

HUMAN RIGHTS COMMITTEE

Chongwe v. Zambia

Communication No 821/1998*

25 October 2000

CCPR/C/70/D/821/1998

VIEWS

Submitted by: Mr. Rodger Chongwe

Alleged victim: The author

State party: Zambia

Date of communication: 7 November 1997 (initial submission)

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

Meeting on 25 October 2000,

Having concluded its consideration of communication No. 821/1998 submitted to the Human Rights Committee by Mr. Rodger Chongwe under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into consideration all written information made available to it by the author of the communication and the State party,

Adopts the following:

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

1.1 The author of the communication is Rodger Chongwe, born on 2 October 1938, a citizen of Zambia. He claims to be victim of the violation of his rights under articles 6 and 14 of the International Covenant for Civil and Political Rights by Zambia, and raises the issue of security of person, which may be considered in relation to article 9.

Facts as submitted by the author

2.1 The author, a *Zambian* advocate and chairman of a 13-party opposition alliance, states that in the afternoon of 23 August 1997, he and Dr. Kenneth Kaunda, for 27 years the President of Zambia, were shot and wounded by the police. The author states that the incident occurred in Kabwe, a town some 170 kilometres north of Lusaka, while the author and Dr. Kaunda were to attend a major political rally to launch a civil disobedience campaign. He annexes reports by Human Rights Watch and Inter-African Network for Human Rights and Development as part of his communication.

2.2 The author states that the police fired on the vehicle on which he was travelling, slightly wounding former President Kaunda and inflicting a life threatening wound on the author. The police force subsequently promised to undertake its own investigation. The *Zambian Human Rights Commission* was also said to be investigating the incident; but no results of any investigations have been produced.

2.3 He further refers to the Human Rights Watch Report for May 1998, Vol. 10, No 2 (A), titled "*Zambia, no model for democracy*") which includes 10 pages on the so-called "*Kabwe shooting*", confirming the shooting incident that took place by quoting witness statements and medical reports.

2.4 The report refers to the incident as follows:

"When Kaunda and the Alliance leader Rodger Chongwe decided to leave by car, police attacked the car with tear gas and later live ammunition, possibly to try to stop their exit. According to eyewitnesses no warning was given before shots were heard. A small number of police that day were carrying AK-47s, and senior officers had revolvers and a few G-3s were held by mobile unit members. Most of the police were issued only batons and teargas."

2.5 In a referred interview with the Human Rights Watch, Kaunda's driver, Nelson Chimanga stated:

"They (the police) fired tear gas at the car, one came into the car because I had opened a window to let out the smoke. When we got out of the smoke, I had to swerve past a police vehicle that tried to block our escape; just before the roundabout, I had to swerve to avoid a second vehicle blocking the road and then a third that was across the road. It was after this vehicle that we heard the bullet. Suddenly Rodger Chongwe was bleeding next to me. We gave him first aid in the vehicle, but because he was bleeding so much, did a U-turn and returned to Kabwe General Hospital. Because of heavy paramilitary police presence I moved the vehicle around the back and we left for Lusaka at around 0300 hrs."

2.6 Former President Kenneth Kaunda described the incident as follows:

"A bullet fired by the *Zambian* police grazed the top of my head. The same bullet much more seriously injured Dr Chongwe. It was then the police opened up with live ammunition. A bullet grazed my head and struck Dr Chongwe who was sitting in the

front seat, below the right ear. My aide Anthony Mumbi was also slightly injured by shrapnel. I probably would have died except my bodyguard Duncan Mtonga, pushed me to the side when he heard the gun shots. I did not hear them."

2.7 One of the passengers in the vehicle, was the United Independence Party (UNIP)'s legal officer, Mwangala Zaloumis, who provided Human Rights Watch with a written statement dated 4 September 1997:

"The vehicle was blocked three times in three different places by police vehicles. At about 200 meters from the Party Offices the presidential (Secretary's note; the former president's car) vehicle was fired at and at the same time tear gas was fired into the vehicle because the windows were open due to earlier firing of tear gas around at the bottom of the vehicle. There was a lot of confusion in the vehicle as a result of tear gas smoke. The next thing we saw was blood all over. Dr Chongwe had been hit on the cheek and was bleeding profusely. One of the security personnel who sat next to me was also bleeding. He had been hit by the shrapnel in three different places..."

2.8 According to the Human Rights Watch report, President Chiluba on 26 August 1997, denied that the Kabwe shooting was a state-sponsored assassination plot. He said that the Zambian police had instigated an investigation and that Nungu Sassasali, the commanding officer at Kabwe, was suspended. However, he rejected calls for an independent inquiry into the incident. The report refers to the ZNBC radio, stating that on 28 August, President Chiluba said the government would not apologise over the Kabwe shooting as it could not be held responsible for it.

