

F. Communication No. 194/1985, Miango v. Zaire
(Views adopted on 27 October 1987 at the
thirty-first session)

Submitted by: Lilo Miango

Alleged victim: Jean Miango Muiyo (author's brother)

State party concerned: Zaire

Date of communication: 5 August 1985

Date of decision on admissibility: 2 April 1986

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

Meeting on 27 October 1987,

Having concluded its consideration of communication No. 194/1985 submitted to the Committee by Lilo Miango 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 with serious concern that no information whatever has been received from 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 August 1985) is Lilo Miango, a Zairian national residing in France, writing on behalf of his brother, Jean Miango Muiyo, who died in dubious circumstances on 23 June 1985 at the age of 44 years at the Mama Yemo Hospital at Kinshasa, Zaire.

2.1 The author states that, according to the information that his family has been able to obtain, his brother was kidnapped and taken to the military camp at Kokolo, Kinshasa, on 20 or 21 June 1985 and that, inside the camp, he was kept in the residence of Lieutenant Kalonga. The author believes that his brother was subjected to torture in the camp by members of the armed forces (forces armées zairoises (FAZ)), since he was seen later, in terrible condition, by a friend of the family at the Mama Yemo Hospital. The friend informed the author's family and they went twice to the hospital. On the first occasion, they were unable to find his brother since his name had not been entered in the hospital register and, on the second occasion, they were taken directly to the morgue to identify his body.

2.2 In the report of the traffic police (Second Detachment), the alleged victim is said to have entered the hospital on 18 June 1985 as a result of a road traffic accident, which was not, however, recorded by the police. The author states that, according to neighbours, his brother was at home on 18 and 19 June 1985 and that the allegation of a road accident is questionable, because his family knew that he

had been taken to the camp at Kokolo and, moreover, they had also learned that he had been brought to the hospital by a military ambulance, driven by Sergeant Radjabo from the camp at Kokolo.

2.3 The author enclosed a copy of a report dated 11 July 1985 by the forensic physician, Doctor Nsusi Ntula, stating that the alleged victim died as a result of traumatic wounds probably caused by a blunt instrument and that his death seemed to have been the result of the use of violence and not a road accident as stated in the report of the traffic police.

2.4 The author states that his family in Zaire requested the Office of the Prosecutor to carry out an inquiry regarding the death of Jean Miango Muiyo. In particular, the family requested that Sergeant Radjabo be summoned to the prosecutor's office for questioning. With the consent of his superiors, he allegedly refused to be questioned and left for his home province. In this connection, the author states that cases involving members of the armed forces in Zaire can only be dealt with by a military tribunal (auditorat militaire). He alleges that ordinary tribunals are not permitted to try members of the armed forces unless they have been discharged from their military functions. A case is allegedly dealt with by a military tribunal only when the authorities (pouvoir établi) decide to do so.

2.5 The author alleges that his entire family in Zaire has been subjected to discrimination and harassment because of its relationship with Daniel Monguya Mbenge, the leader of an opposition party, the Mouvement d'action pour la résurrection du Congo (MARC). g/ The author mentions that several members of his family have been subjected to arbitrary arrest, threats and other forms of harassment. He fears that, in the circumstances, there is no hope that the case of his brother's death will be properly investigated. He therefore requests the Human Rights Committee to prevail upon the State party to fulfil its obligations under the Covenant.

2.6 The author claims that article 2, paragraph 3, articles 5, 6, paragraph 1, articles 7, 14 and 16 of the International Covenant on Civil and Political Rights have been violated in the case of Jean Miango Muiyo. He indicates that his brother's case has not been submitted to another procedure of international investigation or settlement.

3. Having concluded that the author of the communication was justified in acting on behalf of the alleged victim, the Working Group of the Human Rights Committee decided on 15 October 1985 to transmit 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.

