

REDRESS

Ending Torture. Seeking Justice for Survivors

UN HUMAN RIGHTS COMMITTEE

106TH SESSION

**THE FAILURE OF THE PHILIPPINES TO IMPLEMENT
VIEWS IN INDIVIDUAL COMMUNICATIONS**

Shadow Report

September 2012

A. SUMMARY

In the list of issues to be taken up in connection with the consideration of the fourth periodic report of the Philippines, the Human Rights Committee has asked the Philippines to respond to the following:

“Please indicate what procedures are in place for the implementation of the Committee’s Views under the Optional Protocol. Please indicate what concrete steps have been taken to implement the Committee’s Views adopted in respect of the State party in which the Committee found a violation of the Covenant.”¹

This submission addresses the Committee’s requests for information, and shows that in a number of cases no concrete steps have been taken to implement in good faith recommendations of the Committee in individual communications brought under the Optional Protocol.

In other cases some steps have been taken or proceedings completed but in all but one case these have either been the result of more general measures (such as the abolition of the death penalty), have been very delayed (in relation to proceedings already held by the Committee to be unduly delayed), have sought to reopen issues determined by the Committee, and/or have not been matched by other parts of the remedy recommended, such as compensation. As such, the Philippines has repeatedly failed to comply with its obligation to provide an effective remedy to those the Committee has recognised as victims of violations.

There do not appear to be clear mechanisms in place to ensure that the views of the Committee are implemented. In a number of cases the Philippines has left it to victims to seek the implementation of views through domestic legal processes, and in one case has formally resisted such claims,² essentially reopening the issues considered before the Committee and leading to further frustration and suffering by the victims. In other cases, where action to investigate and prosecute serious human rights violations has been required of the state, no action has been taken.

The Philippines, as signatory to the Covenant and the Optional Protocol, has the obligation to use whatever means lie within its power in order to give effect to the views issued by the Committee.³ Its failure to provide a remedy to those who the Committee has recognised as victims of violations of the Covenant is a systemic issue, and should be addressed at a policy level by the introduction of legislation designating clear responsibilities and mechanisms for the implementation of views adopted by UN bodies.

B. SURVEY OF IMPLEMENTATION OF VIEWS

REDRESS has collected information on the extent to which recommendations made by the Committee have been implemented in each of the twelve individual communications brought against the Philippines where violations have been found. As part of its research it has been in

¹ CCPR/C/PHL/Q/4, para.2.

² See the case of Albert Wilson, referred to in Section C below.

³CCPR/C/GC/33 (2008), para. 20.

contact with many representatives of authors of the communications,⁴ as well as referring to publicly-available materials including the Committee’s own annual reports.

A detailed table setting out our findings is set out below, and demonstrates that:

- in nine out of the twelve cases, effective remedies, in line with the Committee’s recommendation, have not yet been provided (although a remedy may now be in process in two further cases);
- the only remedy which has unequivocally been provided in any case is commutation of the death penalty (four cases), in connection with the general abolition of the death penalty in the Philippines in 2006; in two other cases court hearings have gone ahead as recommended by the Committee, but these have been far from ‘prompt’ as required;
- in four of the twelve petitions the Committee recommended investigations and prosecutions of suspects in relations to violations of the rights to life, liberty and freedom from torture, but only one case displays evidence of the beginnings of an impartial investigation capable of leading to prosecution;⁵
- in eight of the twelve petitions the Committee recommended the provision of compensation to the author/s, however there is no evidence of compensation having been provided in any case;
- victims attempting to seek a remedy through the courts following the issuance of the Committee’s views continue to face severe delays;
- the government has on more than one occasion reopened the merits of cases when victims have attempted to obtain redress for violations found by the Committee.⁶

A summary of the known status of implementation of communications decided in favour of the author in relation to the Philippines is set out below:

Author (Date of views)	Violation	Remedy ordered - Effective remedy, including:	Remedy provided	Contact with lawyer
Hernandez (2010)	2(3), 6(1)	<ul style="list-style-type: none"> • take effective measures to ensure that criminal proceedings are expeditiously completed and that all perpetrators are prosecuted, • full reparation, including adequate compensation • measures to ensure that such violations do not recur in the future. 	No. One suspect who was already being tried for the killing at the time of the Communication was subsequently acquitted, and charges against others held at the time were dismissed; prosecutions have not been brought or completed against other identified	Yes

⁴ For further specific information see Appendix One.

⁵ The case of *Pestaño & Pestaño v The Philippines* (2010). In another case – *Hernandez v The Philippines* (2010), criminal prosecutions which were underway at the time the communication was brought resulted in dismissal of charges and acquittal, and other identified suspects were not investigated and prosecuted in line with the Committee’s recommendation.

⁶ See for example, the most recent submissions of the government in the *Larrañaga* case, and the defence of the government in the *Wilson* case (provided to the Committee).

