**Facts**

Chisanga, a Zambian citizen, was convicted of aggravated robbery in 1995 and sentenced to death; he was also convicted of attempted murder but not sentenced for it. Chisanga claimed that he was innocent and that his trial was unfair because he was convicted solely on the basis of one witness’s testimony. Evidence from the medical report was not presented, the weapon was not investigated for fingerprints, and his counsel was prevented from seeing him.

Chisanga appealed his conviction by the Ndola High Court to the Supreme Court. He received the first “notification of result of final appeal” in 1997, which stated that his death sentence had been commuted to 18 years imprisonment. In 2003, he received a letter from the Supreme Court that informed him that his appeal had been dismissed in 1999 and his death sentence had therefore been confirmed and he had been sentenced to an additional 18 years of imprisonment for the attempted murder charge. The state claimed that Chisanga’s death penalty was upheld in 1996 and that he was sentenced to an additional 18 years of imprisonment at the same time. Chisanga sent three petitions for clemency to the President in 2001, 2003 and 2004, but he never received a reply.

After receiving the 1997 decision, Chisanga was moved to the long-term section of the prison from the death-row section and worked as a carpenter. After two years, he was moved back to the death row section without being informed of the decision of his appeal until, 2003. He had been in prison for 11 years, on death row for 9 of those years; only those prisoners that had been on death row for more than 10 years were covered by Presidential amnesty.

Chisanga petitioned the Committee on Human Rights, alleging that his original trial was unfair, that he suffered inhuman treatment in prison due to the contradictory notifications he received concerning the outcome of his appeal, that the crime of aggravated robbery with use of a firearm is not one of the most serious crimes meriting the death penalty, and that the method of execution (death by hanging) constituted inhuman, cruel and degrading punishment. He did not invoke specific provisions of the International Covenant on Civil and Political Rights (â€œCovenantâ€), but it appeared that he was claiming that Zambia had violated articles 14(1) (right to fair trial), 14(2)(being presumed innocent), 14(3)(b) (opportunity to prepare defense), 14(5) (right of appeal), 2 (right to an effective remedy in relation to his right to appeal), 7 (freedom from cruel and inhuman treatment), 6(2) (right to life), and 6(4) (right to seek amnesty).

**Decision and Reasoning**

The Committee held that Zambia violated Chisanga’s right to appeal (article 14(5)) and his right to an effective remedy (article 2). The Committee reasoned that Zambia acted inconsistently with regard to the decision on Chisanga’s appeal of the death penalty: the state claimed that there was one judgment in 1996, yet Chisanga had two separate judgments, and he was moved from the death row to the long-term section of the prison in 1997, the year his judgment said his sentence was commuted. His transfer showed that he did not simply misunderstand the state’s decision.

The Committee also held that Zambia violated Chisanga’s right to be freed from cruel and inhuman treatment (article 7) by making him believe that his death sentence had been commuted to a prison term and then moving him back to the death row section without an explanation after two years, and only later explaining that his death sentence had not been commuted.
The Committee further found that Zambia’s imposition of the death penalty violated Chisanga’s right to life (article 6) because the crime of aggravated robbery with use of firearms was not a “most serious” crime allowing for the death penalty under article 6(2). This was consistent with a previous ruling by the Committee that aggravated robbery was not a crime that should receive the death penalty.

Moreover, the Committee held that Zambia violated Chisanga’s right to seek amnesty or commutation (protected by article 6(4) of the Covenant. The state did not grant him amnesty because he had not been on death row for 10 years, but Zambia was the one that removed him from death row for two years of his prison term, and had that not occurred, he would have been eligible for amnesty.

The Committee did not address the method of the execution by Zambia because it found that the death penalty imposed in this case was in violation of Chisanga’s right to life under article 6 and that Zambia had an obligation to commute the author’s death sentence to a lesser sentence under article 2(3)(a) of the Covenant. The Committee found that Chisanga had failed to show the domestic courts’ decisions were arbitrary or amounted to a denial of justice. Accordingly, the Committee did not analyze his claim under article 14(1) (right to a fair trial).

Finally, the Committee found that Chisanga had not presented evidence in support of his claims of violations under articles 14(2) (being presumed innocent) and 14(3)(b) (opportunity to prepare defense).

Decision Excerpts

“...to keep the author in doubt as to the result of his appeal, in particular by making him believe that his sentence had been commuted, only to inform him later that it was not, and by returning him to death row after two years in the long-term section, without an explanation on the part of the state, had such a negative psychological impact and left him in such continuing uncertainty, anguish, and mental distress as to amount to cruel and inhuman treatment.” Para. 7.3.

“...the Committee considers that the mechanism of mandatory capital punishment would deprive the author of the benefit of the most fundamental of rights, the right to life, without considering whether this exceptional form of punishment could be appropriate in his case. In the present case, the Committee notes that, although the victim of the crime was shot in the thigh, it did not result in loss of life and finds that the imposition of death penalty in this case violated the author’s right to life protected by article 6 of the Covenant.” Para. 7.4.