

## **ZAMBIA**

### **Follow-up - Jurisprudence Action by Treaty Bodies**

**CCPR A/51/40 vol. I (1996)**

#### **VIII. FOLLOW-UP ACTIVITIES UNDER THE OPTIONAL PROTOCOL**

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429. A country-by-country breakdown of follow-up replies received or requested and outstanding as at 26 July 1996 provides the following picture:

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Zambia: Two views finding violations; one satisfactory reply and one preliminary, incomplete follow-up reply received. On 24 April 1996, the victim in one case complained to the Committee that the State party had not implemented any of the Committee's recommendations in his case. Follow-up consultations in respect of the latter case to be conducted during the fifty-eighth session.

**VIII. FOLLOW-UP ACTIVITIES UNDER THE OPTIONAL PROTOCOL**

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524. A country-by-country breakdown of follow-up replies received or requested and outstanding as of 30 June 1997 provides the following picture (Views in which the deadline for receipt of follow-up information had not yet expired have not been included):

...

Zambia: Three Views finding violations: 314/1988 - Bwalya and 326/1988 - Kalenga (1994 Report);<sup>9/</sup> 390/1990 -Lubuto (1996 Report);<sup>10/</sup> State party follow-up reply dated 3 April 1995, unpublished, received in respect of the first two decisions; follow-up reply in respect of case No. 390/1990 remains outstanding.

...

Concern over instances of non-cooperation under the follow-up mandate

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554. In spite of some progress in collecting follow-up information since the adoption of its 1996 Report, the Committee and the Special Rapporteur note with concern that a number of countries did not provide any follow-up information within the deadlines established by the Committee or have not replied to reminders or requests for information from the Special Rapporteur. Those States which have not replied to requests for follow-up information are the following (in alphabetical order):

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Zambia: one case.

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555. The Committee urges those States parties to reply to the Special Rapporteur's requests for follow-up information within the deadlines that have been set.

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<sup>9/</sup> Official Records of the General Assembly, Forty-ninth Session, Supplement No. 40 (A/49/40).

<sup>10/</sup> Ibid., Fifty-first Session, Supplement No. 40 (A/51/40).

### VIII. FOLLOW-UP ACTIVITIES UNDER THE OPTIONAL PROTOCOL

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486. The Committee's previous report (A/52/40) contained a detailed country-by-country breakdown of follow-up replies received or requested and outstanding as of 30 June 1997. The list that follows shows the additional cases in respect of which follow-up information has been requested from States (Views in which the deadline for receipt of follow-up information had not yet expired have not been included). It also indicates those cases in which replies are outstanding. In many of these cases there has been no change since the previous report. This is because the resources available for the Committee's work were considerably reduced in the current year, preventing it from undertaking a comprehensive systematic follow-up programme.

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Zambia: Three Views finding violations: 314/1988 - Bwalya and 326/1988 - Kalenga (1994 Report (A/49/40), 390/1990 - Lubuto (1996 Report (A/51/40)); State party's follow-up reply, dated 3 April 1995, unpublished, received in respect of the first two decisions; follow-up reply in respect of case No. 390/1990 remains outstanding.

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#### Concern over the follow-up mandate

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510. The Committee again expresses its regret that its recommendations, formulated in its 1995, 1996 and 1997 Reports, to the effect that at least one follow-up mission per year be budgeted by the Office of the United Nations Commissioner for Human Rights, have still not been implemented.

Similarly, the Committee considers that staff resources to service follow-up mandate remain inadequate, despite the Committee's repeated requests, and that this prevents the proper and timely conduct of follow-up activities, including follow-up missions. In this context, the Committee expresses serious concern that, because of the lack of staff, no follow-up consultations could be organized during its sixty-second session or at its sixty-third session. It is for this reason that the Committee is unable to include in the present report a complete list of States which have failed to cooperate under the follow-up procedure. States listed in the previous year's report for which replies are still outstanding are: ... Zambia.

**VII. FOLLOW-UP ACTIVITIES UNDER THE OPTIONAL PROTOCOL**

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461. The Committee's previous report (A/53/40) contained a detailed country-by-country breakdown of follow-up replies received or requested and outstanding as of 30 June 1998. The list that follows shows the additional cases in respect of which follow-up information has been requested from States (Views in which the deadline for receipt of follow-up information had not yet expired have not been included). It also indicates those cases in which replies are outstanding. In many of these cases there has been no change since the last report. This is because the resources available for the Committee's work have been considerably reduced preventing it from undertaking a comprehensive systematic follow-up programme.

...

Zambia: Three Views finding violations: 314/1988 - Bwalya and 326/1988 - Kalenga (A/48/40; 390/1990 - Lubuto (A/51/40); State party's follow-up reply, dated 3 April 1995, unpublished, received in respect of the first two decisions; follow-up reply in respect of Lubuto case remains outstanding.

**VI. FOLLOW-UP ACTIVITIES UNDER THE OPTIONAL PROTOCOL**

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596. The Committee's previous report (A/54/40) contained a detailed country-by-country breakdown of follow-up replies received or requested and outstanding as of 30 June 1999. The list that follows shows the additional cases in respect of which follow-up information has been requested from States. (Views in which the deadline for receipt of follow-up information had not yet expired have not been included.) It also indicates those cases in which replies are outstanding. In many of these cases there has been no change since the last report. This is because the limited resources available for the Committee's work prevent it from undertaking a comprehensive or systematic follow-up programme.

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Zambia: Four Views finding violations: 314/1988 - Bwalya and 326/1988 - Kalenga (A/48/40; 390/1990 - Lubuto (A/51/40); 768/1997 - Mukunto (A/54/40); the State party's follow-up reply, dated 3 April 1995, unpublished, was received in respect of the first two decisions; follow-up replies in respect of the last two cases remain outstanding.

Chapter IV. Follow-up Activities under the Optional Protocol

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180. The Committee's previous annual report (A/55/40, vol. I, chap. VI) contained a detailed country-by-country survey on follow-up replies received or requested and outstanding as of 30 June 2000. The list that follows updates that survey, indicating those cases in which replies are outstanding, but does not take into account the Committee's Views adopted during the seventy-second session, for which follow-up replies are not yet due. In many cases there has been no change since the previous report.

...

Zambia: Five Views finding violations: 314/1988 - Bwalya; and 326/1988 - Kalenga (A/48/40); 390/1990 - Lubuto (A/51/40); 768/1997 - Mukunto (A/54/40); follow-up reply, dated 3 April 1995, unpublished, received in respect of the first two decisions; follow-up replies in respect of the last two cases remain outstanding. 821/1998 - Chongwe (annex X, sec. K); follow-up reply, dated 23 January 2001, challenging the Committee's Views, alleging non exhaustion of domestic remedies by Mr. Chongwe. The author by letter of 1 March 2001 indicates that the State party has not taken any measures pursuant to the Committee's Views.

...

Overview of follow-up replies received during the reporting period, Special Rapporteur's follow-up consultations and other developments

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200. Zambia: The Special Rapporteur met with representatives of the Government of Zambia on 20 July 2001 and requested a formal reply concerning the three cases, Nos. 390/1990 Lubuto (A/51/40), 768/1997 Mukunto (A/54/40) and 821/1998 Chongwe (A/56/40), for which no follow-up reply had been received (other than the late submission of 23 January 2001 concerning domestic remedies allegedly not exhausted by the author). The representatives said that the request would be forwarded to the Government.

Chapter VI. Follow-up activities under the optional protocol

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228. The previous annual report of the Committee (A/56/40, vol. I, chap. VI) contained a detailed country-by-country survey of follow-up replies received or requested and outstanding as of 30 June 2001. The list that follows updates that survey, indicating those cases in which replies are outstanding, but does not include responses concerning the Committee's Views adopted during the seventy-fourth and seventy-fifth sessions, for which follow-up replies are not yet due. In many cases there has been no change since the previous report.

...