			suspects as recommended by the Committee. No reparation provided.	
Pestaño & Pestaño (2010)	2(3), 6(1), 9(1)	<ul style="list-style-type: none"> impartial, effective and timely investigation into the circumstances of their son's death prosecution of perpetrators adequate compensation measures to prevent similar violations in the future 	First step taken in January 2012, when the Ombudsman overturned previous Ombudsman's decision to dismiss the case; instead found probable cause to indict ten Naval officers for murder and ordered their dismissal from the Navy for grave misconduct (with the alternative if dismissal is no longer possible a fine of the equivalent of one year's salary).	Yes
Marcellana & Gumanoy (2008)	2(3), 6(1), 9(1)	<ul style="list-style-type: none"> initiation and pursuit of criminal proceedings to establish responsibility for the kidnapping and death of the victims payment of appropriate compensation measures of non-repetition 	No.	Yes
Lumanog & Santos (2008)	14(3)(c)	<ul style="list-style-type: none"> prompt review of their appeal before the Court of Appeal compensation for the undue delay 	Appeal finally denied September 2010. No compensation provided. Authors continue to seek executive clemency.	Yes
Pimentel et al (2007)	2007	<ul style="list-style-type: none"> compensation and a prompt resolution of their case on the enforcement of the US judgment in the State party ensure that similar violations do not occur in the future. 	Court proceedings still ongoing in the Philippines to enforce the judgment. No compensation provided.	Yes
Larrañaga (2006)	6(1), 7, 14(1),(2),(3)(b)-(e), (5)	<ul style="list-style-type: none"> commutation of death sentence early consideration for release on parole measures to prevent similar violations in the future 	Death penalty commuted to life imprisonment along with many others prior to issuance of Committee's views. Court order in 2007 recognised possibility of parole. Author remains in prison in Spain under a prisoner transfer agreement; author maintains release on parole requires steps to be taken by the Philippines. Anticipated release date 28 September 2034. Communication between the parties ongoing.	Yes
Rouse (2005)	14(1),(3)(c), (3)(e), 9(1) and 9(7)	<ul style="list-style-type: none"> adequate compensation, <i>inter alia</i> for the time of detention and imprisonment 	None known.	No
Rolando (2004)	6(1), 9(1)-(3), 14(3)(d)	<ul style="list-style-type: none"> commutation of death sentence avoid similar violations in the future 	Yes – death sentence commuted to <i>reclusion</i>	Yes

			<i>perpetua</i> at time of abolition of the death penalty in the Philippines (2006).	
Rayos (2004)	6(1), 14(3)(b)	<ul style="list-style-type: none"> • commutation of death sentence • avoid similar violations in the future 	Yes – death sentence commuted to <i>reclusion perpetua</i> at time of abolition of the death penalty in the Philippines (2006).	No
Wilson (2003)	7, 9(1)-(3), 10(1)-(2)	<ul style="list-style-type: none"> • violations of article 9 - the State party should compensate the author • violations of articles 7 and 10 - compensation due to the author should take due account both of the seriousness of the violations and the damage to the author caused • undertake a comprehensive and impartial investigation and draw the appropriate penal and disciplinary consequences for the individuals found responsible • refund to the author the moneys claimed from him for immigration fees and visa exclusion • all monetary compensation to be made available for payment to the author at the venue of his choice • avoid similar violations in the future 	State party asserts that investigations have been undertaken, but no prosecutions or disciplinary proceedings have taken place and no compensation has been provided. Proceedings seeking a remedy continue in Supreme Court, but these are being vigorously defended by the Government, including on the bases that the Covenant and Optional Protocol do not form part of Philippines law and the Philippines government is under no obligation to enforce or implement the Committee's decisions or determinations.	Yes
Ibao, Ibao & Ibao (2003)	6(1)	<ul style="list-style-type: none"> • commutation of death sentence • avoid similar violations in the future 	Yes - death sentence commuted to <i>reclusion perpetua</i> at time of abolition of the death penalty in the Philippines (2006).	Yes
Cagas, Butin & Astillero (2003)	9(3), 14(2), 14(3)(c)	<ul style="list-style-type: none"> • adequate compensation for time spent unlawfully in detention • ensure that the authors be tried promptly with all the guarantees set forth in article 14 or, if this is not possible, released 	None known.	No

C. SPECIFIC DISAVOWAL OF THE COMMITTEE'S VIEWS

In a number of cases the government has sought to reopen the merits of the communication when victims have sought redress for violations found to have occurred by the Committee, or has specifically disavowed the authoritative nature of the Committee's views.

The failure of the Philippines to implement views in individual cases is of particular concern to REDRESS as the representative of Mr Albert Wilson, who was found by the Committee in 2003 to have been the victim of numerous violations of the Covenant by the Philippines. The Committee recommended that the Philippines undertake a comprehensive and impartial investigation and that

Mr Wilson be provided with compensation taking into account both the seriousness of the violations and the damage caused to him. Additionally, the Committee ordered that all monetary compensation due to the author should be made available for payment to the author at the venue of his choice.

Despite efforts in the Philippines on Mr Wilson's behalf, more than nine years since the issuance of the Committee's views, he has still not received an adequate remedy. Instead, the State Party sought to reopen matters determined by the Committee.

In September 2009 Mr Wilson, through a lawyer in the Philippines, brought a petition against several Philippine ministers and officials as respondents before the Supreme Court, founded on the state's non-compliance with the Committee's views. The petition sought a writ of *mandamus* based on the state party's international law obligations to remedy the violations which occurred, as expressed in the Committee's views.

The State Party's defence to the proceedings provides a worrying insight into the government's approach to its obligations, as authoritatively determined by the Committee under the Covenant. It has adopted the position in Mr Wilson's case that the Covenant and the Optional Protocol do not form part of the laws of the Republic of the Philippines, and the Philippines government is under no obligation to enforce or implement the Committee's decisions or determinations. A copy of the government's submission is provided to the Committee with this report.

Mr Wilson filed a reply in October 2010, and a motion seeking urgent consideration of his case in July 2012. He awaits a decision from the Supreme Court but has been advised that this could take a number of years.

REDRESS is aware of a similar approach being adopted by the State Party in relation to the case of Francisco Larrañaga. In its recent communication to the Committee on the status of implementation of the views in that case, the Philippines sought to argue that, contrary to the Committee's clear finding,⁷ there had been no violation of his rights under Article 14 of the Covenant. According to the State Party:

The arguments advanced by Mr Larrañaga on the alleged violation of his rights had been sufficiently considered and squarely addressed by the Philippine Supreme Court in its per curiam decision in People vs Larrañaga (421 SCRA 530) and Resolution (463 SCRA 652)...on the same case.

