

DECISION No. 49/1993 (ZAMBIA)

Communication addressed to the Government of Zambia
on 30 April 1993.

Concerning: Bweendo Mulengela, Bonnie Tembo, Peter Lishika, Christopher Muyoka, Wezi Kaunda, Cuthbert Nguni, Henry Kamima, Panji Kaunda, Wilfred Wanani as well as Steven Moyo, Rabson Chongo, Stan Mutanga, McPherson Mbulo, William Banda, Rupiya Banda, Sianda Ilukena, on the one hand, and the Republic of Zambia, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the methods of work adopted by it and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with concern that till date no information has been forwarded by the Government concerned in respect of the cases in question. With the expiration of more than ninety (90) days of the transmittal of the letter by the Working Group, it is left with no option but to proceed to render its decision in respect of each of the cases of alleged arbitrary detention brought to its knowledge.

3. (Same text as paragraph 3 of Decision No. 43/1992).

4. In the light of the allegations made, the Working Group would have welcomed the cooperation of the Government of Zambia. In the absence of any information from the Government, the Working Group believes that it is in a position to take a decision on the facts and circumstances of the cases, especially since the facts and allegations contained in the communication have not been challenged by the Government.

5. The communication contains the following allegations:

(a) The first seven persons mentioned above, all members of the United National Independence Party (UNIP), were arrested between 5 and 7 March 1993;

(b) Panji Kaunda, the eldest son of former President Kenneth Kaunda, was arrested on 14 March 1993 and held in police custody at Chipata, in Eastern Province, and Wilfred Wanani, UNIP chairman for local government and housing, was arrested on 18 March;

(c) All the persons mentioned in the present communication were accused of plotting with the aim of "making the country ungovernable through an orchestrated campaign of civil disobedience";

(d) They were subsequently held, without formal charge or trial, in various police stations around the country, where they were interrogated by military personnel;

(e) In the course of these interrogation sessions, two of them, Cuthbert Nguni and Henry Kamima, were ill-treated on several occasions;

(f) The detainees may be presumed to be held under the so-called Preservation of Public Security Regulations, which provide for indefinite administrative detention without charge or trial. These regulations became applicable following the declaration of a state of emergency on 4 and 8 March 1993, and its ratification by Parliament on 12 March. According to the source, the Zambian Constitution contains several provisions guaranteeing the right of detainees to have their detention reviewed, but in fact it is the President who makes the final decision to detain a person for reasons of preserving public security. The courts cannot challenge that decision or question the criteria on the basis of which the decision was taken. Theoretically, the persons concerned may also challenge their detention by filing habeas corpus applications, but in practice they thereby run the risk of remaining in detention for a long period - up to four years - before a ruling is given on their application. It should be noted that, according to the source, Steven Moyo, Rabson Chongo, Stan Mutanga, McPherson Mbulo, William Banda, Rupiya Banda and Sianda Ilukena have been released.

6. It is apparent from the facts as set out above that the persons concerned by the above-mentioned measures have or had been detained since February/March 1993 without charge or trial, by virtue of a purely administrative measure which is in fact within the sole and exclusive competence of the Executive, in the person of the President, and without ever having had the possibility of challenging the legality of their detention in a court or exercising a judicial remedy. The observed absence of the most elementary guarantees of the right to a fair trial, as established by the relevant articles of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, to which Zambia is a party, is so serious that it confers an arbitrary character on the detention measures.

7. As to the violation of the right to freedom of opinion and expression reported by the source, which considers that as members of a political party (UNIP) the persons concerned were simply exercising that right in a peaceful manner, the Working Group considers that it has received insufficient information on the instigators, objectives and characteristics of the civil disobedience campaign which, according to the source, lay at the origin of their detention.

8. In the light of the above the Working Group decides:

(a) The detention of Bweendo Mulengela, Bonnie Tembo, Peter Lishika, Christopher Muyoka, Wezi Kaunda, Cuthbert Nguni, Henry Kamima, Panji Kaunda and Wilfred Wanani is declared to be arbitrary being in contravention of articles 9, 10 and 11 of the Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights, to which the Republic of Zambia is a party, and falling within category III of the principles applicable in the consideration of the cases submitted to the Working Group.

(b) Since the Working Group was informed of the release of Steven Moyo, Rabson Chongo, Stan Mutanga, McPherson Mbulo, William Banda, Rupiya Banda and Sianda Ilukena, and since it is of the opinion that no special circumstances warrant it to consider the nature of the detention of the persons released, the Working Group, without prejudging the nature of the detention, decides to file the cases of the above-mentioned persons in terms of paragraph 14 (a) of its methods of work.

9. Consequent upon the decision of the Working Group declaring the detention of Bweendo Mulengela, Bonnie Tembo, Peter Lishika, Christopher Muyoka, Wezi Kaunda, Cuthbert Nguni, Henry Kamima, Panji Kaunda and Wilfred Wanani to be arbitrary, the Working Group requests the Government of Zambia to take the necessary steps to remedy the situation in order to bring it into conformity with the provisions and principles incorporated in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

Adopted on 30 September 1993