Zambia: Views in five cases with findings of violations:

314/1988 - Bwalya (A/48/40); follow-up reply; dated 3 April 1995, unpublished;

326/1988 - Kalenga (A/48/40); follow-up reply, dated 3 April 1995, unpublished;

390/1990 - Lubuto (A/51/40); and

768/1997 - Mukunto (A/54/40); follow-up replies remain outstanding despite consultations of the Special Rapporteur with representatives of the Permanent Mission on 20 July 2001 (see A/56/40, paragraph 200). See paragraph [253] below;

821/1998 - Chongwe (A/56/40); follow-up reply, dated 23 January 2001, challenging the Committee's Views, alleging non-exhaustion of domestic remedies by Mr. Chongwe. The author by letter of 1 March 2001 indicates that the State party has not taken any measures pursuant to the Committee's Views. See also A/56/40, paragraph 200, and see paragraph [254] below.

229. For further information on the status of all the Views in which follow-up information remains outstanding or in respect of which follow-up consultations have been or will be scheduled, reference is made to the follow-up progress report prepared for the seventy-fourth session of the Committee (CCPR/C/74/R.7/Rev.1, dated 28 March 2002), discussed in public session at the Committee's 2009th meeting on 4 April 2002 (CCPR/C/SR.2009). Reference is also made to the Committee's previous reports, in particular A/56/40, paragraphs 182 to 200.

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Overview of follow-up replies received during the reporting period, Special Rapporteur's follow-up consultations and other developments

230. The Committee welcomes the follow-up replies that have been received during the reporting period and expresses its appreciation for all the measures taken or envisaged to provide victims of violations of the Covenant with an effective remedy. It encourages all States parties which have addressed preliminary follow-up replies to the Special Rapporteur to conclude their investigations in as expeditious a manner as possible and to inform the Special Rapporteur of their results. The follow-up replies received during the period under review and other developments are summarized below.

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253. Zambia: With regard to case No. 768/1997, Mukunto (A/54/40), the author informed the Committee by letter of 2 April 2002 that the State party had paid him US\$ 5,000 compensation. The author regarded this payment as insufficient satisfaction of his claim for US\$ 80,000, and pointed out further that the State party had not published the Committee's Views. By a note verbale of 12 June 2002, the State party indicated that both parties had agreed that the sum of \$5,000 compensation was a full and final settlement, and supplied a signed undertaking of full satisfaction by the author of a sum of 20 million Kwacha.

254. With regard to case No. 821/1998, Chongwe (A/56/40), the State party contended, by a note verbale dated 10 October 2001, that the Committee had not indicated the quantum of damages payable, much less directed payment of the US\$ 2.5 million claimed by the author. It also reiterated its wish to be heard on the merits of the dispute. On 20 October 2001, at the Committee's seventy-third session, the Special Rapporteur met with a representative of the Zambian mission. It was explained that the case could not be reopened and that the State party was given the opportunity to make submissions to the Committee within the prescribed deadlines.

On 5 and 13 November 2001, the author objected to the State party's view, and sought an effective remedy. By its note verbale of 14 November 2001, the State party provided copies of correspondence between its Attorney-General and the author, in which the author was provided assurances that the State party would respect his rights to life and invited to return to its territory.

As to the issue of compensation, the Attorney-General indicated to the author that this would be dealt with at the conclusion of further investigations into the incident, which had been hindered by the author's earlier refusal to cooperate. By letter of 23 February 2002, the author again rejected the State party's arguments and sought an effective remedy. By letter of 28 February 2002, the State party noted that the domestic courts could not have awarded the quantum of damages sought, that the author had fled the country for reasons unrelated to the incident in question, and that, while the Government saw no merit in launching a prosecution, it was open to the author to do so. The State party considered that the communication was without merit, but that was taking sufficient positive steps. By letter of 26 April 2002, the author pointed out that the State party had provided compensation in other Optional Protocol cases. The author also speaks of further attempts upon Mr. Kaunda's life by State agents since the incident forming the subject of the communication and his prolonged detention without trial. He reiterated his fears for his safety if he returned. The author noted that no action had been taken on the conclusions of a recent commission of inquiry into torture of suspects in the 1997 attempted coup attempt.



He repeated his request for a full remedy. By a note verbale of 13 June 2002, the State party reiterated its position that it was not bound by the Committee's decision as domestic remedies had not been exhausted. The author chose to leave the country of his own will, but remained at liberty to commence proceedings even in his absence. In any event, the new President had confirmed to the author that he was free to return. Indeed the State hoped that he would do so and then apply for legal redress. Mr. Kaunda, who was attacked at the same time as the author, is said to be a free citizen carrying on his life without any threat to his liberties.

CHAPTER VI. Follow-up activities under the Optional Protocol

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223. The previous annual report of the Committee<sup>1</sup> contained a detailed country-by-country survey of follow-up replies received or requested and outstanding as of 30 June 2002. The list that follows updates that survey, indicating those cases in which replies are outstanding, but does not include responses concerning the Committee's Views adopted during the seventy-seventh and seventy-eighth sessions, for which follow-up replies are not yet due in the majority of cases. In many cases there has been no change since the previous report.\*

...

Zambia: Views in five cases with findings of violations:

314/1988 - *Bwalya* (A/48/40); follow-up reply; dated 3 April 1995, unpublished;

326/1988 - *Kalenga* (A/48/40); follow-up reply, dated 3 April 1995, unpublished;

390/1990 - *Lubuto* (A/51/40);

768/1997 - *Mukunto* (A/54/40); follow-up replies remain outstanding despite consultations of the Special Rapporteur with representatives of the Permanent Mission on 20 July 2001 (see A/56/40, paragraph 200, A/57/40, paragraph 253);

821/1998 - *Chongwe* (A/56/40); follow-up reply, dated 23 January 2001, challenging the Committee's Views, alleging non-exhaustion of domestic remedies by Mr. Chongwe. By letter of 1 March 2001, the author indicated that the State party has not taken any measures pursuant to the Committee's Views. See also A/56/40, paragraph 200 and A/57/40, paragraph 254. A South African NGO, acting on the author's behalf, confirmed this information on 16 June 2003.

Notes

1. [Official Records of the General Assembly], Fifty-seventh Session, Supplement No. 40(A/57/40), vol. I, chap. VI.

\* The document symbol A/[Session No.] /40 refers to the *Official Record of the General Assembly* in which the case appears; annex VI refers to the present report, vol. II.

**CCPR CCPR/C/80/FU/1 (2004)**

**Follow-Up Progress Report submitted by The Special Rapporteur for Follow-Up on Views**

Follow-up progress report

1. The current report updates the previous Follow-up Progress Report, (CCPR/C/71/R.13) [*Ed. Note: CCPR/C/71/R.13 is not publicly available*] which focused on cases in which, by the end of February 2001, no or only incomplete follow-up information had been received from States parties, or where follow-up information challenged the findings and recommendations of the Committee. In an effort to reduce the size of the follow-up report, this current report only reflects cases in which information was received from either the author or the State party from 1 March 2001 to 2 April 2004. It is the intention of the Special Rapporteur to update this report on an annual basis.

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ZAMBIA:

Mukunto v. Zambia, Case no. 768/1997, Views adopted on 2 August 1999

Violations found: Article 14, paragraph 1

Issues of case: Denial of access to court

Remedy recommended: Compensation for the undue delay in deciding the authors compensation claim for the illegal detention he suffered in 1979

Deadline for State party follow-up information: 9 November 1999

Follow-up information received from State party: By note verbale of 12 June 2002, the State party indicated that both parties had agreed that the sum of \$5,000 compensation was a full and final settlement, and supplied a signed undertaking of full satisfaction by the author of a sum of 20 million Kwacha.

Follow-up information received from author: By letter of 2 April 2002, the author informed the Committee that the State party had paid him US\$ 5,000 as compensation. The author regarded this payment as insufficient satisfaction of his claim for US\$ 80,000, and pointed out further that the State party had not published the Committee's Views.

Special Rapporteur's recommendations: No further consideration under the follow-up procedure, as the State party has complied with the Committee's recommendations.

Chongwe v. Zambia, Case no. 821/1998, Views adopted on 25 October 2000

Violations found: Articles 6, paragraph 1, and 9, paragraph 1.

Issues of case: Attempted murder of the chairman of the opposition alliance.

Remedy recommended: Adequate measures to protect the author's personal security and life from threats of any kind. The Committee urged 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.