The decision of the Philippine Supreme Court in People vs. Larrañaga clearly shows that Mr Larrañaga was accorded a fair trial and his rights as an accused were duly safeguarded. On the contrary it was the accused who contributed to the delay in the proceedings and made a mockery of the judicial process, which were cited in the decision.(emphasis added)

⁷Francisco Juan Larrañaga v. Philippines, Communication No. 1421/2005, U.N. Doc. CCPR/C/87/D/1421/2005 (2006), para. 7.4.

D. FAILURE TO ACKNOWLEDGE THE COMMITTEE'S VIEWS

In other cases the State Party's approach appears to have been to ignore the views altogether. One such case is the case of Eden Marcellana and Eddie Gumanoy, decided by the Committee in 2008. The two victims, the secretary-general of a human rights organisation and the chairperson of an organisation of farmers, were travelling on a fact finding mission as part of a group when they were kidnapped by armed men. Two of the armed men were identified as former rebels currently associated with the military. The other members of the fact finding mission were released, however the dead bodies of the two victims were found the following day and appeared to have sustained gunshot wounds.

The Committee found a violation of Articles 2(3), 6(1) and 9(1) and recalled the states obligation to provide the authors of the communication with an effective remedy, including initiation and pursuit of criminal proceedings to establish responsibility for the kidnapping and death of the victims, payment of appropriate compensation and to take measures to ensure that such violations do not recur in the future.

On the 180th day after adoption of the views, the victims' representatives and other human rights defenders conducted a picket in front of the Department of Justice to demand redress. The representatives showed the then Secretary of Justice a copy of the Committee's views and asked him what the government had done to implement them. He did not know of such views and he did not know what had happened to the case, despite the fact that it was his department that had thrown the case out at the preliminary investigation stage.⁸ Even in the face of sustained pressure from the victims' family and representatives, as at April 2012 no further action had been taken in relation to the case, and no compensation has been provided to the authors of the communication.⁹

E. BY FAILING TO IMPLEMENT THE COMMITTEE'S VIEWS THE PHILIPPINES IS IN BREACH OF ITS OBLIGATIONS

Under the International Covenant on Civil and Political Rights (ICCPR) states undertake to ensure that any person whose rights or freedoms, as recognised in the Covenant, are violated shall have an effective remedy.¹⁰ States must also ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority.¹¹ Accordingly, states must also ensure that the competent authorities shall enforce such remedies when granted.¹²

The duty to comply with the views of the Committee arises from the State party's acceptance of the Optional Protocol and its obligations under the Covenant. The views adopted by the Committee are legal in character and represent an authoritative determination made by the recognized interpreter

⁸ Communication between author's representative and REDRESS, 30 December 2011.

⁹ Karapatan, 'On the 9th death anniversary of Eden Marcellana and Eddie Gumanoy, families still cry for Justice', 20 April 2012, available at: <http://www.karapatan.org/node/527>.

¹⁰ International Covenant on Civil and Political Rights (ICCPR) art.2(3)(a)

¹¹ ICCPR art.2(3)(b)

¹² ICCPR art.2(3)(c)

of the Covenant.¹³ By ratifying the Covenant and its Optional Protocol, states accept the authority of the Committee in this regard and agree to respect and implement its views.

A duty to cooperate with the Committee arises from an application of the principle of good faith to the observance of all treaty obligations.¹⁴ Compliance is not discretionary and States parties must give full effect to the views of the Committee in view of their obligation to ensure to all individuals within their territory, or subject to their jurisdiction, the rights recognized in the Covenant and to provide an effective and enforceable remedy in cases where a violation has been established.¹⁵ The Committee has made it clear that States parties “*must use whatever means lie within their power in order to give effect to the views issued by the Committee*”.¹⁶ For a remedy to be effective, the Philippines must implement the views expressed by the Committee in a timely manner and provide the requisite reparation measures.

F. CONCLUSION: A FAILURE OF PROCESS AND COMMITMENT

The Philippine Constitution affirms that generally accepted principles of international law are incorporated into the law of the land.¹⁷ Treaties and international agreements must be ratified by the Senate in order to become valid and effective.¹⁸ The ICCPR and the First Optional Protocol were both approved by the Senate.

There is not, however, a procedure for implementing the views of the Committee in Philippine law. Although there are a number of bodies which could theoretically assist in the provision of a remedy, the experience in individual cases summarised above shows that these have not been effective in ensuring the implementation of views.

The review of the status of implementation of views suggests that there are no clear, established or effective mechanisms at the domestic level to give effect to Human Rights Committee views or any political will to ensure that recommendations are carried out. Although through significant pressure at least one case is now apparently moving forward,¹⁹ the State Party’s general stance is demonstrated by the position it has taken in the ongoing Supreme Court proceedings in Mr Wilson’s case, where it has argued that the Covenant and the Optional Protocol do not form part of the laws of the Republic of the Philippines, and the Philippines government is under no obligation to enforce or implement the Committee’s decisions or determinations.²⁰ This is contrary to the State Party’s obligations to implement its Covenant obligations in good faith, frustrates the Optional Protocol’s objectives and leaves victims without any realistic prospect of obtaining redress.

¹³ General Comment No 33: The Obligations of States Parties under the Optional Protocol to the International Covenant on Civil and Political Rights, doc. CCPR/C/GC/33 (2008), paras. 11 and 13.

¹⁴ General Comment 33, par. 15.

¹⁵ General Comment 33, par. 14.