2.9 According to the said report quoting the Zambia Daily Mail, Home Affairs Minister Chitalu Sampa on 31 August stated:

" We have been told that the bullet hit Dr. Kaunda on the head, the same bullet went through Dr. Chongwe's cheek, the same bullet again hit the other person in the neck. Honestly, how can that be possible, so we can not conclusively say they were shot by the police."

Further, President Chiluba on 13 November, stated that:

"These two people were not shot. An AK 47 cannot leave a simple wound. Let them prove that they were (shot)."

The President then admitted that police fired in the air as they tried to break up the opposition rally.

2.10 The author states that he was admitted to the Kabwe hospital immediately after the shooting incident. The Human Rights Watch report, cites a medical report by the Kabwe Hospital to the Permanent Secretary, Ministry of Health, Lusaka, stating:

"Local examination revealed puncture wound on the right cheek communicating with a bleeding, open wound on the upper aspect of the neck."

Furthermore, a medical report from St John of God Hospital in Australia, where the author took refuge, dated 3 October 1997, states that:

"A small metallic foreign body can be seen in the soft tissue beneath the skull base close to the skin surface consistent with the history of a gunshot wound. A small metallic fragment is noted in the soft tissues in the posterior aspect of the upper cervical region close to the skin surface."

2.11 Human Rights Watch report that they showed the medical reports, photographs, and the Human Rights Commission video to Dr Richard Shepard of the Forensic Medicine Unit, St George's Hospital Medical School, London, for an expert assessment. Dr Shepard concluded as follows:

"From evidence that I've seen one can say for sure that a bullet hit the vehicle and then as it entered sprayed fragments throughout the vehicle, a bit like an angry swarm of bees. The injuries sustained by Kaunda, Chongwe and Kaunda's aide all are consistent with this. Rodger Chongwe is lucky to be alive. If the shrapnel had hit him a couple of inches to the left he would have been dead. The trajectory of the bullet hole is slightly downwards suggesting that whoever fired the shot was slightly elevated, from the back of a lorry, that sort of height. The angle does not suggest a shot from a tree or roof top."

2.12 Human Rights Watch also sought the expert opinion of a firearms and ballistics specialist, Dr Graham Renshaw, who examined the photographs of the bullet hole in Kaunda's car, the photographs of a bullet cartridge found near the scene of the incident the day after the rally, and a photograph of a bullet that UNIP claimed was extracted from the vehicle after the incident. He explained the following, according to the Human Rights Watch:

"One bullet clearly penetrated the vehicle through the back. The bullet is consistent with the cartridge. The bullet, with its folds bent backwards, suggests it had pierced three layers of metal, consistent with penetrating the vehicle. It could be a non-Russian AK 47 but is more likely to be a G-3 or Belgian FAR. The bullet hole in Kaunda's vehicle is consistent with the bullet and cartridge. With this information it might be possible to match the bullet with the firearm that fired it. While one cannot say this was an assassination attempt, one can say for sure that all the passengers in the car are lucky to be alive. If the bullet had hit a window it would have been able to kill somebody straight. It was slowed down and displaced by going through metal."

2.13 Secondly, in its report, submitted by the author, on the investigation of the Kabwe-shooting, the Inter-African Network for Human Rights and Development concluded that the shooting incident took place, and that an international tribunal should investigate the assassination attempt on the former President Kenneth Kaunda. This report, which is based on evidence taken from persons directly concerned in the incident, shows that the car in which the author was travelling, had left the centre of Kabwe. Before it did so, there is evidence that the local police commander had given orders to his men to fire on the car without giving any details as to the objective of such shooting; this information was relayed on the police radio network. At a roundabout at the outskirts of Kabwe,

a police vehicle whose registration number and driver have been identified attempted to block the path of the car. The car's driver evaded this attempt, and there is evidence that two policemen standing on the back of the police vehicle opened fire on the car.

2.14 The author claims that on 28 November 1997, while on board a British Airways plane in Harare, he was told by airport and airline personnel that there was a VIP plane on the runway sent by the Zambian Government to collect him. He decided not to go back to Zambia, and has since this incident been residing in Australia. He will not return to Zambia, as he fears for his life.

2.15 From the information supplied by the author, he does not appear to have taken steps to exhaust domestic remedies, except for filing a claim for compensation to the Attorney General of the Republic of Zambia, Ministry of Legal Affairs. The claim was filed approximately one and a half month after the Kabwe shooting, that is on 15 October 1997. The author states that he has no access to effective domestic remedies.

The complaint

3. The author alleges that the incident on 23 August 1997 was an assassination attempt by the Zambian Government, and that it constitutes a violation of article 6 of the Covenant. The author further claims that the Zambian judges are not free from pressure in the performance of their duties, and that this implies a violation of article 14. He also raises the issue of security of person. He submits that an amount of US \$2.5 million in damages would be reasonable compensation.