Deadline for State party follow-up information: 8 February 2001

Follow-up information received from State party: By note verbale of 10 October 2001, the State party contended that the Committee had not indicated the quantum of damages payable, much less directed payment of the US\$ 2.5 million claimed by the author. By its note verbale of 14 November 2001, the State party provided copies of correspondence between its Attorney-General and the author, in which the author was provided assurances that the State party would respect his right to life and invited him to return to its territory. As to the issue of compensation, the Attorney-General indicated to the author that this would be dealt with at the conclusion of further investigations into the incident, which had been hindered by the author's earlier refusal to cooperate. By letter of 28 February 2002, the State party noted that the domestic courts could not have awarded the quantum of damages sought, that the author had fled the country for reasons unrelated to the incident in question, and that, while the Government saw no merit in launching a prosecution, it was open to the author to do so. By note verbale of 13 June 2002, the State party reiterated its position that it was not bound by the Committee's decision as domestic remedies had not been exhausted. The author chose to leave the country of his own will, but remained at liberty to commence proceedings even in his absence. In any event, the new President had confirmed to the author that he was free to return. Indeed the State hoped that he would do so and then apply for legal redress. Mr. Kaunda, who was attacked at the same time as the author, is said to be a free citizen carrying on his life without any threat to his liberties.

Follow-up information received from author: On 5 and 13 November 2001, the author objected to the State party's observations in its notes of 10 October and 14 November 2001, and sought an effective remedy. By letter of 26 April 2002, the author pointed out that the State party had provided compensation in other Optional Protocol cases. The author also speaks of further attempts upon Mr. Kaunda's life by State agents since the incident forming the subject of the communication. He reiterated his fears for his safety if he returned. The author noted that no action had been taken on the conclusions of a recent commission of inquiry into torture of suspects in the 1997 attempted coup attempt. He repeated his request for a full remedy.

Consultations with State party: On 20 October 2001, at the Committee's seventy-third session, the Special Rapporteur met with a representative of the Zambian mission. It was explained that

the case could not be reopened and that the State party was given the opportunity to make submissions to the Committee within the prescribed deadlines.

Special Rapporteur's recommendations: No further action under the follow-up procedure.

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CHAPTER VI. FOLLOW-UP ACTIVITIES UNDER THE OPTIONAL PROTOCOL

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230. The previous annual report of the Committee<sup>1</sup> contained a detailed country-by-country survey of follow-up replies received or requested and outstanding as of 30 June 2003. The list that follows updates that survey, indicating those cases in which replies are outstanding, but does not include responses concerning the Committee's Views adopted during the eightieth and eighty-first sessions, for which follow-up replies are not yet due in the majority of cases. In many cases there has been no change since the previous report.\*

...

Zambia:

Views in six cases with findings of violations:

314/1988 - *Bwalya* (A/48/40); follow-up reply; dated 3 April 1995, unpublished;

326/1988 - *Kalenga* (A/48/40); follow-up reply, dated 3 April 1995, unpublished;

390/1990 - *Lubuto* (A/51/40); follow-up replies remain outstanding;

768/1997 - *Mukunto* (A/54/40); follow-up replies remain outstanding despite consultations of the Special Rapporteur with representatives of the Permanent Mission on 20 July 2001 (see A/56/40, para. 200, A/57/40, para. 253). In the follow-up report (CCPR/C/80/FU1), adopted by the Committee during its eightieth session, the Special Rapporteur recommended that no further action be taken under the follow-up procedure as the State party had complied with its Views;

821/1998 - *Chongwe* (A/56/40); follow-up reply, dated 23 January 2001, challenging the Committee's Views, alleging non-exhaustion of domestic remedies by Mr. Chongwe. By letter of 1 March 2001, the author indicated that the State party has not taken any measures pursuant to the Committee's Views. See also A/56/40, paragraph 200 and A/57/40, paragraph 254. A South African NGO, acting on the author's behalf, confirmed this information on 16 June 2003. In the follow-up report (CCPR/C/80/FU1), adopted by the Committee during its eightieth session, the Special Rapporteur recommended that no further action be taken under the follow-up procedure;

856/1999 - *Chambala* (A/58/40); follow-up reply not yet received.

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Notes

1/ Ibid., *Fifty-eighth Session, Supplement No. 40* (A/58/40), vol. I, chap. VI.

\* The document symbol A/[session No.]/40 refers to the *Official Records of the General Assembly* in which the case appears; annex IX refers to the present report, volume II.



**CHAPTER VI. FOLLOW-UP ACTIVITIES UNDER THE OPTIONAL PROTOCOL**

224. In July 1990, the Committee established a procedure for the monitoring of follow-up to its Views under article 5, paragraph 4, of the Optional Protocol, and created the mandate of the Special Rapporteur for the follow-up on Views to this effect. Mr. Ando has been the Special Rapporteur since March 2001 (seventy-first session).

225. In 1991, the Special Rapporteur began to request follow-up information from States parties. Such information has been systematically requested in respect of all Views with a finding of a violation of Covenant rights. A total of 391 Views out of the 503 Views adopted since 1979 concluded that there had been a violation of the Covenant.

228. In many cases, the Secretariat has also received information from complainants to the effect that the Committee's Views have not been implemented. Conversely, in rare instances, the petitioner has informed the Committee that the State party has in fact given effect to the Committee's recommendations, even though the State party did not itself provide that information.

229. The present annual report adopts a different format for the presentation of follow-up information compared to previous annual reports. The table below displays a complete picture of follow-up replies from States parties received as of 28 July 2005, in relation to Views in which the Committee found violations of the Covenant. Wherever possible, it indicates whether follow-up replies are or have been considered as satisfactory or unsatisfactory, in terms of complying with the Committee's Views, or whether the dialogue between the State party and the Special Rapporteur for follow-up on Views continues. The notes following a number of case entries convey an idea of the difficulties in categorizing follow-up replies.

230. Follow-up information provided by States parties and by petitioners or their representatives since the last annual report is set out in a new annex VII, contained in Volume II of the present annual report. This, more detailed, follow-up information also indicates action still outstanding in those cases that remain under review.

## FOLLOW-UP RECEIVED TO DATE FOR ALL CASES OF VIOLATIONS OF THE COVENANT

State party and number of cases with violation	Communication number, author and location <sup>a</sup>	Follow-up response received from State party and location	Satisfactory response	Unsatisfactory response	No follow-up response	Follow-up dialogue ongoing
...						
Zambia (6)	314/1988, <i>Bwalya</i> A/48/40	X A/59/40*	X			
	*Note: According to this report, information was provided in 1995, but was unpublished. The State party stated on 12 July 1995 that compensation had been paid to the author, that he had been released and that the matter was closed.					
	326/1988, <i>Kalenga</i> A/48/40	X A/59/40*	X			
	*Note: According to this report, information was provided in 1995, but was unpublished. The State party stated that compensation would be paid to the author. In a subsequent letter from the author, dated 4 June 1997, he states that he was unsatisfied with the sum offered and requested the Committee to intervene. The Committee replied that it was not within its remit to challenge, contest or re-evaluate the amount of compensation that was offered and that it would decline to intervene with the State party.					
	390/1990, <i>Lubuto</i> A/51/40				X	X
	768/1997, <i>Mukunto</i> A/54/40	X A/56/40, A/57/40, A/59/40, CCPR/C/80/FU1	X A/59/40			
	821/1998, <i>Chongwe</i> A/56/40	X A/56/40, A/57/40, A/59/40	X			
	856/1999, <i>Chambala</i> A/58/40				X	X

<sup>a</sup> The location refers to the document symbol of the *Official Records of the General Assembly, Supplement No. 40*, which is the annual report of the Committee to the respective sessions of the Assembly.

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## CHAPTER VI FOLLOW-UP ACTIVITIES UNDER THE OPTIONAL PROTOCOL

227. In July 1990, the Committee established a procedure for the monitoring of follow-up to its Views under article 5, paragraph 4, of the Optional Protocol, and created the mandate of the Special Rapporteur for follow-up to Views to this effect. Mr. Ando has been the Special Rapporteur since March 2001 (seventy-first session).

228. In 1991, the Special Rapporteur began to request follow-up information from States parties. Such information has been systematically requested in respect of all Views with a finding of a violation of Covenant rights; 429 Views out of the 547 Views adopted since 1979 concluded that there had been a violation of the Covenant.