¹⁶ General Comment 33, par. 20.

¹⁷ The 1987 Constitution of the Republic of the Philippines (The Constitution), section 2 art.II

¹⁸ Constitution, section 21 art.VII

¹⁹ *Felipe and Evelyn Pestaño v. The Philippines*, Communication No. 1619/2007, U.N. Doc. CCPR/C/98/D/1619/2007 (see further Appendix One).

²⁰ See above Section C..

G. RECOMMENDATIONS

- The State Party should establish clear, transparent and effective legal frameworks, institutional arrangements and procedures to ensure that those who have been recognized as victims of human rights violations by the Human Rights Committee promptly obtain the remedy to which they are entitled, without being required to take further action at the domestic level.
- The State Party should act immediately to appoint an identified state official responsible for ensuring the implementation of all currently outstanding views in individual communications, within twelve months, and as part of the remedy given provide compensation calculated to take into account the delay in the provision of such remedies.

APPENDIX ONE: SUMMARY OF COMMUNICATIONS AND KNOWN STATUS OF IMPLEMENTATION

Evangeline Hernandez v. The Philippines, Communication No. 1559/2007, U.N. Doc. CCPR/C/99/D/1559/2007 (2010).

Summary of facts: Arbitrary execution of a human rights defender; failure to investigate

Ms. Benjaline Hernandez was the Deputy Secretary-General of KARAPATAN-Southern Mindanao Region, a human rights advocacy group, and also the Vice-President of the College Editor's Guild of the Philippines (CEGP), an alliance of school publications. She was conducting research on the impact of the peace process on the local community in Arakan, a province in Mindanao, when the incident occurred. On 5 April 2002, Ms. Hernandez and three local people were about to take their lunch when six paramilitaries from the Citizens Armed Force Geographical Unit (CAFGU), led by 7th Battalion (Airborne) M/Sgt. T., strafed the hut they were in. Four members of the militia were named by the author. All four members of KARAPATAN were shot, despite pleading for mercy. The autopsy disclosed, *inter alia*, that two bullets had been fired at Ms. Hernandez from close range and that she had been lying on her back when she was shot. There was an eyewitness to the incident.

The Department of Justice belatedly filed "criminal informations" for murder against M/Sgt. T. and three others, who are members of CAFGU, before the Regional Trial Court of Kidapawan City, South Cotabato. According to the author, a junior military officer, who was the principal suspect, was not included in the charge. Despite the fact that bail is not normally granted in murder cases, it was granted in this case. Subpoenas for the attendance of military witnesses, as hostile witnesses for the prosecution, were disobeyed or ignored. The author argued that, although the case was ongoing, remedies had been unreasonably prolonged and will prove to be ineffective.

Violations: Article 2(3), Article 6(1)

Remedy:

In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to take effective measures to ensure that the criminal proceedings are expeditiously completed, that all perpetrators are prosecuted, and that the author is granted full reparation, including adequate compensation. The State party should also take measures to ensure that such violations do not recur in the future.

Follow-up:

As at January 2012 it was reported that no action had been taken to implement the views. The one suspect held at the time of the communication in relation to the murder (Master Sergeant Antonio Torilla) had been acquitted of the killing, and charges against others who had been held had been dismissed: communication with the author's representative, see also <http://bulatlat.com/main/2010/10/07/kin-of-victim-of-extrajudicial-killing-find-justice-in-the-un/> and <http://bulatlat.com/main/2011/12/02/women-human-rights-defenders-rally-for-justice/>.

Felipe and Evelyn Pestaño v. The Philippines, Communication No. 1619/2007, U.N. Doc. CCPR/C/98/D/1619/2007 (2010).

Summary of facts: Arbitrary deprivation of life; failure to conduct an adequate investigation and to initiate proceedings against the perpetrators

The authors' son, Phillip, was an Officer of the Philippine Navy, serving as cargo officer. He told his father that the ship was carrying illegal cargo, including drugs. The following day he boarded his ship and later that day, the authors received a call from the Philippine Navy because their son Phillip had "had an accident". The Navy stated that he had committed suicide and produced a weapon and suicide note to confirm this. The Criminal Investigation Division of the Philippine National Police and the National Bureau of Investigation of the Department of Justice corroborated the Navy's position.

A couple of months later, two of Phillip's friends in the Navy died under suspicious circumstances. The author, the Navy's biggest ship repair contractor, was approached by a Navy Flag Officer in Command and threatened the author's business if he continued with his claim. The authors decided that they would not abandon their son's claim. One week after this information was relayed to the Navy Flag Officer in Command, the four Navy ships being repaired by the author's company all mysteriously sank, and his company's offices were ransacked and looted. It is also reported that the authors' nephew, the company's property custodian, was shot dead during the same period.

The authors received a leaked copy of an intelligence report of the State party's Armed Forces, which stated that the ship carried 1 billion pesos worth of shabu (methamphetamines) in 20 sacks of rice during its September 1995 trip. The report also indicated that this shipment had been escorted by a Security Officer of the State party's Navy Flag Officer in Command, and that upon discovering the illegal cargo; the authors' son had confronted his superior, and was killed afterwards, to prevent him from revealing the criminal activities taking place on board the ship. This confidential report also identified the chief security officer of the Navy Flag Officer in Command as the most likely perpetrator of the crime.

Violations: Article 6, read in conjunction with article 2, paragraph 3

Remedy:

The State party is under an obligation to provide the authors with an effective remedy in the form, *inter alia*, of an impartial, effective and timely investigation into the circumstances of their son's death, prosecution of perpetrators, and adequate compensation. The State party is also under an obligation to prevent similar violations in the future.