The Committee's admissibility consideration

4.1 The communication with its accompanying documents was transmitted to the State party on 3 July 1998. The State party has not responded to the Committee's request, under rule 91 of the rules of procedures, to submit information and observations in respect of the admissibility and the merits of the communication, despite several reminders addressed to it, the latest on 5 August 1999. The Committee recalls that it is implicit in the Optional Protocol that the State party makes available to the Committee all information at its disposal and regrets the lack of co-operation by the State party in the present case. In the absence of any reply from the State party, due weight must be given to the author's allegations to the extent that they have been substantiated.

4.2 Before considering the claims contained in the communication, the Human Rights Committee must, in accordance with Article 87 of its rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

4.3 With respect to exhaustion of domestic remedies, the Committee notes that the author has argued that he has no access to domestic tribunals and that no effective domestic remedies are available to him. The State party has failed to contest before the Committee these allegations and thus due weight must thus be given to the author's claim. The Committee considers therefore that it is not precluded by article 5, paragraph 2 b) of the Optional Protocol from examining the communication.

4.4 With respect to the author's claim of a violation of article 14 of the Covenant, the Committee

notes that the information provided by the author does not substantiate for purposes of admissibility, the author's claim that he is a victim of a violation of article 14 of the Covenant. This part of the communication is therefore inadmissible under article 2 of the Optional Protocol.

4.5 The Committee considers that the author's remaining claims should be examined on the merits. Accordingly, the Committee finds the communication admissible and proceeds without delay to consider the merits of the author's claims under articles 6(1) and 9(1).

The Committee's consideration of the merits

5.1 The Human Rights Committee has examined the present case on the basis of the material placed before it by the parties, as required under article 5, paragraph 1, of the Optional Protocol.

5.2 The Committee observes that article 6, paragraph 1, entails an obligation of a State party to protect the right to life of all persons within its territory and subject to its jurisdiction. In the present case, the author has claimed, and the State party has failed to contest before the Committee that the State party authorised the use of lethal force without lawful reasons, which could have led to the killing of the author. In the circumstances, the Committee finds that the State party has not acted in accordance with its obligation to protect the author's right to life under article 6, paragraph 1, of the Covenant.

5.3 The Committee recalls its jurisprudence that article 9(1) of the Covenant protects the right to security of person also outside the context of formal deprivation of liberty(1). The interpretation of article 9 does not allow a State party to ignore threats to the personal security of non-detained persons subject to its jurisdiction. In the present case, it appears that persons acting in an official capacity within the Zambian police forces shot at the author, wounded him, and barely missed killing him. The State party has refused to carry out independent investigations, and the investigations initiated by the Zambian police have still not been concluded and made public, more than three years after the incident. No criminal proceedings have been initiated and the author's claim for compensation appears to have been rejected. In the circumstances, the Committee concludes that the author's right to security of person, under article 9, paragraph 1 of the Covenant, has been violated.

6. 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 before it disclose a violation of articles 6, paragraph 1, and 9, paragraph 1, of the Covenant.

7. Under article 2, paragraph 3(a), of the Covenant, the State party is under the obligation to provide Mr. Chongwe with an effective remedy and to take adequate measures to protect his personal security and life from threats of any kind. The Committee urges the State party to carry out independent investigations of the shooting incident, and to expedite criminal proceedings against the persons responsible for the shooting. If the outcome of the criminal proceedings reveals that persons acting in an official capacity were responsible for the shooting and hurting of the author, the remedy should include damages to Mr Chongwe. The State party is under an obligation to ensure that similar violations do not occur in the future.

8. Bearing in mind that, by becoming a State party to the Optional Protocol, the State party has recognised the competence of the Committee to determine whether there has been a violation of the Covenant or not and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognised in the Covenant and to provide an effective and enforceable remedy in case a violation has been established, the Committee wishes to receive from the State party, within ninety days, information about the measures taken to give effect to the Committee's Views. The State party is also requested to publish the Committee's Views.

* The following members of the Committee participated in the examination of the case: Mr. Abdelfattah Amor, Mr. Nisuke Ando, Mr. Prafullachandra Natwarlal Bhagwati, Lord Colville, Ms. Elizabeth Evatt, Ms. Pilar Gaitan de Pombo, Mr. Louis Henkin, Mr. Eckart Klein, Mr. David Kretzmer, Mr. Rajsoomer Lallah, Ms. Cecilia Medina Quiroga, Mr. Martin Scheinin, Mr. Hipólito Solari Yrigoyen, Mr. Roman Wieruszewski, Mr. Maxwell Yalden and Mr. Abdallah Zakhia.

[Adopted in English, French and Spanish, the English text being the original version. Subsequently to be translated into Arabic, Chinese and Russian as part of the Committee's Annual Report to the General Assembly.]

Notes

1. See the Committee's Views in case No 195/1985, Delgado Paez, paragraph 5.5, adopted on 12 July 1990, document CCPR/C/39/D/195/1985, and in case No 711/1996 Carlos Dias, paragraph 8.3, adopted on 20 March 2000, document CCPR/C/68/D/711/1996