

D. Communication No. 157/1983, André Alphonse Mpaka-Nsusu v. Zaïre
(Views adopted on 26 March 1986 at the twenty-seventh session)

Submitted by: André Alphonse Mpaka-Nsusu

Alleged victim: The author

State party concerned: Zaïre

Date of communication: 15 August 1983 (date of initial letter)

Date of decision on admissibility: 28 March 1985

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

Meeting on 26 March 1986;

Having concluded its consideration of communication No. 157/1983 submitted to the Committee by André Alphonse Mpaka-Nsusu 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 noting that no substantive information has been received from the State party concerned;

adopts the following:

VIEWS UNDER ARTICLE 5, PARAGRAPH 4, OF THE OPTIONAL PROTOCOL

1.1 The author of the communication (initial letter dated 15 August 1983 and further letters dated 8 January and 8 May 1984) is André Alphonse Mpaka-Nsusu, a Zaïrian national at present living in exile. He claims to be a victim of breaches by Zaïre of articles 1, 9, 14 and 26 of the International Covenant on Civil and Political Rights. He is represented by an attorney.

1.2 The facts as described by the author are as follows: on 21 November 1977 he presented his candidacy for the presidency of the Mouvement populaire de la révolution (MPR) and, at the same time, for the presidency of Zaïre in conformity with existing Zaïrian law. After the rejection of his candidacy - which he alleges was in contravention of law No. 77-029 (concerning the organization of presidential elections) - Mr. Mpaka-Nsusu, on 31 December 1977, submitted a proposal to the Government requesting recognition of a second, constitutionally permissible, party in Zaïre, the Federal Nationalist Party (PANAFÉ).

1.3 He claims that he acted in accordance with article 4 of the Constitution of 24 June 1967 which envisages a two-party system, but despite this he was arrested on 1 July 1979 and detained without trial until 31 January 1981 in the prison of the State Security Police (CNRI). He claims that his detention was based on unfounded charges of subverting State security. After being released from prison, he was banished to his village of origin for an indefinite period. This banishment ended de facto on 15 February 1983 when he fled the country.

1.4 The author states that although he filed a suit on 1 October 1981 before the Supreme Court of Justice of Zaire ((i) contesting the legality of the institutionalization of MPR as sole party as being counter to the dual party structure set out in the Constitution; (ii) therefore requesting that parts of laws No. 74-020 of 15 August 1974 and No. 80-012 of 15 November 1980 be declared unconstitutional (modifying by ordinary law constitutional provisions); and (iii) seeking reparation for damages suffered during detention), the Supreme Court of Justice refused to consider it. Furthermore, the author notes that individuals have no access to the Constitutional Court of Zaire. Accordingly, the author contends that he has exhausted all domestic remedies available to him.

2. By its decision of 9 November 1983, 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 in so far as it might raise issues under articles 9, 25 and 26 of the Covenant. The Committee also requested the State party to transmit to the Committee any copies of court orders or decisions relevant to the case. Furthermore, the Committee requested the author to provide more detailed information concerning the grounds for alleging violations of article 1 of the Covenant.

3. In response to the Committee's request, the author, by a letter dated 8 January 1984, explained that the people of Zaire, in a constitutional referendum held from 4 to 24 June 1967, had declared themselves in favour of a bipartisan constitutional system. He asserted that it was contrary to the Constitution of Zaire, in particular article 39, to prohibit the establishment of a second political party, and that he had been a victim of persecution because of his political activities as leader of PANAFÉ.

4. By a note dated 18 January 1984, the State party informed the Committee that an inquiry into the case of Mr. Mpaka-Nzusu was in progress in Zaire and that a reply would be forwarded to the Committee by the end of February 1984. By a note dated 6 April 1984, the State party informed the Committee that the inquiry had not yet been completed and that a reply would be submitted by the end of April. No further submission from the State party has been received, despite repeated reminders.

5. Before considering a communication on the merits, the Committee must ascertain whether it fulfils all conditions relating to its admissibility under the Optional Protocol. With regard to article 5, paragraph 2 (a), of the Optional Protocol, the Committee had not received any information that the subject-matter had been submitted to another procedure of international investigation or settlement. Accordingly, the Committee found that the communication was not inadmissible under article 5, paragraph 2 (a), of the Optional Protocol. The Committee was also unable to conclude that in the circumstances of the 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, paragraph 2 (b), of the Optional Protocol.

6. On 28 March 1985, the Human Rights Committee therefore decided that the communication was admissible, and in accordance with article 4, paragraph 2, of the Optional Protocol, requested the State party to submit to the Committee, within six months of the date of the transmittal to it of the Committee's decision, written explanations or statements clarifying the matter and the remedy, if any, that might have been taken by it.

7.1 The time-limit for the State party's submission under article 4, paragraph 2, of the Optional Protocol expired on 2 November 1985. No submission has been received from the State party.

7.2 No further submission has been received from the author.

8.1 The Human Rights Committee, having considered 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 have not been contested by the State party.

8.2 Mr. André Alphonse Mpaka-Nausu is a Zairian national at present living in exile. In 1977, he presented his candidacy for the presidency of Zaïre in conformity with existing Zairian law. His candidacy, however, was rejected. On 1 July 1979, he was arrested and subsequently detained in the prison of the State Security Police without trial until 31 January 1981. After being released from prison he was banished to his village of origin for an indefinite period. He fled the country on 15 February 1983.

9.1 In formulating its views, the Human Rights Committee also takes into account the failure of the State party to furnish any information and clarifications necessary for the Committee, to facilitate its tasks. In the circumstances, due weight must be given to the author's allegations. It is implicit in article 4, paragraph 2, of the Optional Protocol that 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 to furnish to the Committee the information available to it. The Committee notes with concern that, despite its repeated requests and reminders and despite the State party's obligation under article 4, paragraph 2, of the Optional Protocol, no submission has been received from the State party in the present case, other than two notes of January and April 1984 informing the Committee that an inquiry into the case of Mr. Mpaka-Nausu was in progress.

9.2 The Committee observes that the information before it does not justify a finding as to the alleged violation of article 1 of the Covenant.

10. 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 these facts disclose violations of the Covenant, with respect to:

Article 9, paragraph 1, because André Alphonse Mpaka-Nausu was arbitrarily arrested on 1 July 1979, and detained without trial until 31 January 1981;

Article 12, paragraph 1, because he was banished to his village of origin for an indefinite period;

Article 19, because he suffered persecution for his political opinions;

Article 25, because, notwithstanding the entitlement to stand for the presidency under Zairian law, he was not so permitted.

11. The Committee, accordingly, is of the view that the State party is under an obligation, in accordance with the provisions of article 2 of the Covenant, to provide Mr. Mpaka-Nausu with effective remedies, including compensation, for the violations that he has suffered, and to take steps to ensure that similar violations do not occur in the future.