Follow-up:

A/66/40

On 11 February 2011, the State party informed the Committee on the steps taken in connection to the Committee's views. It explains, first, that the Committee's views were made public on 11 May 2010. Further, on 6 October 2010, the Justice Secretary instructed the Director of the National Bureau of Investigation (NBI) to conduct an investigation on the exact circumstances surrounding the death of the authors' son. On 9 November 2010, the Office of the Justice Secretary issued another memorandum, reiterating its directive to the NBI to conduct an investigation and to provide its conclusions before December 2010. On 14 November 2010, the Office of the Ombudsman informed the Presidential Human Rights Committee that a Motion for Reconsideration has been filed by the authors and is pending resolution. The State party explains that, in the meantime, it has transpired that on 17 May 2010, the Office of the Ombudsman approved a Joint Resolution dated 15 June 2009, dismissing the authors' complaints filed against several Navy and police officers, and

other individuals, for lack of evidence.

Author's comments

On 15 April 2011, the authors' counsel expressed satisfaction on the steps taken so far by the State party in connection to the present case and explained, in particular, that the Ombudsman will face a trial in the Philippines, for betrayal of public trust and violations of the Constitution, to start in May 2011. Counsel further asks the Committee to consider the possibility to send some of its members, who participated in the adoption of the views, to testify in court.

Further action taken/required

The author's most recent submission was sent to the State party. The State party should be requested to provide an update on the developments in the case. The Committee may wish to await receipt of further information prior to making a decision on the matter.

Further information:

On 22 July 2010, Mr and Mrs Pestaño (along with 2 other complainants) filed an Impeachment Complaint against the Ombudsman, Ma. Merceditas Navarro-Gutierrez for any or all of the following constitutional grounds: (i) betrayal of public trust, and (ii) culpable violation of the Constitution. In relation to their son's case, one of the grounds of the complaint is the inexcusable delay of the Ombudsman in conducting and concluding its investigation into the wrongful death of Philip Pestano.

<http://bombodennis.wordpress.com/2011/03/02/impeachment-complaint-vs-ombudsman-gutierrez/>

Following a long legal battle, in March 2011, the Philippine House of Representatives approved the impeachment complaint against the Ombudsman.

<http://dateline.ph/2011/03/24/impeachment-of-ombudsman-gutierrez-a-victory-for-the-people/>

On 10 January 2012, the Ombudsman Conchita Carpio Morales reversed the resolution that dismissed the criminal and administrative charges filed by Mr Pestaño's parents for his murder. The Ombudsman found probable cause to indict Naval Captain Ricardo Ordoñez and nine other naval officials for murder. Ombudsman Morales also found the respondents administratively liable for Grave Misconduct and ordered them dismissed from service. The Information for murder was filed with the Sandiganbayan on 11 January 2012:

<http://www.ombudsman.gov.ph/index.php?navId=MTQ=&pressId=MjM3>

Mr. Orly Marcellana and Mr. Daniel Gumanoy v. The Philippines, Communication No. 1560/2007, U.N. Doc. CCPR/C/94/D/1560/2007 (2008).

Summary of facts: Security of person outside detention; failure to investigate/prosecute

Ms. Marcellana was the former Secretary General of Karapatan-Southern Tagalog (a human rights organisation) and Mr. Eddie Gumanoy was the former chairperson of Kasama Tk (an organization of farmers). From 19 April 2003 to 21 April 2003, they were leading a fact-finding mission in the province of Mindoro Oriental, to enquire about the abduction of three individuals allegedly committed by elements of the 204th infantry brigade, under the command of one Col. Jovito Palparan, and the killing and disappearance of civilians and burning of properties by the military in the town of Pinamalayan. The authors claim that Ms. Marcellana was threatened several times by the military for her advocacy work. In addition, while conducting their work, mission members were under the impression that they were under constant surveillance.

The victims (together with other members of the fact finding mission) were travelling on the highway about 5.5 kilometres from the 204th infantry brigade headquarters, when their van was stopped by ten armed men. After the armed men tied them up, they were taken into a vehicle. The armed men were not all hooded and some of them could be identified as being Aniano "Silver" Flores and Richard "Waway" Falla, former rebels and currently associated with the military.

At some point, the victims were ordered to step out of the vehicle while the other members of the fact-finding mission stayed inside the vehicle and were later dropped along the roadside (alive) in different parts of Bongagbong municipality. The dead bodies of Ms. Marcellana and Mr. Eddie Gumanoy were found the following day. Forensic reports and the death certificates indicate that their death was caused by gun-shot wounds.

Violations: Article 2, paragraph 3; article 6, paragraph 1; and article 9, paragraph 1

Remedy:

The State party is under an obligation to provide the authors with an effective remedy, including initiation and pursuit of criminal proceedings to establish responsibility for the kidnapping and death of the victims, and payment of appropriate compensation. The State party should also take measures to ensure that such violations do not recur in the future.

Follow-up:

On the 180th day from adoption of the views, the Authors' representatives and other human rights defenders conducted a picket in front of the Department of Justice to demand justice for the victims in that communication. The authors' representative showed the then Secretary of Justice the copy of the Committee's views and asked him what the government had done to implement them. He did not know of such views and he did not know what had happened to the case, despite the fact that it was his department that had thrown the case out at the preliminary investigation stage.²¹ Despite sustained pressure from the victims' family and author's representatives, as at April 2012 no further action had been taken in relation to the case, and no compensation has been provided to the authors of the communication.

As at April 2012 it was reported that no action had been taken to implement the views: Karapatan, 'On the 9th death anniversary of Eden Marcellana and Eddie Gumanoy, families still cry for Justice', 20 April 2012, available at: <http://www.karapatan.org/node/527>.

