

ANNEX VIII

Views of the Human Rights Committee under article 5, paragraph 4,  
of the Optional Protocol to the International Covenant on Civil  
and Political Rights

A. Communication No. 138/1983, Ngalula Mpandanjila et al. v. Zaïre  
(Views adopted on 26 March 1986 at the twenty-seventh session)

Submitted by: Ngalula Mpandanjila et al. (represented by Maître Eric Verquawen  
and Robert-Charles Goffin)

Alleged victims: Ngalula Mpandanjila et al.

State party concerned: Zaïre

Date of communication: 3 March 1983 (date of initial letter)

Date of decision on admissibility: 9 July 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. 138/1983 submitted to  
the Committee by Ngalula Mpandanjila et al. 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  
authors of the communication and noting that no information has been received  
from the State party concerned;

adopts the following:

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

1. The communication was initially submitted to the Human Rights Committee by two  
Belgian lawyers, Eric Verquawen and Robert-Charles Goffin (initial letter of  
3 March 1983) on behalf of their 13 Zaïrian clients, Messrs. Ngalula, Tshise,  
Makanda, Kapita, Kyunqu, Lumbu, Kanana, Kasala, Lusanga, Dia, Ngoy and Kibassa,  
former Zaïrian members of parliament, and Mr. Birindwa, a Zaïrian businessman. At  
the time of the initial submission (3 March 1983), all 13 individuals were detained  
in various prisons in Zaïre and were allegedly unable to present their cases to the  
Committee themselves. As evidence of their authority to act, the lawyers furnished  
a copy of a letter, dated 2 September 1982, signed by the wives of the 12 former  
parliamentarians, requesting them to submit the cases of their husbands to the  
Human Rights Committee. The lawyers' submissions further show that they also  
represented the thirteenth alleged victim, the businessman Mr. Birindwa, in  
connection with the steps taken to exhaust remedies before the domestic courts,  
prior to the submission of the communication to the Human Rights Committee under  
the Optional Protocol to the International Covenant on Civil and Political Rights.

2.1 The facts, as described by the lawyers in the initial and further submissions are as follows: in 1980, the parliamentarians sent an "open letter" to President Mobutu, which was subsequently held by the Central Committee of the Mouvement populaire de la révolution (MPR) to be grossly improper both in form and content. In consequence, the Party stripped them of their membership of parliament and deprived them of their civil and political rights, including their right to hold public office, for a period of five years, with some of them being subjected, as of December 1980, to detention, or house arrest, or an administrative banning measure, the effect of which was to relocate them to a distant region against their will. Although these latter measures were the subject of a decree of amnesty of 17 January 1981, the amnesty did not become effective until 4 December 1981, at which time the individuals concerned were able to return to their homes.

2.2 During February 1982, while the former parliamentarians were negotiating with representatives of the President of Zaire concerning the establishment of a new political party, the Union pour la démocratie et le progrès social (UDPS), seven of them were arrested and subsequently all 12 were brought to trial before the State Security Court on charges of plotting to overthrow the régime and planning to establish a political party. The businessman, Mr. Birindwa, was also brought to trial before the State Security Court on charges of having secreted documents concerning the establishment of UDPS.

2.3 The trial of the 13 accused took place on 28 June 1982. On 1 July 1982, they were sentenced to 15 years' imprisonment, with the exception of Mr. Birindwa, who was sentenced to 5 years' imprisonment. The two lawyers, who assisted their defence at the trial, alleged that due process of law had not been observed by the magistrates (three accused were not heard at the pre-trial stage, no summonses were served on two others, the trial was not held in public, etc.).

