to the appeal for clemency made by Mr. Dave Marais and Mr. John Wight on 14 July 1982 and will be unable to do so until Nelson Mandela has been finally released in exchange".

9.1 On 31 May 1983, Maitre Hamel submitted a legal memorandum on behalf of John Wight, alleging that since 27 November 1981 John Wight had been detained in a dark cell in the basement of the Malagasy political police prison at Ambohibao under the same conditions as Dave Marais, Jr., and completely incommunicado, and that since that date the detainee had been unable to communicate with his lawyer. b/ Maitre Hamel pointed out that three successive lawyers of the two South Africans had all been arrested and detained and then expelled or else had escaped the country; the purpose of the alleged persecution was to prevent political prisoners from being properly defended. In particular he alleges:

"(a) That Maitre J. J. Natbai, their first lawyer, who was temporarily in France in early 1978 (on the eve of their trial), was prohibited from returning to Madagascar (his return visa was cancelled)...;

"(b) That Maitre Boitard, their second lawyer, was arrested by the political police in May 1979 charged with conspiracy and with aiding and abetting the escape of his two clients detained in prison and that he escaped on 3 January 1980 ...;

"(c) That the present defence counsel was arrested first on 3 March 1980 by DGID, interrogated on that day and then released and that he was again arrested by MID in November 1980, interrogated on that day and then released, that his chambers were searched by the Malagasy political police in early February 1982, that he was arrested by the political police, detained in a basement cell of the Malagasy political police prison and then expelled from Madagascar on 11 February 1982 ... [and] that one of the principal charges levelled against this counsel during his detention and interrogation was that he had defended political prisoners, including the two South Africans."

9.2 With regard to the facts of the case, Maitre Hamel elaborates on the initial communication and explains that

"the South African aircraft piloted by the detainee made an emergency landing at Manjary for technical reasons and in order to refuel because of atmospheric disturbances and bad weather between Madagascar and La Reunion and Mauritius (the month of January, which is mid-summer in the southern hemisphere, is generally a period of bad weather and cyclones). That since then, many aircraft have made emergency landings for technical reasons at Madagascar (aircraft from Botswana, Zambia, French aircraft from La Reunion, etc.) and that none of the pilots or passengers of those aircraft has been arrested or harassed, that in general such aircraft remain on the field guarded by the army or the gendarmerie, the passengers are confined to the aircraft but are given food, and that after the necessary repairs or refuelling, the aircraft are authorized to take off for their scheduled destination."

9.3 Maitre Hamel therefore concludes that John Wight and Dave Marais were arrested and charged primarily because of their South African nationality and because of the South African nationality of their aircraft.

10.1 In its submission under article 4, paragraph 2, of the Optional Protocol dated 12 January 1984, the State party explains with respect to the nature of Mr. Wight's imprisonment that

"under article 550 of the Code of Penal Procedure, to which the communication submitted on behalf of John Wight refers, imprisonment may be effected in two types of place: a prison or separate quarters of a penal establishment. This provision of the Code of Penal Procedure points to the concept of quarters and signifies that a penal establishment (forming a whole at the administrative level) may have Quarters in a number of different places: so much so that in the case of Antananarivo Central Prison, the Quarters reserved for adults and for juveniles are in two different places more than 15 kilometres apart. Nevertheless, these premises are under the administration of the Head Warden of the Central Prison ... The Central Prison of Antananarivo, to which Mr. John Wight was committed, has never ceased to be responsible for him."

10.2 With respect to the charge of unlawful detention, the State party notes

"that the definition of unlawful detention depends not on the place of detention but on the existence of a proper detention order issued by the competent judicial authority. Following his arrest, the author of the communication was the subject of the following detention orders in due form: warrant of commitment issued by the examining magistrate in charge of the case following examination; warrant of commitment issued by the indictment division which is valid until the time the prisoner is tried by the competent court; decision of the military court which convicted him and authorized his imprisonment until completion of his sentence."

10.3 With respect to the Question of any irregularity in the imprisonment of Mr. Wight, the

State party declares that the provisions of article 557 of the Malagasy Code of Penal Procedure have been respected and points out that extracts from the Prison Calendar (which the State party submits to the Committee) bears witness to the fact that the provisions of the law were complied with.