²¹ Communication between author's representative and REDRESS, 30 December 2011.

Lenido Lumanog and Augusto Santos v. Philippines, Communication No. 1466/2006, U.N. Doc. CCPR/C/92/D/1466/2006 (2008)

Summary of facts: Delay in the review of a conviction imposing death penalty; right to be tried without undue delay; right to review of the conviction and sentence by a higher tribunal; right to equality before the courts and tribunals

The authors and three other individuals were sentenced to death for the murder of a former Colonel. Their motions for reconsideration and new trial were rejected and the case was transmitted to the Supreme Court automatic review of the death penalty. The Supreme Court transferred the case to the Court of Appeals for appropriate action and disposition, in conformity with its new jurisprudence pursuant to the judgment in "Mateo". As a result, the authors filed an "Urgent Motion for Reconsideration of Transfer to the Court of Appeals" on 24 February 2005, stressing that the jurisprudence in "Mateo" should not be applied automatically to each death penalty case, but rather take into account the specific circumstances of each case. Furthermore, it was argued that the Supreme Court was in a position to proceed with the review of the case.

Violations: Article 14, paragraph 3 (c)

Remedy: Effective remedy, including the prompt review of their appeal before the Court of Appeal and compensation for the undue delay

Follow-up:

A/66/40

State party's submission

On 11 May 2009 the State party explained what action had been taken since the case in question was brought before the Supreme Court. On 13 August 2008, following a request by the petitioners to declare unconstitutional the penalty of *reclusion perpetua* without the benefit of parole, the third division of the court transferred this case to the Court En Banc. On 19 January 2009, this Court requested the parties to submit their respective memoranda and has been waiting for compliance with this resolution since then.

Authors' comments

On 2 July 2009, the author submitted that the State party had failed to publish the views and had failed to address the issue of undue delay in the proceedings. It had given no indication so far of any review, refinement or improvement of those procedural rules for automatic intermediate review by the Court of Appeal of cases where the penalty imposed is *reclusion perpetua*, life imprisonment to death as embodied in the 2004 ruling in *People vs. Mateo*. With regard to the remedy, the State party had provided no information as to any measures it intends to take to prevent similar violations in the future with respect to undue delay at the appeal stage and there has been no compensation paid for the undue delay. This case remains before the Supreme Court.

On 16 November 2009, the authors submitted that their case, which had been ready for consideration by the Supreme Court since 5 May 2008, had now been delayed due to the same court's decision on 23 June 2009 to consider this case jointly with several others. As a result of this decision, upon which the authors had no opportunity to comment, the hearing of this case will be further delayed.

State party's further submission

On 24 November 2009, the State party informed the Committee that this case had been joined with

other cases. With respect to the issue of compensation, the case will be reviewed and decided upon by the Court of Appeal, after which it may be appealed to the Supreme Court for a final judgement. The State party submits that it will comply with the final judgement of the Supreme Court.

On 29 July 2010, following a request by the Committee to respond specifically to the authors' arguments, in particular on the issue of the continued delay in their appeal, the State party submitted that the consolidation of the authors' appeals with other accused whose criminal liability arose from the same event might bring about delays but was a logical step. In this way, the High Court would have to render only one decision with respect to five accused. In addition, according to the State party, the authors have in fact waived their objection to consolidation.

Further action taken/required

The State party's most recent submission was sent to the authors for comments. A reminder was prepared in July 2011. The Committee may wish to await receipt of further information prior to making a decision on this matter.

Decision of the Committee The Committee considers the dialogue ongoing.

See also A/65/40 and A/64/40

Further information:

In May 2008 it was reported that the lawyers for the Abadilla Five invoked as addendums to their Petition for Review on Certiorari the United Nation Human Rights Committee decision, finding the government as responsible for violating their clients' right for unduly delaying their case.

<http://www.humanrights.asia/news/press-releases/AHRC-PRL-012-2008/?searchterm=human%20rights%20committee%20philippines>

The Supreme Court heard the final appeal in the criminal case on 7 September 2010 and affirmed the Court of Appeal's decisions (with modifications regarding the civil damages).

<http://larc.fluxfun.com/2010/09/07/lenido-lumanog-and-augusto-santos-petitioners-vs-people-of-the-philippines-respondent/>

The victims filed motions for reconsideration, but were denied with finality on 8 February 2011 for lack of merit.

<http://elibrary.judiciary.gov.ph/decisions.php?doctype=Decisions%20/%20Signed%20Resolutions&docid=130319722278243689>

In December 2011 it was reported that the Board of Pardons and Parole had recommended to the President on 28 September 2011 the commutation of sentence to 16 years, however no pardon has yet been granted and the authors remain in prison as at 12 December 2011.

<http://www.journal.com.ph/index.php/news/national/18723-abadilla-5-hope-for-clemency>. As at September 2012 the authors were still seeking executive clemency (communication with the authors' representative).

Mariano Pimentel et al. v. Philippines, Communication No. 1320/2004, U.N. Doc. CCPR/C/89/D/1320/2004 (2007)

Summary of facts: Unreasonable length of time in civil proceedings, equality before the Courts

The authors claim to be members of a class of 9,539 Philippine nationals who obtained a final judgment in the United States for compensation against the estate of the late Ferdinand E. Marcos for having been subjected to torture during the regime of President Marcos. Ferdinand E. Marcos

was residing in Hawaii at the time. The authors claim that their proceedings in the Philippines on the enforcement of the US judgement have been unreasonably prolonged and that the exorbitant filing fee amounts (\$8 million) to a de facto denial of their right to an effective remedy to obtain compensation for their injuries.

Violations: Article 14, paragraph 1 in conjunction with article 2, paragraph 3.