229. All attempts to categorize follow-up replies by States parties are inherently imprecise and subjective: it accordingly is not possible to provide a neat statistical breakdown of follow-up replies. Many follow-up replies received may be considered satisfactory, in that they display the willingness of the State party to implement the Committee's recommendations or to offer the complainant an appropriate remedy. Other replies cannot be considered satisfactory because they either do not address the Committee's Views at all or only relate to certain aspects of them. Some replies simply note that the victim has filed a claim for compensation outside statutory deadlines and that no compensation can therefore be paid. Still other replies indicate that there is no legal obligation on the State party to provide a remedy, but that a remedy will be afforded to the complainant on an *ex gratia* basis.

230. The remaining follow-up replies challenge the Committee's Views and findings on factual or legal grounds, constitute much-belated submissions on the merits of the complaint, promise an investigation of the matter considered by the Committee or indicate that the State party will not, for one reason or another, give effect to the Committee's Views.

231. In many cases, the Secretariat has also received information from complainants to the effect that the Committee's Views have not been implemented. Conversely, in rare instances, the petitioner has informed the Committee that the State party had in fact given effect to the Committee's recommendations, even though the State party had not itself provided that information.

232. The present annual report adopts the same format for the presentation of follow-up information as the last annual report. The table below displays a complete picture of follow-up replies from States parties received up to 7 July 2006, in relation to Views in which the Committee found violations of the Covenant. Wherever possible, it indicates whether follow-up replies are or have been considered as satisfactory or unsatisfactory, in terms of their compliance with the Committee's Views, or whether the dialogue between the State party and the Special Rapporteur for follow-up to Views continues. The Notes following a number of

case entries convey an idea of the difficulties in categorizing follow-up replies.

233. Follow-up information provided by States parties and by petitioners or their representatives subsequent to the last annual report (A/60/40, vol. I, chap. VI) is set out in annex VII to volume II of the present annual report.

## FOLLOW-UP RECEIVED TO DATE FOR ALL CASES OF VIOLATIONS OF THE COVENANT

State party and number of cases with violation	Communication number, author and location	Follow-up response received from State party and location	Satisfactory response	Unsatisfactory response	No follow-up response received	Follow-up dialogue ongoing
...						
Zambia (7)	314/1988, <i>Bwalya</i> A/48/40	X A/59/40*	X			
	*Note: According to this report, information was provided in 1995 (unpublished). The State party stated on 12 July 1995 that compensation had been paid to the author, that he had been released and that the matter was closed.					
	326/1988, <i>Kalenga</i> A/48/40	X A/59/40*	X			
	*Note: According to this report, information was provided in 1995 (unpublished). The State party stated that compensation would be paid to the author. In a subsequent letter from the author, dated 4 June 1997, he states that he was unsatisfied with the sum offered and requested the Committee to intervene. The Committee replied that it was not within its remit to challenge, contest or re-evaluate the amount of compensation that was offered and that it would decline to intervene with the State party.					
	390/1990, <i>Lubuto</i> A/51/40				X	X
	768/1997, <i>Mukunto</i> A/54/40	X A/56/40, A/57/40, A/59/40 CCPR/C/80/FU1	X A/59/40			
	821/1998, <i>Chongwe</i> A/56/40	X A/56/40, A/57/40, A/59/40,				X

	A/61/40				
856/1999, <i>Chambala</i> A/58/40				X	X
1132/2002, <i>Chisanga</i> A/61/40	X A/61/40				X

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Annex VII

FOLLOW-UP OF THE HUMAN RIGHTS COMMITTEE ON INDIVIDUAL COMMUNICATIONS UNDER THE OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

This report sets out all information provided by States parties and authors or their counsel since the last Annual Report (A/60/40).

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<i>State party</i>	<i>ZAMBIA</i>
<i>Case</i>	Chongwe, 821/1998
<i>Views adopted on</i>	25 October 2000
<i>Issues and violations found</i>	Articles 6, paragraph 1, and 9, paragraph 1 - Attempted murder of the chairman of the opposition alliance.
<i>Remedy recommended</i>	Adequate measures to protect the author's personal security and life from threats of any kind. The Committee urged 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.
<i>Due date for State party response</i>	8 February 2001
Date of State party's response	28 December 2005
<i>State party response</i>	The Committee will recall that, as set out in the FU report from 10 March 2003, the State party had responded on 10 October and 14 November 2001. It contended that the Committee had not indicated the quantum of damages payable and provided copies of correspondence between its Attorney-General and the author, in

which the author was provided assurances that the State party would respect his right to life and invited him to return to its territory. As to the issue of compensation, the Attorney-General indicated to the author that this would be dealt with at the conclusion of further investigations into the incident, which had been hindered by the author's earlier refusal to cooperate. By letter of 28 February 2002, the State party noted that the domestic courts could not have awarded the quantum of damages sought, that the author had fled the country for reasons unrelated to the incident in question, and that, while the Government saw no merit in launching a prosecution, it was open to the author to do so. By note verbale of 13 June 2002, the State party reiterated its position that it was not bound by the Committee's decision as domestic remedies had not been exhausted. The author chose to leave the country of his own will, but remained at liberty to commence proceedings even in his absence. In any event, the new President had confirmed to the author that he was free to return. Indeed the State hoped that he would do so and then apply for legal redress. Mr. Kaunda, who was attacked at the same time as the author, is said to be a free citizen carrying on his life without any threat to his liberties.

On 28 December 2005, the State party provide the following information. It stated that it had offered the author 60,000 US dollars on a without prejudice basis. The author had rejected the offer, which is more than adequate under Zambian law, particularly in light of the fact that Zambia is one of the 49 countries classified by the United Nations as Least Developed Countries. In spite of the offer, the author is still at liberty to commence legal proceedings in the Zambian Courts over this matter. As an act of good faith, the Zambian government will waive the statute of limitations of his case and allow this matter to be heard in courts of law.

*Author's response*

The Committee will recall that, as set out in the March 2003 Follow-Up Report Follow-up, the author had referred to the State party's failure to provide him with a remedy on 5 and 13 November 2001.

In March 2006 (letter undated), the author responded to the State party's submission. It appears that the author returned to Zambia in 2003. He submits that he does not intend to make any new claims in the Zambian courts. Although he recognizes the efforts being made by the judiciary to improve he states that the problems are not yet solved. Thus, he would have no confidence that a claim would be handled appropriately by the courts. To begin such a complaint



nearly 10 years after the incident would be useless. It would be impossible to conduct such an investigation on his own and would fear for his safety in doing so. In any event, he is not interested in finding the particular “minion of the Zambian Government” who tried to kill him.

The author submits that the State party has not implemented the Views and has not provided him with security. He submits that the government made no effort to help him and his family resettle from Australia back to Zambia and refers to the offer of compensation as “petty cash” which he is obliged to receive on a “like it or lump it basis”. He says that he has no intention of negotiating with the Zambian government on the basis of the State party’s response of 28 December 2005.

<i>Committee's Decision</i>	To be considered by the Committee during the eighty-eighth session.
<i>Case</i>	1132/2002, Chisanga
<i>Views adopted on</i>	18 October 2005
<i>Issues and violations found</i>	Right to life, ineffective remedy on appeal and ineffective remedy with respect to commutation - articles 14, paragraph 5 together with articles 2; 7; 6, paragraph 2; and 6, paragraph 4 together with article 2.
<i>Remedy recommended</i>	To provide the author with a remedy, including as one necessary prerequisite in the particular circumstances, the commutation of the author's death sentence.
<i>Due date for State party response</i>	9 February 2006
<i>Date of State party's response</i>	17 January 2006
<i>State party response</i>	<p>As to the author's sentence, the State party says that it had provided the HRC with the Supreme Court Judgement dated 5 June 1996 which upheld the sentence of death for aggravated robbery and also convicted the accused to an additional 18 years on the count of attempted murder.</p> <p>Therefore, Zambia's view is that, if the sentence clearly indicates two different counts and two different sentences given for each count respectively, there can be no confusion. The State party quotes from section 294 of its Penal Code and affirms that the Supreme Court cannot reduce the sentence of death if it finds that the offence contained</p>

in Section 294 (2) - namely felony of aggravated robbery where the offensive weapon or instrument is a firearm, or where the offensive weapon or instrument is not a firearm and grievous harm is done to any person in the course of the offence - was committed.

