



## Joyce Nawila Chiti v. Zambia

Communication no. 1303/2004

**Country:** Zambia

**Region:** Africa

**Year:** 2012

**Court:** United Nations Human Rights Committee United Nations Human Rights Committee

**Health Topics:** Chronic and noncommunicable diseases, Diet and nutrition, Health care and health services, HIV/AIDS, Medicines, Prisons

**Human Rights:** Freedom from discrimination, Freedom from torture and cruel, inhuman or degrading treatment, Freedom of movement and residence, Right to due process/fair trial, Right to education, Right to family life, Right to health, Right to liberty and security of person, Right to life, Right to privacy

### Facts

On 28 October 1997, JC (a military officer) was arrested by Zambian police for an attempted coup d'état. He was severely tortured and charged with treason. While being tortured, he was forced to sign false confessions and to implicate other military officials. Because of the torture, he was hospitalized at various times. On 31 October 1997, JC's wife and five children were forcibly and illegally evicted from their home and almost all of their possessions were taken away and never recovered. JC's wife and children were forcibly and illegally evicted from six different homes between October 1997 and November 1998. JC's wife and three youngest children fled to Namibia and lived in dire conditions from December 1998 to October 1999. JC's children were unable to attend school because they carried their father's name.

In November 1997, JC, represented by a private law firm, sued Zambia. The court ordered Zambia to provide compensation to JC, his wife and their children for the illegal eviction, loss of property and for the torture suffered by JC. There was a dispute about whether Zambia ever paid any compensation, but there was no dispute that no compensation was paid before September 2005.

JC was convicted of treason and sentenced to death, however, due to his poor health his death sentence was cancelled and the President of Zambia pardoned him. JC was released in June 2004 and died on 18 August 2004. From 1997 to 2004, JC was detained in inhuman conditions with inadequate food and inadequate medical attention.

JC's wife filed a communication with the HRC on 26 July 2004 asserting numerous violations of the ICCPR. Zambia challenged this communication on the grounds of non-exhaustion of domestic remedies, denied that the torture suffered by JC contributed to his death and denied that Zambia failed to provide court-ordered compensation.

[Adapted from INTERIGHTS summary, with permission]

### Decision and Reasoning

The Committee held that:

(1) it was not precluded from considering the communication based on any delay in receiving information from JC's wife;

(2) the communication was admissible as to the allegations that JC was arrested, tortured and forced to sign a confession, allegations that the torture and imprisonment contributed to JC's death, and as to allegations of the disruption of JC's wife's family life, anguish, and lack of remedy for the torture, detention, and the death of her husband;

(3) Zambia failed to protect the life of JC by inflicting torture and detaining him in inhuman conditions;

(4) the inhuman conditions of JC's detention violated Article 7 and Article 2, Paragraph 3 of the International Convention on Civil and Political Rights ("ICCPR");

(5) the anguish and distress of JC's wife caused by the eviction from her home and by JC's arrest, torture, and the conditions of his detention violated Article 7 of the ICCPR;

(6) Zambia violated Article 14, Paragraph 3(g), of the ICCPR by obtaining a confession under conditions of torture;

(7) the illegal eviction and destruction of belongings had a significant impact on JC's wife's family life and infringed her family rights under Article 17 and under Article 23, Paragraph 1 (alone and read in conjunction with Article 2, Paragraph 3) of the ICCPR;

(8) there was a violation of Article 6, Article 7 (alone and read in conjunction with Article 2, Paragraph 3), Article 14, Paragraph 3(g), Article 17, Article 23, Paragraph 1 (alone and in conjunction with Article 2, Paragraph 3) of the ICCPR;

(9) Zambia was under an obligation to provide an effective remedy to JC, including (i) a thorough and effective investigation into the torture suffered by JC; (ii) communication of the results of the investigation to JC's wife; (iii) prosecuting the persons responsible for the torture; and (iv) appropriate compensation.

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### Decision Excerpts

"The Committee also notes that Mr. Chiti was HIV-positive and that he was allegedly detained in inhuman conditions, denied adequate food and a clean environment. The Committee notes in this regard that according to the author, these inhuman conditions of detention led to Mr. Chiti's premature death. In the light of his cancer and his HIV-positive condition, the denial of the necessary drugs and the torture and inhuman conditions of detention to which he was subjected, this claim seems plausible. The Committee notes that the State party limits itself to denying the causal link established by the author between the conditions of detention of her husband and his death, without providing further explanation. In the absence of rebuttal from the State party, the Committee concludes that the State party has failed to protect the life of Mr. Chiti in violation of article 6 of the Covenant." Paragraph 12.2.

"[T]he Committee further concludes that the torture inflicted on Jack Chiti, his poor conditions of detention with no adequate access to health care, the anguish he remained in for seven years before his sentence to death was quashed as well as the absence of a prompt, thorough and impartial investigation of the facts constitute a violation of article 7, alone and read in conjunction with article 2, paragraph 3, of the Covenant." Paragraph 12.3

"The Committee also takes note of the anguish and distress caused by the arrest, allegations of torture, poor conditions of the author's husband and the eviction from their home. It considers that the facts before it reveal a violation of article 7 of the Covenant with regard to author and her family." Paragraph 12.4.

"[T]he Committee notes the author's contention that on 10 November 1997, her husband was taken back to the police station headquarters where he had been allegedly tortured for nine days, and was forced to make a written statement implicating certain politicians in the alleged coup and sign the document. The Committee notes that the State party has not refuted this claim. . . . Domestic law must ensure that statements or confessions obtained in violation of article 7 of the Covenant are excluded from the evidence, except if such material is used as evidence that torture or other treatment prohibited by this provision occurred, and that in such cases the burden is on the State to prove that statements made by the accused have been given of their own free will. In light of the information before it, the Committee concludes to a violation of Mr. Chiti's rights under article 14, paragraph 3 (g), of the Covenant." Paragraph 12.6.

"[T]he Committee finds that the author's illegal eviction and the destruction of the family's personal belongings has had significant impact on the author's family life<sup>14</sup> and constitutes an infringement on her family's rights under articles 17 and 23, paragraph 1, of the Covenant, for which no effective redress was provided. The Committee concludes that the Chiti family's eviction and destruction of belongings amount to a violation of articles 17 and 23 read alone and in conjunction with article 2, paragraph 3, of the Covenant." Paragraph 12.8.