2.4 On 7 July 1982, the lawyers filed appeals with the Supreme Court of Justice (pourvoi en cassation) on behalf of their clients against the judgement of 1 July 1982. By a decision of 26 October 1982 (ordonnance de classement sans suite), the Supreme Court declined to consider the appeals, because the court fees had not been paid. In this connection, the lawyers point out that they had taken steps to ensure that the requirement of payment of the court fees be complied with. They state that, since their clients were scattered among several detention centres and it was impossible to communicate with them, a Zairian lawyer, Maître Mukendi, bâtonnier of Kinshasa, was asked to carry out the necessary formalities for depositing the fees. By a letter dated 15 September 1982, they urged Maître Mukendi to contact Mrs. Birindwa (the wife of one of the alleged victims), who was supposed to collect the necessary funds. At the same time, they wrote to the Chief Justice of the Supreme Court to inform the Court of the steps taken to comply with the necessary formalities. It later transpired that Mrs. Birindwa had not been in Kinshasa at the time in question and that the intended collection and payment of the court fees had not been made. The lawyers contend, however, that the efforts made to comply with the formalities, although unsuccessful, should be considered as satisfactory, in particular as the decision not to take action on the appeals was taken relatively shortly after the Supreme Court was informed of the efforts being made to collect and deposit the court fees. They submit that, since the decision of the Supreme Court not to consider the appeals could not be challenged under Zairian law, domestic remedies had been exhausted within the meaning of article 5, paragraph 2 (b), of the Optional Protocol. They further point out in this context that under article 33 of the Code of Procedure for the Supreme Court of Justice, the President of the Court could have waived the deposit.

2.5 At this stage in the presentation of the communication, the lawyers alleged that the State party had violated a number of articles of the International Covenant on Civil and Political Rights, as follows:

Article 14. The Central Committee of MPR, which was not an independent and impartial tribunal, took disciplinary measures of a penal character against the parliamentarians; the State Security Court, which rendered the judgement of 1 July 1982, was also not an independent and impartial tribunal since its judges were members of MPR; the trial was not held in public; no summonses were served on two of the accused; and in three cases the accused were not heard at the pre-trial stage;

Article 19. The parliamentarians were punished solely because of their opinions;

Article 22. The criminal proceedings before the State Security Court resulted from the defendants' attempts to establish a political party (a right implicit in the right to freedom of association);

Article 15. The order, issued by the Central Committee of MPR, to strip the parliamentarians of their parliamentary mandate was based on internal regulations adopted only on 7 January 1981, i.e., after the date of the alleged offence - the sending of the "open letter" - which occurred in 1980;

Articles 9 and 12. The measures of arrest, internal exile or house arrest to which the parliamentarians were subjected in December 1980 continued until 4 December 1981, although an amnesty had been decreed on 17 January 1981, and therefore constituted arbitrary arrests and detentions; these measures were also contrary to the provisions of article 12, paragraph 1;

Articles 7 and 10. The alleged victims were subjected to ill-treatment in detention.

2.6 By a letter dated 23 June 1983, the lawyers informed the Human Rights Committee that the alleged victims had all benefited from a new amnesty decree, promulgated on 21 May 1983. They therefore asked that consideration of the communication be suspended to allow them time to contact their clients for further instructions. Consideration of the communication was, accordingly, suspended temporarily.

2.7 By a letter dated 9 January 1984, the lawyers requested the Committee to resume consideration of the communication. As to the developments after the amnesty of May 1983, they stated that the President had adopted "an administrative banning measure" against their clients and that they had been deported along with their families to different parts of the country. They further conveyed the concern of their clients' family members living in Belgium, who had been unable to contact the alleged victims since the deportation.

2.8 By a letter dated 24 January 1984, the lawyers reiterated their request that consideration of the communication be resumed, alleging that the current situation of their clients constituted a violation by the State party of article 9 of the Covenant. In substantiation, they enclosed a copy of a letter of 25 December from

Mrs. Ngalula, the wife of one of the alleged victims, describing the situation of some of the alleged victims. She, however, mentioned that two of the lawyers' clients, namely Mr. Ngoy Mukendi and Mr. Kapita Shabangi, had rejoined the government party (MPR) and that they were now working for that party.