Besides, Zambia acknowledges the “possibility” that the complainant may have been transferred from death row to the long term section of the prison. Zambia explains that this constitutes “deterrent sentencing”, that is to say, the convict is required to perform the shorter sentence before being subjected to the more severe one when sentenced on more than one count. Zambia affirms that “deterrent sentencing” is a recognized form of punishment under the common law system and that, therefore, Zambian courts are within their mandates when imposing such sentences. According to the State party, the alleged confusion by the complainant was contrived in bad faith and is meant to disparage Zambia’s well established and respected judicial system.

The State party affirms that the right to appeal in its judicial system is not only guaranteed under the Constitution but is also effectively implemented, because in the offences of treason, murder and aggravated robbery (carrying the death penalty) an accused person is, without discrimination, automatically granted the right to appeal to the Supreme Court by the High Court. Regarding the communication of the Master of Supreme Court that purportedly reduced the complainant’s sentence, Zambia says that the communication may have been conveying the sentence by the Supreme Court for the count of attempted murder.

The State party states that the accused was taken to the long term section of the prison to serve the 18-year sentence for attempted murder. It adds that there is no record that the author was taken back to death row after 2 years and requests him to prove this allegation.

The State party considers that what constitutes one of the most serious crimes is a subjective test and depends upon a given society. Zambia claims that, in the State of Zambia, crimes of murder or aggravated robbery are widespread and, therefore, not to consider them as serious crimes defeats fundamental rights such as the right to life, security and liberty of the person. Zambia further states that the HRC’s suggestion that since the victim did not die the complainant should not be sentenced to death is an affront to the very essence of human rights.

The State party submits that there is on Presidential decree giving amnesty to all prisoners on death row. What the President is said to have declared publicly is that he will not sign any death warrant during his term. Zambia further affirms that prisoners can still apply for clemency according to the terms of the Constitution. Such applications are dealt with by the "Committee on the Prerogative of Mercy" chaired by the vice President. Zambia finally states that no death sentence has been carried out since 1995, and that there is a moratorium on the death penalty in Zambia.

*Author's response*      None

*Committee's Decision*      The Committee notes that the State party's argument on admissibility should have been included in its comments on the communication prior to consideration by the Committee. The Committee regards the State party's response as unsatisfactory and considers the follow-up dialogue ongoing.

...

## CHAPTER VI. FOLLOW-UP ACTIVITIES UNDER THE OPTIONAL PROTOCOL

213. In July 1990, the Committee established a procedure for the monitoring of follow-up to its Views under article 5, paragraph 4, of the Optional Protocol, and created the mandate of the Special Rapporteur for follow-up to Views to this effect. Mr. Ando has been the Special Rapporteur since March 2001 (seventy-first session).

214. In 1991, the Special Rapporteur began to request follow-up information from States parties. Such information has been systematically requested in respect of all Views with a finding of a violation of Covenant rights; 452 Views out of the 570 Views adopted since 1979 concluded that there had been a violation of the Covenant.

215. All attempts to categorize follow-up replies by States parties are inherently imprecise and subjective: it accordingly is not possible to provide a neat statistical breakdown of follow-up replies. Many follow-up replies received may be considered satisfactory, in that they display the willingness of the State party to implement the Committee's recommendations or to offer the complainant an appropriate remedy. Other replies cannot be considered satisfactory because they either do not address the Committee's Views at all or only relate to certain aspects of them. Some replies simply note that the victim has filed a claim for compensation outside statutory deadlines and that no compensation can therefore be paid. Still other replies indicate that there is no legal obligation on the State party to provide a remedy, but that a remedy will be afforded to the complainant on an *ex gratia* basis.

216. The remaining follow-up replies challenge the Committee's Views and findings on factual or legal grounds, constitute much-belated submissions on the merits of the complaint, promise an investigation of the matter considered by the Committee or indicate that the State party will not, for one reason or another, give effect to the Committee's Views.

217. In many cases, the Committee secretariat has also received information from complainants to the effect that the Committee's Views have not been implemented. Conversely, in rare instances, the petitioner has informed the Committee that the State party had in fact given effect to the Committee's recommendations, even though the State party had not itself provided that information.

218. The present annual report adopts the same format for the presentation of follow-up information as the last annual report. The table below displays a complete picture of follow-up replies from States parties received up to 7 July 2007, in relation to Views in which the Committee found violations of the Covenant. Wherever possible, it indicates whether follow-up

replies are or have been considered as satisfactory or unsatisfactory, in terms of their compliance with the Committee's Views, or whether the dialogue between the State party and the Special Rapporteur for follow-up to Views continues. The Notes following a number of case entries convey an idea of the difficulties in categorizing follow-up replies.

219. Follow-up information provided by States parties and by petitioners or their representatives subsequent to the last annual report (A/61/40, vol. I, chap. VI) is set out in annex VII to volume II of the present annual report.

*FOLLOW-UP RECEIVED TO DATE FOR ALL CASES OF VIOLATIONS OF THE COVENANT*

<i>State party and number of cases with violation</i> ...	<i>Communication number, author and location</i>	<i>Follow-up response received from State party and location</i>	<i>Satisfactory response</i>	<i>Unsatisfactory response</i>	<i>No follow-up response received</i>	<i>Follow-up dialogue ongoing</i>
Zambia (7)	314/1988, <i>Bwalya</i> A/48/40	X A/59/40*	X			
	*Note: According to this report, information was provided in 1995 (unpublished). The State party stated on 12 July 1995 that compensation had been paid to the author, that he had been released and that the matter was closed.					
	326/1988, <i>Kalenga</i> A/48/40	X A/59/40*	X			
	*Note: According to this report, information was provided in 1995 (unpublished). The State party stated that compensation would be paid to the author. In a subsequent letter from the author, dated 4 June 1997, he states that he was unsatisfied with the sum offered and requested the Committee to intervene. The Committee replied that it was not within its remit to challenge, contest or re-evaluate the amount of compensation that was offered and that it would decline to intervene with the State party.					
	390/1990, <i>Lubuto</i> A/51/40	X A/62/40			X	X
	768/1997, <i>Mukunto</i> A/54/40	X A/56/40, A/57/40, A/59/40 CCPR/C/80/FUI	X A/59/40			
	821/1998, <i>Chongwe</i> A/56/40	X A/56/40, A/57/40, A/59/40, A/61/40				X
	856/1999, <i>Chambala</i> A/58/40				X	X
	1132/2002, <i>Chisanga</i>	X				X

<i>State party and number of cases with violation</i>	<i>Communication number, author and location</i>	<i>Follow-up response received from State party and location</i>	<i>Satisfactory response</i>	<i>Unsatisfactory response</i>	<i>No follow-up response received</i>	<i>Follow-up dialogue ongoing</i>
	A/61/40	A/61/40				

*CCPR, CCPR/C/SR.2564/Add.1 (2008)*

HUMAN RIGHTS COMMITTEE

Ninety-third session

SUMMARY RECORD OF THE SECOND PART (PUBLIC)\* OF THE 2564th MEETING

Held at the Palais Wilson, Geneva,  
on Wednesday, 23 July 2008 at 11.25 a.m.

...

FOLLOW-UP TO CONCLUDING OBSERVATIONS ON STATE REPORTS AND TO  
VIEWS UNDER THE OPTIONAL PROTOCOL

...

Follow-up progress report of the Human Rights Committee on individual communications  
(CCPR/C/93/R.5)

40. Mr. SHEARER, Special Rapporteur for follow-up on communications, introduced the Committee's progress report on individual communications.

...

50. In the case pertaining to Zambia the Committee had recommended the commutation of the author's death sentence. Although the State party was observing a moratorium on the death penalty, the author's sentence had not been commuted. Despite having previously been moved from death row to a facility for long-term prisoners, the author had recently been moved back to death row. His status was unclear, and the Committee did not know whether his death sentence remained pending. He suggested that the Committee should reiterate its decision and consider the State party's response unsatisfactory. The dialogue could therefore be considered to be ongoing.

...