4. The deadline for the State party's submission under rule 91 of the Committee's provisional rules of procedure expired on 14 January 1986. No rule 91 submission was received from the State party.

5.1 With regard to article 5, paragraph 2 (a), of the Optional Protocol, the Committee noted that the author's statement that his brother's case was not being examined under another procedure of international investigation or settlement, was uncontested.

5.2 With regard to article 5, paragraph 2 (b), of the Optional Protocol, the Committee was unable to conclude, on the basis of the information before it, that there were available remedies in the circumstances of the case which could or should have been pursued.

5.3 Accordingly, the Committee found that the communication was not inadmissible under article 5, paragraph 2 (a) or (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. The time-limit for the State party's submission under article 4, paragraph 2, of the Optional Protocol expired on 1 November 1986. No submission has been received from the State party, despite a reminder sent on 19 June 1987.

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. Jean Miango Muiyo, a Zairian citizen, was kidnapped and taken to the military camp at Kckolo, Kinshasa, on 20 or 21 June 1985. There, he was subjected to torture by members of the armed forces (forces armées zairoises ((FAZ)). Later, he was seen in a precarious physical condition by a friend of the family at Mama Yemo Hospital in Kinshasa. The author's relatives were unable to locate the victim alive; they were, however, taken to the hospital morgue to identify the victim's body. Contrary to the report of the traffic police, the victim did not succumb to the consequences of a road accident he allegedly suffered on 18 June 1985, but died as the result of traumatic wounds probably caused by a blunt instrument. This conclusion is buttressed by a report from a forensic physician dated 11 July 1985, which states that the victim's death seems to have been the result of the use of violence and not of a road accident. The author's family has requested the Office of the Public Prosecutor to conduct an inquiry into the death of Mr. Miango Muiyo, in particular asking that the military officer who delivered the victim to the hospital be summoned for questioning. This officer, however, with the consent of his superiors, has refused to be questioned.

9. In formulating its views, the Human Rights Committee also takes into account the failure of the State party to furnish any information and clarifications. 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 violations 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 explanations or statements clarifying the matter have been received from the State party in the present case. In the circumstances, due weight must be given to the author's allegations.

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 a violation of articles 6 and 7, paragraph 1, of the Covenant. Bearing in mind the gravity of these violations the Committee does not find it necessary to consider whether other provisions of the Covenant have been violated.

11. The Committee therefore urges the State party to take effective steps (a) to investigate the circumstances of the death of Jean Miango Muiyo, (b) to bring to justice any person found to be responsible for his death, and (c) to pay compensation to his family.

G. Communication No. 197/1985, Kitok v. Sweden
(Views adopted on 27 July 1988 at the
thirty-third session)

Submitted by: Ivan Kitok

Alleged victim: The author

State party concerned: Sweden

Date of communication: 2 December 1985 (date of initial letter)

Date of decision on admissibility: 25 March 1987

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

Meeting on 27 July 1988,

Having concluded its consideration of communication No. 197/1985, submitted to the Committee by Ivan Kitok under the Optional Protocol to the International Covenant on Civil and Political Rights,

Adopts the following:

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

1. The author of the communication (initial letter dated 2 December 1985 and subsequent letters dated 5 and 12 November 1986) is Ivan Kitok, a Swedish citizen of Sami ethnic origin, born in 1926. He is represented by counsel. He claims to be the victim of violations by the Government of Sweden of articles 1 and 27 of the Covenant.

2.1 It is stated that Ivan Kitok belongs to a Sami family which has been active in reindeer breeding for over 100 years. On this basis, the author claims that he has inherited the "civil right" to reindeer breeding from his forefathers as well as the rights to land and water in Sörkaitum Sami Village. It appears that the author has been denied the exercise of these rights because he is said to have lost his membership in the Sami village ("sameby", formerly "lappby"), which under a 1971 Swedish statute is like a trade union with a "closed shop" rule. A non-member cannot exercise Sami rights to land and water.