"It is clear from those documents that Mr. John Wight has never ceased to be under the authority of Antananarivo Central Prison. If Mr. John Wight was transferred to another place of detention, it was in order to strengthen surveillance and prevent any recurrence of his escape. His present whereabouts are more appropriate for such surveillance and can guarantee the security of his person."

11.1 The State party also forwarded a copy of the sentence of the military court of Antananarivo dated 22 March 1978, and a copy of the decision of 20 March 1979 of the Supreme Court of Madagascar, dismissing the appeal filed by Messrs. Marais, Lappeman and Wight.

11.2 On the question of the legitimacy of the overflight of Malagasy territory by the aircraft of which Mr. Wight was the pilot, the Supreme Court of Madagascar held

"WITH REGARD TO THE SECOND GROUND FOR CASSATION proposed by Me. BOITARD, counsel, referring to the violation of article 5 of the Chicago Convention, in that that article explicitly provides that each contracting State authorizes the overflight of its territory and landing in that territory for reasons of safety, and that it cannot be denied that both the Democratic Republic of Madagascar and the Republic of South Africa are signatories to that Convention;

"Whereas article 5 of the Chicago Convention of 7 December 1944 does indeed stipulate that each contracting State agrees that all aircraft of the other contracting States, being aircraft not engaged in scheduled international air services, shall have the right to make flights into or transit non-stop across its territory and to make stops for non-traffic purposes without the necessity of obtaining prior permission, under article 9 (b) of the Convention each contracting State reserves the right, in exceptional circumstances or during a period of emergency, or in the interest of public safety, and with immediate effect, temporarily to restrict or prohibit flying over the whole or any part of its territory;

"Whereas, by prohibiting flying over its territory during a period of emergency, and in the interest of public safety, the State of Madagascar was merely availing itself of the possibility afforded by article 9 (b) of the Chicago Convention;

"Whence it follows that the appeal is unfounded."

12.1 On 30 January 1984, Maitre Hamel submitted a memorandum concerning the State party's submission under article 4, paragraph 2, of the Optional Protocol. He points out, inter alia, that the State party has failed to submit the judgement by the Correctional Tribunal of Antananarivo of 14 May 1981, c/ which sentenced John Wight for escaping from prison and

overflying the territory. He reiterates that the place of imprisonment of John Wight is irregular, explaining that from the legal point of view, the Malagasy political police (DGID) is a police and intelligence service responsible for preliminary investigations, and that the political police prison is not part of the prison service, but is administered directly by the political police. Prisoners are guarded *not* by prison service officials, but by political police staff and military personnel from various units. Moreover, the political police prison has no commitment register because prisoners held there are listed in the Commitment registers of the ordinary prisons. Within the legal meaning of the term, the political police prison is not a prison.

12.2 With respect to the conditions of detention, Maitre Hamel reiterates that his client was held in the basement of the political police prison, where he was even chained at times. He was kept in the strictest solitary confinement, could not see anyone, could not receive or send letters and could not communicate with his lawyer. "No one from outside DGID, including chaplains, is allowed to enter the prison. Prisoners are also prohibited from talking to one another, as the undersigned counsel is in a particularly good position to know, since he was detained in that prison in the same conditions." d/

12.3 Maitre Hamel also submitted a copy of the order for release "from the lock-up" and the text of Ordinance No. 021/77 of 10 June 1977 amending the Code of Penal Procedure to read, inter alia, "Article 54 (new): A prisoner awaiting trial may, after his first hearing, communicate freely with his defence counsel. In no case shall the prohibition on communication apply to him. However, any person who is being held in custody in connection with an investigation of a crime or offence against State security and who is also charged with other offences may be prohibited by the competent Judicial officer from communicating with his defence counsel except during hearings at which his presence is required and during sentencing."

13. By telegram dated 26 March 1984, the State party informed the Committee that Messrs. John Wight and Dave Marais, Jr., had been released from prison upon completion of their terms of imprisonment and that they had left Malagasy territory on 16 February 1984.