The meeting rose at 1.05 p.m.



**VI. FOLLOW-UP ACTIVITIES UNDER THE OPTIONAL PROTOCOL**

187. In July 1990, the Committee established a procedure for the monitoring of follow-up to its Views under article 5, paragraph 4, of the Optional Protocol, and created the mandate of the Special Rapporteur for follow-up to Views to this effect. Mr. Ando has been the Special Rapporteur since March 2001 (seventy-first session).

188. In 1991, the Special Rapporteur began to request follow-up information from States parties. Such information had been systematically requested in respect of all Views with a finding of a violation of Covenant rights; 429 Views out of the 547 Views adopted since 1979 concluded that there had been a violation of the Covenant.

189. All attempts to categorize follow-up replies by States parties are inherently imprecise and subjective: it accordingly is not possible to provide a neat statistical breakdown of follow-up replies. Many follow-up replies received may be considered satisfactory, in that they display the willingness of the State party to implement the Committee's recommendations or to offer the complainant an appropriate remedy. Other replies cannot be considered satisfactory because they either do not address the Committee's Views at all or relate only to certain aspects of them. Some replies simply note that the victim has filed a claim for compensation outside statutory deadlines and that no compensation can therefore be paid. Still other replies indicate that there is no legal obligation on the State party to provide a remedy, but that a remedy will be afforded to the complainant on an *ex gratia* basis.

190. The remaining follow-up replies challenge the Committee's Views and findings on factual or legal grounds, constitute much-belated submissions on the merits of the complaint, promise an investigation of the matter considered by the Committee or indicate that the State party will not, for one reason or another, give effect to the Committee's recommendations.

191. In many cases, the Secretariat has also received information from complainants to the effect that the Committee's Views have not been implemented. Conversely, in rare instances, the petitioner has informed the Committee that the State party had in fact given effect to the Committee's recommendations, even though the State party had not itself provided that information.

192. The present annual report adopts the same format for the presentation of follow-up information as the last annual report. The table below displays a complete picture of follow-up replies from States parties received up to 7 July 2008, in relation to Views in which the Committee found violations of the Covenant. Wherever possible, it indicates whether follow-up replies are or have been considered as satisfactory or unsatisfactory, in terms of their compliance with the Committee's Views, or whether the dialogue between the State party and the Special

Rapporteur for follow-up to Views continues. The notes following a number of case entries convey an idea of the difficulties in categorizing follow-up replies.

193. Follow-up information provided by States parties and by petitioners or their representatives subsequent to the last annual report (A/62/40) is set out in annex VII to volume II of the present annual report.

...						
Zambia (7)	314/1988, <i>Bwalya</i> A/48/40	X A/59/40*	X			
	*Note: According to this report, information was provided in 1995 (unpublished). The State party stated on 12 July 1995 that compensation had been paid to the author, that he had been released and that the matter was closed.					
	326/1988, <i>Kalenga</i> A/48/40	X A/59/40*	X			
	*Note: According to this report, information was provided in 1995 (unpublished). The State party stated that compensation would be paid to the author. In a subsequent letter from the author, dated 4 June 1997, he states that he was unsatisfied with the sum offered and requested the Committee to intervene. The Committee replied that it was not within its remit to contest or re-evaluate the amount of compensation that was offered and that it would decline to intervene with the State party.					
Zambia ( <i>cont'd</i> )	390/1990, <i>Lubuto</i> A/51/40	X A/62/40			X	X
	768/1997, <i>Mukunto</i> A/54/40	X A/56/40, A/57/40, A/59/40 CCPR/C/80/FU/1	X A/59/40			
	821/1998, <i>Chongwe</i> A/56/40	X A/56/40, A/57/40, A/59/40, A/61/40				X

	856/1999, <i>Chambala</i> A/58/40	XA/62/40			X	X
	1132/2002, <i>Chisanga</i> A/61/40	X A/61/40, A/63/40				X

*Annex VII*

*FOLLOW UP OF THE HUMAN RIGHTS COMMITTEE ON INDIVIDUAL COMMUNICATIONS UNDER THE OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS*

This report sets out all information provided by States parties and authors or their counsel since the last Annual Report (A/62/40).

...

*State party* *ZAMBIA*

*Case* *Chisanga, 1132/2002*

*Views adopted on* 18 October 2005

*Issues and violations found* Right to life, ineffective remedy on appeal and ineffective remedy with respect to commutation - articles 14, paragraph 5 together with articles 2, 7, 6, paragraph 2, and 6, paragraph 4, together with article 2.

*Remedy recommended* To provide the author with a remedy, including as a necessary prerequisite in the particular circumstances, the commutation of the author's death sentence.

*Due date for State party response* 9 February 2006

*Date of State party's response* 27 May 2008 (previously responded on 17 January 2006)

*State party response* On 17 January 2006, the State party provided its follow-up response. As to the author's sentence, the State party stated that it had provided the Committee with the Supreme Court judgement dated 5 June 1996, which upheld the sentence of death for aggravated robbery and also convicted the accused to an additional 18 years on the count of attempted murder. Therefore, Zambia's view is that, if the sentence clearly indicates two different counts

and two different sentences given for each count respectively, there can be no confusion. The State party quoted from section 294 of its Penal Code and affirmed that the Supreme Court cannot reduce the sentence of death if it finds that the offence contained in Section 294 (2) - namely the felony of aggravated robbery where the offensive weapon or instrument is a firearm, or where the offensive weapon or instrument is not a firearm and grievous harm is done to any person in the course of the offence - was committed.

The State party acknowledged the “possibility” that the complainant may have been transferred from death row to the long-term section of the prison. It explained that this constitutes “deterrent sentencing”, which means that the convict is required to perform the shorter sentence before being subjected to the more severe one when sentenced on more than one count. It affirms that “deterrent sentencing” is a recognized form of punishment under the common law system and that, therefore, Zambian courts are within their mandates when imposing such sentences.

The State party affirmed that the right to appeal in its judicial system is not only guaranteed under the Constitution but is also effectively implemented, because in the offences of treason, murder and aggravated robbery (carrying the death penalty) an accused person is, without discrimination, automatically granted the right to appeal to the Supreme Court by the High Court. Regarding the communication of the Master of the Supreme Court that purportedly reduced the complainant’s sentence, it states that the communication may have been conveying the sentence by the Supreme Court for the count of attempted murder.

The State party stated that the accused was taken to the long-term section of the prison to serve the 18-year sentence for attempted murder. It added that there is no record that the author was taken back to death row after two years and requests him to prove this allegation. It considered that what constitutes one of the most serious crimes is a subjective test and depends upon a given society. In the State party crimes of murder or aggravated robbery are widespread and, therefore, not to consider them as serious crimes defeats fundamental rights such as the right to life, security and liberty of the person. Zambia further states that the Committee’s suggestion that since the victim did not die the

complainant should not be sentenced to death is an affront to the very essence of human rights.

The State party submits that there is a Presidential decree giving amnesty to all prisoners on death row. What the President is said to have declared publicly is that he will not sign any death warrants during his term. It further affirms that prisoners can still apply for clemency according to the terms of the Constitution. Such applications are dealt with by the "Committee on the Prerogative of Mercy" chaired by the Vice-President. No death sentence has been carried out since 1995, and there is a moratorium on the death penalty in Zambia.

On 27 May 2008, the State party provided another copy of the Supreme Court judgement of 5 June 1996, as well as the notification of result of final appeal, both of which indicate that the author's appeal against the death penalty was dismissed and his death sentence confirmed and that the author was also sentenced to 18 years imprisonment. The State party provides no explanation of the reason behind the re-submission of these documents.

*Author's response*

None

*Committee's Decision*

The Committee reiterates its decision set out in its annual report A/61/40, that the State party's argument on admissibility should have been included in its comments on the communication prior to consideration by the Committee, and that it regards the State party's response as unsatisfactory and considers the follow-up dialogue ongoing.

**VI. FOLLOW UP ACTIVITIES UNDER THE OPTIONAL PROTOCOL**

230. In July 1990, the Committee established a procedure for the monitoring of follow-up to its Views under article 5, paragraph 4, of the Optional Protocol, and created the mandate of the Special Rapporteur for follow-up on Views to this effect. Ms. Ruth Wedgwood has been the Special Rapporteur since July 2009 (ninety-sixth session).