2.9 In a further letter, dated 19 June 1984, the lawyers stated that the banning order against their clients, being of a purely administrative nature, could not be subject to any judicial control and that the deprivation of liberty of their clients constituted violations by the State party of articles 9 and 12 of the Covenant. In substantiation, they enclosed a copy of a letter addressed to them on 18 June 1984 by Mrs. Marie-Claire Ngalula-Mbomba, the eldest daughter of the alleged victim Ngalula Mpandanjila, describing the situation as follows:

"As soon as he was arrested and banned to the village of Tshilunde, my father was joined by the rest of his family, who had also been arrested and forcibly brought to the same village. The banned family members include children still of elementary-school age, adolescent boys and girls who are now prevented from continuing their studies, and married brothers who are heads of families and whose wives have been left at Kinshasa alone with small children and without any means of support.

"All the news that has reached me gives evidence of:

"Deprivation of the minimum needed to live. They are not allowed to obtain the money they need for their survival or for their housing, and no one, not even a member of the family, is allowed to help them;

"Total deprivation of medical attention. They are therefore at the mercy of all kinds of diseases and are the ideal targets of malnutrition. The closest town is 65 kilometres from the place to which they have been exiled. There is no road infrastructure for rapidly evacuating the sick in case of need;

"Deprivation of liberty. Victims of an arbitrary banning measure, they are deprived of liberty even within the locality. A large security force has been installed all around the locality to prevent any contact with the outside. The inhabitants of the village are prohibited, under pain of imprisonment, from speaking to the banned persons (who are to consider themselves as being in prison) even concerning problems connected with the very administration of the village. The customary chief of the village was arrested for having allowed villagers to communicate with the family during the first few days of their exile to the village.

"My father, who was deported with 17 persons, is living under conditions that could not be more precarious. Most of the children sleep on the tables of the little local market's stalls, which they must leave at dawn to make room for the traders, while others must make do with secretly borrowed mats and cloths spread on the ground under the open sky.

"As if all these violations and humiliations were not enough, our main house in Kinshasa has been robbed and the managers of businesses have been arrested, so as not to leave any resources, however small, that would enable them to live 'decently' in the place to which they have been exiled.

"I consider it important to point out:

"That they were covered by the general amnesty of 19 May 1983;

"That no charge justifies these new measures against them and still less against small children;

"That these measures are not based on any judicial decision;

"That is the situation of my family at this time;

"As to the other members of the Group of Thirteen, I can state that their situation is similar to that of my family."

3.1 Consideration of the communication was resumed at the Committee's twenty-second session and on 5 July 1984 the Working Group of the Human Rights Committee decided that the communication be transmitted, 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. The Working Group also requested the State party to transmit to the Committee copies of any court orders or decisions relevant to the case.

3.2 The time-limit for the State party's submission under rule 91 of the provisional rules of procedure expired on 14 October 1984. At the time of adoption of the decision on admissibility on 9 July 1985, no submission had been received from the State party.

4.1 Before deciding on the admissibility of the communication, the lawyers were asked to clarify for the Committee, which of the initial 13 alleged victims still wished to pursue the matter before the Human Rights Committee. By a telegram dated 26 February 1985, the lawyers stated that they had received no instructions from Kapita Shabangi, Ngoy Mukendi, Dia Oken and Kasala Kalomba, and that, although they had not been able to contact the other petitioners directly, they understood from their friends and families that it was their intention to pursue the matter.

4.2 In the light of the above clarification, the Human Rights Committee decided to continue consideration of the communication with respect to the cases of nine of the initial 13 alleged victims and that Messrs. Kapita Shabangi, Ngoy Mukendi, Dia Oken and Kasala Kalomba were no longer deemed to be parties to the communication.

5.1 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.