14. In a letter dated 3 July 1984, requesting the Committee to continue consideration of his communication for the purpose of adopting views thereon, Mr. Wight confirmed that the facts as described by Maitre Hamel are basically correct, but added the following clarifications concerning the conditions of his detention:

"(i) After our escape from prison and subsequent recapture in September 1978, I was kept in a solitary room at the DGID chained to a bed spring on the floor, with minimal clothing and a severe rationing of food (I lost 25 kg of weight) for a period of 3 1/2 months. I was then fortunate in contracting hepatitis and was transferred to the hospital. During the period of being chained to the floor, I was seldom allowed to wash (perhaps once a fortnight). During this period and in fact until July 1979 (10 months), I was held totally incommunicado.

"(ii) From July 1979 until November 1981 I was held in a prison at Manjakandriana

where conditions were at least human.

"(iii) I was then transferred to the DGID where I was kept in a basement cell 2 m x 11/2 m in inhuman conditions for a period of one month. Incommunicado.

"(iv) In January 1982, I was transferred from the basement cell to a room 3 m x 3 m, which I shared with Dave Marais until our release. The conditions were satisfactory and the treatment good, except that for the first 18 months of these last two years we were never allowed out of the room. We were now for the first time officially permitted to correspond with our families.

"The above are the basic facts of my detention which are far less severe than the conditions under which Dave Marais was detained. He was held incommunicado in the 2 m x 11/2 m basement cells for a period of more than two years."

15.1 The Human Rights Committee has the obligation under article 5, paragraph 1, of the Optional Protocol to consider this communication in the light of all written information made available to it by or on behalf of John Wight, and by the State party. It therefore decides to base its views on the following facts, which have not been contradicted by the State party.

15.2 John Wight, a South African national, was the pilot of a private South African aircraft which, en route to Mauritius, made an emergency landing in Madagascar on 18 January 1977. A passenger on the plane, Dave Marais, Jr., a South African national, another passenger, Ed Lappeman, a national of the United States of America, and John Wight were tried and sentenced to five years' imprisonment and a fine for overflying the country without authority and thereby endangering the external security of Madagascar. On 19 August 1978, while serving his sentence, John Wight escaped from the Antananarivo Central Prison, was subsequently apprehended, tried on charges of prison-breaking and, on 15 May 1981, sentenced to an additional two years' imprisonment. After his recapture in September 1978, John Wight was kept in a solitary room at the political police prison at Ambohibao (DGID), chained to a bed spring on the floor, with minimal clothing and severe rationing of food, for a period of 3 1/2 months. During this period and until July 1979 (10 months) he was held incommunicado. He was then held from July 1979 to November 1981 in a prison at Manjakandriana where conditions were better. In November 1981 he was again transferred to the DGID prison where he was kept incommunicado in a basement cell measuring 2 m by 11/2 m in inhuman conditions for a period of one month. In January 1982, he was moved from the basement cell to a room measuring 3 m by 3 m, which he shared with Dave Marais until their release. Although they were not allowed out of the room for the first 18 months of this period, John Wight acknowledges that the conditions were otherwise satisfactory and the treatment good. They were now allowed for the first time since their arrest to correspond with their families. John Wight and Dave Marais were released in February 1984 upon completion of their prison sentences.

16. The Human Rights Committee observes that the information available to it is insufficient to show that Mr. Wight was arrested and charged primarily because of his South African

nationality and the South African nationality of his aircraft.

17. 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 the International Covenant on Civil and Political Rights, with respect to:

- article 7 and article 10, paragraph 1, because of the inhuman conditions in which John Wight was at times held in prison in Madagascar;

- article 14, paragraph 3 (b), because during a 10-month period (from September 1978 to July 1979), while criminal charges against him were being investigated and determined, he was kept incommunicado without access to legal counsel.

18. The Committee, accordingly, is of the view that the State party is under an obligation to take effective measures to remedy the violations which John Wight has suffered and to take steps to ensure that similar violations do not occur in the future.

Notes

a/ See Official Records of the General Assembly, Thirty-eighth Session, Supplement No. 40 (A/38/40), annex XI.

b/ See Data. 14, further clarifications concerning his conditions of imprisonment, received from John Wight after his release.

c/ In an earlier submission (see Data. 2.2 above) Maitre Hamel gives the date of this judgement as being 15 May 1981.

d/ See footnote b.