231. In 1991, the Special Rapporteur began to request follow-up information from States parties. Such information had been systematically requested in respect of all Views with a finding of a violation of Covenant rights; 543 Views out of the 681 Views adopted since 1979 concluded that there had been a violation of the Covenant.

232. All attempts to categorize follow-up replies by States parties are inherently imprecise and subjective: it accordingly is not possible to provide a neat statistical breakdown of follow-up replies. Many follow-up replies received may be considered satisfactory, in that they display the willingness of the State party to implement the Committee's recommendations or to offer the complainant an appropriate remedy. Other replies cannot be considered satisfactory because they either do not address the Committee's Views at all or relate only to certain aspects of them. Some replies simply note that the victim has filed a claim for compensation outside statutory deadlines and that no compensation can therefore be paid. Still other replies indicate that there is no legal obligation on the State party to provide a remedy, but that a remedy will be afforded to the complainant on an *ex gratia* basis.

233. The remaining follow-up replies challenge the Committee's Views and findings on factual or legal grounds, constitute much belated submissions on the merits of the complaint, promise an investigation of the matter considered by the Committee or indicate that the State party will not, for one reason or another, give effect to the Committee's recommendations.

234. In many cases, the Secretariat has also received information from complainants to the effect that the Committee's Views have not been implemented. Conversely, in rare instances, the petitioner has informed the Committee that the State party had in fact given effect to the Committee's recommendations, even though the State party had not itself provided that information.

235. The present annual report adopts the same format for the presentation of follow-up information as the last annual report. The table below displays a complete picture of follow-up replies from States parties received up to the ninety-sixth session (13-31 July 2009), in relation to Views in which the Committee found violations of the Covenant. Wherever possible, it indicates whether follow-up replies are or have been considered as satisfactory or unsatisfactory, in terms of their compliance with the Committee's Views, or whether the dialogue between the State party



and the Special Rapporteur for follow-up on Views continues. The notes following a number of case entries convey an idea of the difficulties in categorizing follow-up replies.

236. Follow-up information provided by States parties and by petitioners or their representatives subsequent to the last annual report (A/63/40) is set out in annex IX to volume II of the present annual report.

...						
Zambia (7)	314/1988, <i>Bwalya</i> A/48/40	X A/59/40*	X			
	*Note: According to this report, information was provided in 1995 (unpublished). The State party stated on 12 July 1995 that compensation had been paid to the author, that he had been released and that the matter was closed.					
	326/1988, <i>Kalenga</i> A/48/40	X A/59/40*	X			
	*Note: According to this report, information was provided in 1995 (unpublished). The State party stated that compensation would be paid to the author. In a subsequent letter from the author, dated 4 June 1997, he states that he was unsatisfied with the sum offered and requested the Committee to intervene. The Committee replied that it was not within its remit to contest or re-evaluate the amount of compensation that was offered and that it would decline to intervene with the State party.					
	390/1990, <i>Lubuto</i> A/51/40	X A/62/40			X	X

	768/1997, <i>Mukunto</i> A/54/40	X A/56/40, A/57/40, A/59/40CCPR/C/	X A/59/40			
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		80/FU/1				
...						

*A/64/40 vol. II (2009)*

...

*Annex IX*

*Follow-up of the Human Rights Committee on individual communications under the Optional Protocol to the International Covenant on Civil and Political Rights*

This report sets out all information provided by States parties and authors or their counsel since the last annual report (A/63/40).

...

<i>State party</i>	<i>Zambia</i>
<i>Case</i>	<i>Chongwe, 821/1998</i>
<i>Views adopted on</i>	25 October 2000
<i>Issues and violations found</i>	Articles 6, paragraph 1, and 9, paragraph 1 - Attempted murder of the chairman of the opposition alliance.
<i>Remedy recommended</i>	Adequate measures to protect the author's personal security and life from threats of any kind. The Committee urged 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.
<i>Due date for State party response</i>	8 February 2001
<i>Date of State party response</i>	The State party had responded on 10 October and 14 November 2001, and 28 December 2005.
<i>State party response</i>	In 2001, the State party had contended that the Committee had not indicated the quantum of damages payable and provided

copies of correspondence between its Attorney-General and the author, in which the author was provided assurances that the State

party would respect his right to life and invited him to return to its territory. As to the issue of compensation, the Attorney-General indicated to the author that this would be dealt with at the conclusion of further investigations into the incident, which had been hindered by the author's earlier refusal to cooperate. By letter of 28 February 2002, the State party noted that the domestic courts could not have awarded the quantum of damages sought, that the author had fled the country for reasons unrelated to the incident in question, and that, while the Government saw no merit in launching a prosecution, it was open to the author to do so. By note verbale of 13 June 2002, the State party reiterated its position that it was not bound by the Committee's decision as domestic remedies had not been exhausted. The author chose to leave the country of his own will, but remained at liberty to commence proceedings even in his absence. In any event, the new President had confirmed to the author that he was free to return. Indeed the State hoped that he would do so and then apply for legal redress. Mr. Kaunda, who was attacked at the same time as the author, is said to be a free citizen carrying on his life without any threat to his liberties.

On 28 December 2005, the State party provided the following information. It stated that it had offered the author 60,000 US dollars on a without prejudice basis. The author had rejected the offer, which is more than adequate under Zambian law, particularly in light of the fact that Zambia is one of the 49 countries classified by the United Nations as Least Developed Countries. In spite of the offer, the author is still at liberty to commence legal proceedings in the Zambian Courts over this matter. As an act of good faith, the Zambian Government will waive the statute of limitations of his case and allow this matter to be heard in courts of law.

*Author's comments*

The Committee will recall that, as set out in the March 2003 follow-up report, the author had referred to the State party's failure to provide him with a remedy on 5 and 13 November 2001.

In March 2006 (letter undated), the author responded to the State party's submission. It appeared that the author had returned to Zambia in 2003. He submits that he does not intend to make any new claims in the Zambian courts. Although he recognizes the efforts being made by the judiciary to improve he states that the

problems are not yet solved. Thus, he would have no confidence that a claim would be handled appropriately by the courts. To begin such a complaint nearly 10 years after the incident would be useless. It would be impossible to conduct such an investigation on his own and would fear for his safety in doing so. In any event, he is not interested in finding the particular "minion of the Zambian Government" who tried to kill him.

The author submits that the State party has not implemented the Views and has not provided him with security. He submits that the Government made no effort to help him and his family resettle from Australia back to Zambia and refers to the offer of compensation as "petty cash" which he is obliged to receive on a "like it or lump it basis" . He says that he has no intention of negotiating with the Zambian Government on the basis of the State party's response of 28 December 2005.

On 15 July 2008, the author provided an update on his case. He refers to a meeting he had with the Attorney General in April 2008, during which they discussed the payment of damages and the Attorney-General's wish to have the matter finalized. According to the author, over the years certain members of the Government have blocked the payment of compensation for the violations found by the Committee. He is of the view that the intention of the State party is to delay this matter, as his rights to compensation will cease upon his death - he is now approaching his seventieth birthday.

*Committee's Decision*

The follow-up dialogue is ongoing.

*Case*

*Chisanga, 1132/2002*

*Views adopted on*

18 October 2005

*Issues and violations found*

Right to life, ineffective remedy on appeal and ineffective remedy with respect to commutation - article 14, paragraph 5, together

with articles 2, 7, 6, paragraph 2, and 6, paragraph 4, together with article 2.