Remedy:

The State party is under an obligation to ensure an adequate remedy to the authors including, compensation and a prompt resolution of their case on the enforcement of the US judgement in the State party. The State party is under an obligation to ensure that similar violations do not occur in the future.

Follow-up:

A/66/40

Authors' comments

On 1 October 2007, the authors informed the Committee that the State party had failed to provide them with compensation and that the action to enforce the class judgement remained in the Regional Trial Court of Makati following remittal of the case in March 2005. It was not until September 2007 that the court determined, per motion for consideration, that service of the complaint on the defendant estate in 1997 was proper. The authors requested the Committee to demand of the State party prompt resolution of the enforcement action and compensation. Following the jurisprudence of the European Court of Human Rights (*inter alia* Triggiani v. Italy, (1991) 197 Eur.Ct.H.R. (ser.A)) and other reasoning, including the fact that the class action is made up of 7,504 individuals, they suggest a figure of 413,512,296 dollars in compensation.

State party response

On 24 July 2008, the State party informed the Committee that on 26 February 2008, the presiding judge of the Regional Trial Court issued an order setting the case for Judicial Dispute Resolution (JDR). Three JDR conferences have already taken place, however due to the confidentiality of the process no further information on the status of the process may be divulged.

Authors' further comments

On 22 August 2008, the authors responded to the State party's submission of 24 July 2008. They confirmed that they met with the presiding judge on several occasions to discuss settlement and that although they made earnest proposals the Marcos Estate showed no interest in doing so. By order of 4 August 2008, the JDR phase was terminated. According to the authors, the State party's delay in the enforcement proceedings, at the time of their submission extending 11 years, is part of a pattern and practice by the State party to ensure that the class never realizes any collection on its United States judgement, and provides other examples of this practice. The authors required the Committee to quantify the amount of compensation (and other relief), to which they claim the Committee has already held the class to be entitled. (The Order of 4 August 2008 states: —Considering that this case has been pending in the courts for 11 years already, it is imperative that trial on the merits commence without further delay. The records of the case have been sent back to the Regional Trial Court for proper disposition). On 21 August 2009, the authors renewed their plea to the Committee to quantify the amount of compensation (and other relief) to which the Committee held that they were entitled. They highlight their views, *inter alia*, that: the State party has done nothing to advance this case; it has collected tens of millions of dollars in Marcos assets but has failed to distribute any to the victims; the provision of compensation is consistent with General Assembly resolution 60/147 on the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Law; and that the delay in

rendering relief to the 9,539 victims who benefit from the Committee's decision encourages the State party to continue to violate human rights.

On 4 February 2011, the author reiterated that the State party has not taken any measures to implement the Committee's views.

Additional information by the parties

By *note verbale* of 8 March 2011, the State party contests the author's allegations regarding the order of 8 July 2010 of the Makati City Regional Trial Court (RTC), dismissing their complaint of unreasonable delay. The State party points out that the authors did not avail themselves of the possibility to appeal against this order. In addition, the State party notes that the RTC decided on the matter promptly and expeditiously, in around two months.

On 7 June 2011, the author's counsel informed the Committee that its views have not been implemented by the State party. Counsel contests the decision of the RTC, explaining that the presiding judge dismissed the case, because of a change in the name of the representatives of the 10,000 victims of various human rights violations, disregarding that the designation of the new representative was duly made and validated before a United States judge, thus preventing the individuals in question of obtaining redress by having their judgement enforced. Counsel explains that a motion for the reconsideration of the TCR order of 8 June 2010 was submitted but not acted upon.

Further action taken/required

The authors' most recent submission was sent to the State party in June 2011. The Committee may wish to await receipt of further comments prior to making a decision on this matter

See also A/64/40 and A/63/40

Further information:

Following the dismissal, a motion for reconsideration was filed. The Philippine trial judge died in an automobile accident before ruling on the motion. In 2011 a new trial judge granted the motion for reconsideration and set the enforcement proceeding for trial. That trial began in February 2012 and is still underway, with the final hearing dates scheduled for September 2012. After the evidence is closed, the parties will submit briefs to the court. (Communication with authors' representative).

Francisco Juan Larrañaga v. Philippines, Communication No. 1421/2005, U.N. Doc. CCPR/C/87/D/1421/2005 (2006).

Summary of facts: Mandatory imposition of the death penalty; presumption of innocence

The author, along with six co-defendants, was accused of kidnapping, serious illegal detention, rape and murder. According to the author, he was not in the same city when these crimes were committed.

The main prosecution witness was another defendant who was promised immunity from prosecution. During the hearings, the witness admitted for the first time that he had raped one of the victims and the cross examination was cut short when he admitted that he lied about his previous convictions, which should have disintitiled him from immunity. There were also allegations that he had been bribed. In response, author's counsel refused to participate in the trial and asked the trial judge to recuse himself - he was summarily found guilty of contempt of court, arrested and imprisoned. The author requested 3 weeks to hire new counsel, but the court refused to adjourn the trial any further, and offered the defendants the opportunity to rehire their counsel, who were in

prison. The then court ordered the Public Attorney's Office to assign to the court a team of public attorneys who would act temporarily as defence counsel.

25 prosecution witnesses were presented, and the court deferred the cross-examination of several of them in view of the defendants' insistence that the lawyer whom they had yet to choose would conduct the cross-examination. The author's newly appointed counsel then asked to cross-examine these witnesses but the court refused. It also refused to grant the new counsel an adjournment to acquaint himself with the case file. Author's counsel cross-examined again the main prosecution witness, however, in response to a motion from the prosecution, he was discharged as a witness and was granted immunity from prosecution. The court then granted the new counsel 4 days to decide if they wanted to cross-examine the other prosecution witnesses, but counsel refused in protest and the court decided that all the defendants had waived their right to cross-examine prosecution witnesses.

