

## HUMAN RIGHTS COMMITTEE

### Mukunto v. Zambia

Communication N° 768/1997

23 July 1999

CCPR/C/66/D/768/1997

### VIEWS

*Submitted by: Chisala Mukunto*

*Alleged victim: The author*

*State party: Zambia*

*Date of communication: 1 February 1997*

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

Meeting on 23 July 1999

Having concluded its consideration of communication No. 768/1997 submitted to the Human Rights Committee by Mr. Chisala Mukunto under the Optional Protocol to the International Covenant on Civil and Political Rights,

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

Adopts the following:

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

1. The author of the communication is Chisala Mukunto, a Zambian citizen. He claims to be a victim of a violation of his human rights by Zambia. Both, the International Covenant on Civil and Political Rights and its first Optional Protocol entered into force for Zambia on 10 April 1984.

### The facts as submitted by the author

2.1 The author, who was born on 20 March 1942, was arrested on 2 August 1979, and kept in detention until he was charged, in April 1980, with the publication, possession and distribution of seditious publications. He was acquitted by the Magistrate Court on 12 December 1980 but continued to be illegally detained until 24 June 1981, when his release was ordered by the High Court upon his application for habeas corpus.

2.2 In 1982, the author filed a petition for compensation for unlawful detention, ill-treatment and inhuman treatment.<sup>1</sup> The judge who was dealing with the case, died in 1986. The case was then transferred to another judge, who also died, in 1990, before delivering judgment. A hearing was scheduled to be heard on 31 July 1991 before a new judge. The author states that at the hearing, he was informed by the judge that he was not ready to proceed and that he would be informed about a date for a hearing. According to the author, he has never heard anything since.

### The complaint

3. The author contends that the State party, by denying him a hearing of his claim for compensation, continues its previous violation of articles 7, 9, 10, 14, 19 and 26.

### State party's submission and the author's comments there on:

4.1 By submission dated 9 April 1998, the State party contends that the circumstances under which the author claimed compensation for his illegal detention in 1979 have been superseded by his claim for compensation for the conditions of his second detention in 1987.

4.2 The State party further argues that "the non-delivery of judgement in the case at hand was not out of design but due to circumstances beyond the control of the State party, as already referred by the author, the Judge seized of the matter died before he could deliver judgment, which called for the relocation of the matter, this was done". It further points out that while the matter was still subjudice, the author was detained under a presidential detention order dated 24 February 1987 allegedly for harbouring an escapee from lawful custody.

4.3 The State party contends that the author brought out a constitutional petition to the High Court to obtain his liberty and damages (for his second detention of 1987). Since he was not totally successful in his petition he appealed the decision of the High Court to the Supreme Court. The State party relies on this decision of the Supreme Court to contend that there has been no breach of the Covenant in respect to the author's alleged ill-treatment while in detention. It further contends that since this judgment covers conditions of detention (1987) the author's claim for damages for the conditions of his detention in 1979 have been subsumed into the current case. The State party holds that due to its economic constraints it can not be held accountable for the conditions of detention the author suffered since these were common to all prisoners and the author was not specifically singled out.

5. The author in a letter dated 18 May 1998, contests the State party's attempt to confuse both cases, and reiterates his claim that his case for compensation for the illegal detention he suffered in 1979, has been unduly prolonged, consequently he has been denied access to court, in violation of article 14, paragraph 1, of the Covenant.

Issues and proceedings before the Committee:

6.1 Before considering any claim contained in a communication, the Human Rights Committee must, in accordance with rule 87 of its rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

6.2 The Committee has ascertained as required under article 5, paragraph 2 (a), of the Optional Protocol that the same matter is not being examined under another procedure of international investigation or settlement.

6.3 The Committee observes that the State party has not raised objections to the admissibility of the communication. Notwithstanding this, the Committee itself must verify if a communication complies with the admissibility criteria. In this respect and even though the State party has not raised the issue the Committee considers that it is precluded *ratione temporis* from considering the author's allegations in respect of the actual illegal detention from 1979 to 1981, since the Covenant only came into force for Zambia on 10 April 1984. Consequently, the claim under articles 7, 9, 10, 19 and 26 of the Covenant are inadmissible. The Committee decides that the rest of the case is admissible and proceeds, without further delay, to an examination of the substance of the author's claims, in the light of all the information made available to it by the parties, as required by article 5, paragraph 1, of the Optional Protocol.

6.4 With regard to the author's claim that he has been denied access to court to claim compensation for the illegal detention he suffered in 1979, the Committee notes that the author filed a complaint for compensation before the Supreme Court in 1982 and 1985.<sup>2</sup> The author's claim relates to his rights and obligations in a suit at law and therefore falls within the ambit of article 14, paragraph 1, of the Covenant. It is now 1999 and the author's case still has not been adjudicated on. Neither the author's claim nor the facts of the case have been refuted by the State party, which instead has put forward reasons for the non payment of compensation for the detention the author suffered in 1987 including alleged economic difficulties to provide adequate conditions to all detained persons. It is the Committee's reiterated jurisprudence that the rights set forth in the Covenant constitute minimum standards which all States parties have agreed to observe.<sup>3</sup> In this respect, the Committee considers that the author's rights under article 14 of the Covenant have not been respected.

7. 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 article 14, paragraph 1, of the Covenant.

8. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide Mr. Mukunto with an effective remedy, entailing compensation for the

undue delay in deciding his compensation claim for the illegal detention he suffered in 1979. The State party is under an obligation to ensure that similar violations do not occur in the future.

9. Bearing in mind that, by becoming a State party to the Optional Protocol, the State party has recognized 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 recognized 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 90 days, information about the measures taken in connection with the Committee's Views. The State party is also requested to publish the Committee's Views.

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\*/ The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Nisuke Ando, Mr. Prafullachandra N. Bhagwati, Ms. Christine Chanet, Lord Colville, Ms. Elizabeth Evatt, Ms. Pilar Gaitán de Pombo, Mr. Eckart Klein, Mr. David Kretzmer, Mr. Rajsoomer Lallah, Mr. Martin Scheinin, Mr. Roman Wieruszewski, Mr. Maxwell Yalden and Mr. Abdallah Zakhia.

1/ From the documents in the file it appears that the author made a submission, for compensation, to the High Court on 18 November 1985.

2/ See footnote No.1

3/ Communication N. 390/1990 (Lubuto v. Zambia) Views adopted on 30 June 1994.

[Adopted in English, French and Spanish, the English text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]