<i>Remedy recommended</i>	To provide the author with a remedy, including as a necessary prerequisite in the particular circumstances, the commutation of the author's death sentence.
<i>Due date for State party response</i>	9 February 2006
<i>Date of State party response</i>	27 May 2008 (previously responded on 17 January 2006)
<i>State party response</i>	<p>The Committee will recall that on 17 January 2006, the State party had provided its follow-up response, in which it argued extensively on the admissibility of the communication (see annual report A/61/40, Vol. II, annex V).</p> <p>It also submitted that the President had declared publicly that he would not sign any death warrants during his term in office. No death sentence has been carried out since 1995, and there is a moratorium on the death penalty in Zambia.</p>
<i>Author's comments</i>	On 12 November 2008, the author's wife informed the Committee that in August her husband's death sentence had been commuted to life imprisonment. Both his wife and the author himself have been petitioning the office of the President from 2001 to 2007 requesting a pardon and ask the Committee for its assistance in this regard.
<i>Committee's Decision</i>	<p>The Committee will recall that it had decided (annual report A/61/40, vol. II), that the State party's arguments on admissibility should have been included in its comments on the communication prior to consideration by the Committee, that it regarded the State party's response as unsatisfactory and considers the follow-up dialogue ongoing.</p> <p>The Committee decided that it would consider the issue of the commutation of the author's death sentence at its next session when a Rapporteur on follow-up would be appointed.</p>





CCPR, CCPR/C/SR.2712 (2010)

Human Rights Committee  
Ninety-eighth session

Summary record (partial) of the 2712<sup>th</sup> meeting  
Held at Headquarters, New York,  
on Thursday 25 March 2010, at 3pm

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*Follow-up on views under the Optional Protocol*

...

2. *Ms. Wedgwood*, speaking as Special Rapporteur for follow-up on Views under the Optional Protocol, introduced the follow-up progress report, which included information received since the Committee's 97th session.

...

13. Turning to case No. 1132/2002 (***Chisanga v. Zambia***), she said that the Committee might find it no longer necessary to consider the matter under the follow-up procedure, given that commutation of the author's death sentence to life imprisonment had resolved what had essentially been framed as a death penalty complaint.

14. **Sir Nigel Rodley** said that to him, the wording of the recommended remedy seemed unusual; by stating that commutation was a necessary prerequisite to a remedy, it implied that some other kind of remedy in addition might have been appropriate as well.

15. **Ms. Wedgwood** said that she would review the case, bearing that in mind. However, it would be necessary for the Committee to consider systematically its approach to damages in cases where the author's primary concern was avoiding capital punishment, namely by keeping an account of how similar cases had been treated. To that end, she would ask the Secretariat to compile available records of cases involving commutation of a death sentence.

16. **The Chair** said that he took it that the passage in question would be reworded and that the Committee approved the action recommended on the case involving Zambia.

17. *The recommendations contained in the follow-up progress report of the Committee on individual communications were approved.*

*The discussion covered in the summary record ended at 3.40 p.m.*

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*Chapter VI. Follow-up on individual communications under the Optional Protocol*

202. The present chapter sets out all information provided by States parties and authors or their counsel since the last annual report (A/64/40).

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<i>State party</i>	<i>Zambia</i>
<i>Case</i>	<i>Chongwe, 821/1998</i>
<i>Views adopted on</i>	25 October 2000
<i>Issues and violations found</i>	Articles 6, paragraph 1, and 9, paragraph 1 - Attempted murder of the chairman of the opposition alliance.
<i>Remedy recommended</i>	Adequate measures to protect the author's personal security and life from threats of any kind. The Committee urged 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 injuring of the author, the remedy should include damages to Mr. Chongwe.
<i>Due date for State party response</i>	8 February 2001
<i>Date of State party response</i>	10 October and 14 November 2001, 28 February and 13 June 2002, 28 December 2005, 2 January 2009
<i>State party response</i>	The State party has responded on 10 October and 14 November 2001. It contended that the Committee had not indicated the quantum of damages payable and provided copies of correspondence between its Attorney-General and the author, in

which the author was provided assurances that the State party would respect his right to life and invited him to return to its

territory. As to the issue of compensation, the Attorney-General indicated to the author that this would be dealt with at the conclusion of further investigations into the incident, which had been hindered by the author's earlier refusal to cooperate.

By letter of 28 February 2002, the State party noted that the domestic courts could not have awarded the quantum of damages sought by the author, that he had fled the country for reasons unrelated to the incident in question, and that, while the Government saw no merit in launching a prosecution, it was open to the author to do so.

By note verbale of 13 June 2002, the State party reiterated its position that it was not bound by the Committee's decision as domestic remedies had not been exhausted. The author chose to leave the country of his own will, but remained at liberty to commence proceedings even in his absence. In any event, the new President had confirmed to the author that he was free to return. Indeed the State hoped that he would do so and then apply for legal redress. Mr. Kaunda, who was attacked at the same time as the author, is said to be a free citizen carrying on his life without any threat to his liberties.

On 28 December 2005, the State party stated that it had offered the author US\$ 60,000 on a without-prejudice basis. The author had rejected the offer, which is more than adequate under Zambian law, particularly in the light of the fact that Zambia is one of the 49 countries classified by the United Nations as least developed countries. In spite of the offer, the author is still at liberty to commence legal proceedings in the Zambian Courts over this matter. As an act of good faith, the Government of Zambia will waive the statute of limitations of his case and allow this matter to be heard in courts of law.

On 2 January 2009, the State party denied that there is any deliberate policy of discrimination against the author and submitted that the Attorney-General's Chambers was working towards an agreed sum with lawyers appointed by the author.

*Author's comments*

The author had referred to the State party's failure to provide him with a remedy on 5 and 13 November 2001.

In March 2006 (letter undated), the author responded to the State party's submission. It appeared from this letter that he had returned to Zambia in 2003. He submitted that he did not intend to make any new claims in the Zambian courts, as he would have no confidence that a claim would be handled appropriately. To begin such a complaint nearly 10 years after the incident would be useless. It would be impossible to conduct such an investigation on his own and he would fear for his safety in doing so. In any event, he was not interested in finding the particular "minion of the Zambian Government" who tried to kill him. He submitted that the Government had made no effort to help him and his family resettle from Australia back to Zambia and refers to the offer of compensation as "petty cash" which he is obliged to receive on a "like it or lump it basis". He says that he has no intention of negotiating with the Government of Zambia on the basis of the State party's response of 28 December 2005.

On 9 February 2009, the author submits that he filed a complaint before the Judicial Complaints Authority regarding discrimination against him by the Supreme Court. This relates to a hearing in 2008 and is unrelated to the case in question.

He also submits that he did indeed meet with the Attorney-General in April 2008 on the issue of compensation and subsequently followed up with a letter to the Attorney-General indicating how much he would be prepared to settle for in this regard. The receipt of this letter was not confirmed by the Attorney-General and no correspondence has been received from him by the author. However, a friend who assists the author received a letter from the Attorney-General on 27 November 2008 requesting him to provide a figure of how much compensation the author would settle for. According to the author, the Attorney-General is already aware of the amount requested, and the author implies that the Attorney-General is just attempting to delay the finalization of this matter.

*Committee's Decision*

The follow-up dialogue is ongoing.

<i>Case</i>	<i>Chisanga, 1132/2002</i>
<i>Views adopted on</i>	18 October 2005
<i>Issues and violations found</i>	Right to life, ineffective remedy on appeal and ineffective remedy with respect to commutation - articles 14, paragraph 5, together with articles 2; 7; 6, paragraph 2; and 6, paragraph 4, together with article 2.
<i>Remedy recommended</i>	To provide the author with a remedy, including as a necessary prerequisite in the particular circumstances, the commutation of the author's death sentence.
<i>Due date for State party response</i>	9 February 2006
<i>Date of State party response</i>	17 January 2006, 17 November 2009
<i>State party response</i>	<p>The Committee will recall that on 17 January 2006, the State party had provided its follow-up response, in which it argued extensively on the admissibility of the communication (see annual report, A/61/40). It also submitted that the President had declared publicly that he would not sign any death warrants during his term in office. No death sentence has been carried out since 1995, and there is a moratorium on the death penalty in Zambia.</p> <p>On 17 November 2009, the State party clarified that on 29 July 2007, the author's death sentence was commuted to life imprisonment under article 59 of the Constitution which relates to the President's prerogative of mercy.</p>
<i>Author's comments</i>	On 12 November 2008, the author's wife informed the Committee that in August her husband's death sentence had been commuted to life imprisonment. Both his wife and the author himself have been petitioning the office of the President from 2001 to 2007 requesting a pardon and ask the Committee for its assistance in this regard.

*Committee's Decision*

The Committee decides that, given confirmation both from the author and the State party that the author's death sentence has been commuted to life imprisonment, the Committee does not consider it necessary to consider this matter any further under the follow-up procedure.

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