5.2 Regarding the requirement of exhaustion of domestic remedies under article 5, paragraph 2 (b), of the Optional Protocol, the Committee observed with regard to events prior to 26 October 1982 (the day on which the Supreme Court decided not to take action on the alleged victims' appeals) that the Supreme Court's decision rendered the remedy of appeal ineffective, at a time when the Supreme Court had been informed that steps were being taken on behalf of the alleged victims to collect and to deposit the required court fees. The Committee noted the particular difficulties facing the authors, who were allegedly scattered among different

tion centres, in paying their court fees in timely fashion. The Committee also noted the speed of the Supreme Court's decision, against which there was no appeal, to dismiss the cases on that ground, and found that local remedies could not be deemed not to have been exhausted. In the circumstances, the Committee concluded that the communication was not inadmissible in that respect by virtue of article 5, paragraph 2 (b), of the Optional Protocol. Regarding the events said to have taken place after the amnesty decree of 21 May 1983, the State party did not refute the contention that the banning order imposed on the alleged victims, being purely of an administrative nature, was not subject to any judicial review. The Committee was therefore unable to conclude that there were effective remedies available to the alleged victims which they had failed to exhaust. Accordingly, the Committee found that the communication was not inadmissible by virtue of article 5, paragraph 2 (b), of the Optional Protocol in that respect.

6. On 9 July 1985 the Human Rights Committee therefore decided:

1. That the communication was admissible in so far as it related to Messrs. Ngalula Mpandanjila, Tshisekedi Wa Mulumba, Makanda Mpinga Shambuyi, Kyungu Wa Ku Mwanga, Lumbu Maloba Ndoba, Kanana Tshion Go, Lusanga Ngiele, Kibassa-Maliba and Birindwa;

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 the transmittal to it of the 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 1 February 1986. No submission was received from the State party.

7.2 No further submission has been received from the authors following the Committee's decision on admissibility.

8.1 The Human Rights Committee, having considered the present communication in the light of all the information made available to it by the authors as provided in article 5, paragraph 1, of the Optional Protocol, hereby decides to base its views on the following facts, which, in the absence of any submission from the State party, are uncontested.

8.2 The authors are eight former Zairian parliamentarians and one Zairian businessman. In December 1980, they were subjected to measures of arrest, banishment or house arrest on account of the publication of an "open letter" to Zairian President Mobutu. The eight parliamentarians were also stripped of their membership of parliament and forbidden to hold public office for a period of five years. Although they were covered by an amnesty decree of 17 January 1981, they were not released from detention or internal exile until 4 December 1981. They were subsequently brought to trial before the State Security Court on 28 June 1982 on charges of plotting to overthrow the régime and planning the creation of a political party, and of secreting documents concerning the establishment of said party. The trial was not held in public; no summonses were served on two of the accused; and in three cases the accused were not heard at the pre-trial stage. The accused were sentenced to 15 years' imprisonment with the exception of the businessman, who was sentenced to 5 years' imprisonment. The authors were released pursuant to an amnesty decree promulgated on 21 May 1983, but they were then

subjected to an "administrative banning measure" and deported along with their families to different parts of the country. The banned family members include children still of elementary-school age, adolescent boys and girls and married brothers who are heads of families and whose wives have been left in Kinshasa alone with small children and without any means of support. The authors were subjected to ill-treatment during the period of banishment and deprived of adequate medical attention.

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 necessary for the Committee to facilitate its tasks. In the circumstances, due weight must be given to the authors' allegation. 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 whatever has been received from the State party in the present case.

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 the authors were subjected to arbitrary arrest and detention and were not released until 4 December 1981, despite an amnesty decree on 17 January 1981;

Article 10, paragraph 1, because they were subjected to ill-treatment during the period of banishment;

Article 12, paragraph 1, because they were deprived of their freedom of movement during long periods of administrative banishment;

Article 14, paragraph 1, because they were denied a fair and public hearing;

Article 19, because they suffered persecution because of their opinions;

Article 25, as to the eight former members of the Zairian parliament, because they were deprived of the right equally to take part in the conduct of public affairs.

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 take effective measures to remedy the violations that the authors have suffered, to grant them compensation, to conduct an inquiry into the circumstances of their ill-treatment, to take action thereon as appropriate and to take steps to ensure that similar violations do not occur in the future.