Facts

The communication is presented by Joyce Nawila Chiti on behalf of her late husband, Jack Chiti, and their five children.

Jack Chiti was a military officer who was arrested on 28 October 1997 as a suspect in an attempted coup d’état. He was allegedly detained in solitary confinement and held incommunicado at the police for 9 days, without food and legal representation. During this period he was subjected every night to regular hour-long beatings, repeated questioning, life threats and several ill-treatments, forcing him to sign statements implicating senior politicians in the coup. As a consequence of the torture inflicted, he was brought to a hospital where it was found that his eardrum had been perforated. In the same month the victim made a complaint to the Human Rights Commission, but when the commissioners attempted to see him he was hidden in another prison.

Two days after his arrest, security agents entered into the government flat the family was occupying and took all their belongings. The family was prevented to live there anymore. On six more occasions security agents forcibly and illegally evicted the family from different homes.

The State established a Commission of Inquiry to investigate the alleged infliction of torture on suspects of the coup, but the victim never received a copy of the report, which recommended that the family received compensation. The victim was also awarded compensation by a court for the illegal evictions, loss of personal effects and torture suffered. But the State refused to pay the compensation.

The victim was convicted of treason, in a trial that was continuously delayed, and sentenced to death. While in prison, he was diagnosed prostate cancer but could not afford the drugs and the prison did not provide them to him either, nor the high-protein diet recommended to slowing down the spread of cancer. He was HIV-positive and was denied adequate food, a cleaning environment and counseling. After 7 years, he was pardoned by the Zambian President and released on humanitarian grounds due to his poor health. He died two months later, in August 2004.

The family fled to Namibia and lived in a refugee camp for one year, but returned due to the victim’s illness.

Consideration of admissibility

Regarding the exhaustion of domestic remedies (Art.5§2 (b) OP), the Committee recalled its jurisprudence that the author must exhaust domestic remedies insofar as they appear to be effective and available (No. 10003/2001, P.L. v Germany, 2003 § 6.2). The State has also the duty to carry out investigations of the alleged infliction of torture but also to prosecute and punish those responsible (No. 1755/2008, El Hagag Jumaa v. Libya, 2012 §8.5). The Committee concluded that the State had not launched any investigation into the allegations of torture and eviction 16 years after its occurrence, and had only proposed the author a sum of money in the context of a friendly settlement,
which the author accepted, allegedly due to her dire situation. Thus the Committee found
that the application of the remedies was unreasonably prolonged.

Regarding the author’s claims under Art. 9 and 16, on the grounds that the victim was
placed under incommunicado for 9 days, the Committee found that, since there was no
information about whether or not the victim was brought before a judicial authority, they
were poorly substantiated. Regarding the allegation that the victim’s trial was unduly
delayed, the information provided was too general. The Committee did not examine
separately the claims regarding the author’s children, under Art. 24§1, because their
complete identity was not provided. Since the author left and came back to Zambia several
times, her claim under art. 12§1 was also inadmissible. Since there was no information
about the alleged discrimination, her claim under Art. 26§1 was also dismissed.

The Committee considered that the author’s allegations had been sufficiently
substantiated regarding art.2 §3, art.6, art.7, art.10 and 14§3 g) with regard to Jack Chiti
and in relation to art.2 §3; art.7; art.17; and art.23§1 of the Covenant with regard to the
author and her family.

**Consideration of merits**

**Art.6**: The Committee took note of the author’s allegations that Jack Chiti’s premature
death was due to the fact that he (i) was tortured following his arrest and, as a
consequence, he was transferred to a hospital due to an eardrum perforation; (ii)
while imprisoned, he was diagnosed with prostate cancer but could not afford the
drugs and the prison did not provide him with these drugs nor the high-protein diet
recommended for slowing down the spread of cancer; (iii) was HIV-positive and was
allegedly detained in inhuman conditions, denied adequate food and a clean
environment. The State denies the casual link without further explanation. In the
absence of rebuttal from the State, the Committee concluded that a violation of art. 6
took place.

**Art.7 and Art.2 §3**: The Committee concluded 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 7 years before his sentence to death was quashed and the absence
of a prompt, thorough and impartial investigation of the facts constituted a violation
of Art.7, alone and read in conjunction with Art.2 §3.

Also with regard to the author and her family, the anguish and distress caused by the
arrest, the torture, and the poor conditions of the author’s husband, as well as the
eviction from their home constituted a violation of Art. 7 (No. 1588/2007 *Benaziza v. *
*Algeria*, 2010, 9§6).

**Art. 14§3 g)**: The Committee took into consideration the allegations that the victim
was tortured and forced to make and sign a written statement implicating certain
politicians in the alleged coup. The State did not refute this claim. According to the
Committee “domestic law must ensure that statements or confessions obtained in
violation of article 7 of the Covenant are excluded from the evidence, (...) 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». Therefore, it found a violation of Art. 14§3g).

**Art. 17 and 23 read with art.2§3**: The Committee found that the author’s illegal
eviction from her home and six other places by State agents and the destruction of the
family’s personal belongings had a significant impact of their family life (No. 1799/2008, Georgopoulos et al. v Greece, 2010, §7.3) and was an infringement of Art. 17 and 23§1. Although compensation was awarded to the author by a national court on this account, the amount has not been attributed to her. Hence a violation of Arts. 17 and 23, read alone and in conjunction with Art. 2§3 was found.

Conclusions

The Committee found violations of Art.6, due to the premature death of the victim and the dire conditions in prison; Art.7 and Art.2 §3 due to the torture inflicted and the absence of investigations, Art. 14§3 g) due to confession obtained under duress, and Art. 17 and 23 read with art.2 §3; art.6 and art. 7, due to the illegal evictions and destruction of personal belongings. The State was requested to (i) carry out a thorough and effective investigation into the victim’s torture; (b) providing the author with detailed information on the results of its investigations; (c) prosecuting, trying, and punishing those responsible for the torture; and (d) providing appropriate compensation. The State party was reminded of its obligation to prevent similar violations in the future.

The Committee wishes to receive the information on follow-up from the State party within 180 days and requests the State party to publish its views.

Dissent/Concurrence

N/A