14 witnesses testified in favour of the author and confirmed that he was in Quezon City immediately before, during and after the alleged crime committed in Cebu City, more than 500 kilometres away. Several pieces of evidence were presented to the court to the same effect. The trial judge refused to hear other witnesses on the ground that their testimony would be substantially the same as the author's other witnesses and he refused to hear evidence from other defence witnesses on the ground that the evidence was "irrelevant and immaterial."

The author was found guilty of the kidnapping and serious illegal detention. The author appealed to the Supreme Court, which did not hear the testimony of any witnesses during the review process, relying solely upon the lower court's appreciation of the evidence. They found the author guilty not only of the kidnapping and serious illegal detention, but also of the complex crime of kidnapping and serious illegal detention with homicide and rape. The author was sentenced to death by lethal injection. A motion for reconsideration was lodged with the Supreme Court, but was rejected.

Violations: Article 6, paragraph 1; article 7; and article 14, paragraphs 1, 2, 3 (b), (c), (d), (e), 5

Remedy:

In accordance with article 2, paragraph 3, of the Covenant, the State party is under an obligation to provide the authors with an effective remedy, including commutation of his death sentence and early consideration for release on parole. The State party is under an obligation to take measures to prevent similar violations in the future.

Follow-up:

Death sentence was commuted to life imprisonment in 2006 along with many others prior to issuance of Committee's views. Shortly afterwards the death penalty was abolished in the Philippines.

In March 2007 a court order recognised that the author was not precluded by the decree abolishing the death penalty to consideration for parole.

In October 2009 the author was transferred under a prisoner transfer agreement from the Philippines to Spain. In March 2011 the Spanish courts confirmed that the author's anticipated release date was 28 September 2034.

In November 2011 the case was raised in the Human Rights Committee and the Special Rapporteur on follow-up agreed to look into the case and to consider whether the Philippines has properly implemented the Committee's views. The Special Rapporteur also said he would also start from the "strong presumption" that, as Spain has obligations under the Optional Protocol, it should also be

involved in the implementation of the remedy.

In December 2011 the author's representatives wrote to the Committee urging that the following steps to be taken:

- i. The Special Rapporteur, through the Secretariat, should send a reminder to the Philippines and a letter to Spain seeking its views on follow up
- ii. If no information is forthcoming by the given deadline, the Special Rapporteur should seek to organize a meeting with a representative of the Philippines and Spain from the Permanent Mission in Geneva or New York, to discuss the facilitation of implementation
- iii. If no information is forthcoming from the Philippines, a follow-up mission to the Philippines should be organised because it has experienced particular difficulties with the implementation of the Committee's recommendations
- iv. If insufficient or no follow-up information has been provided, the Committee should seek information from the Philippines during the examination of its periodic report in October 2012 under article 40 of the Covenant; and in respect of Spain during its next periodic report

The Government responded in May 2012, attempting to reopen the merits on some of the violations held by the Committee, and alleging that the Government of Spain was responsible for the terms of continuation of imprisonment. The author responded again in June 2012. No further progress has been made and the author remains in prison. (Communication with the author's representative).

Leon R. Rouse v. Philippines, Communication No. 1089/2002, U.N. Doc. CCPR/C/84/D/1089/2002 (2005).

Summary of facts: Undue delay; right to cross-examine; arrest without a warrant; minimum standards of detention

During a visit to the Philippines, the author (an American citizen) was arrested for alleged sexual relations with a male minor and for a violation of the Child Abuse Law, which criminalises sexual acts between an adult and a person under the age of 18.

The author saw Harty Dancel, a former acquaintance, accompanied by two individuals, Pedro Augustin and Godfrey Domingo. The four of them had lunch in a restaurant, where Dancel offered Godfrey to have sex with the author. The author refused, arguing that the latter was too young, even after Dancel insisted and assured him he had reached the age of majority. Later in the day, the same three persons waited for the author at his hotel. Dancel had them invited to the author's room. After the author had taken a shower, Dancel and Augustin left the room, leaving him alone with Godfrey. The latter requested to use the bathroom, where he undressed. When there were knocks on the door, the author opened, and police officers entered.

The author was arrested without a warrant; he and Godfrey were taken to the police station, where Godfrey signed a sworn statement, witnessed by his parents, and filed a complaint against the author. He claimed that he was fifteen years old and that the author had prompted him into sexual acts. Later, the alleged victim, assisted by his parents, signed an affidavit of desistance, confirming the version of the facts as related by the author, and admitted that he had been part of a set-up organised by police officers Augustin and Dancel. The alleged victim also stated that he was 18 years old when the author was arrested.

The author was charged anyway and filed a demurrer to the evidence, mainly based on the fact that the prosecution rested its case on the statements made to others by the alleged victim, who was the

only eyewitness of the events and who, despite a subpoena order, was not present for cross-examination. The demurrer also pointed out the inconsistencies in the testimonies of the other witnesses and the illegality of the arrest, and invoked the principle of presumption of innocence. The desistance was not allowed as evidence in court, while other evidence was allowed without the possibility to challenge it.

The author filed various petitions to the Court of Appeal and the Supreme Court, all of which were rejected. Whilst in prison, the author suffered from kidney stones and due to administrative reasons, was not properly treated. He was granted voluntary deportation to the US for treatment after 8 years in prison.

Violations: Articles 14, paragraphs 1 and 3 (c) and (e); 9, paragraph 1; and 7

Remedy:

In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the author with an effective remedy, including adequate compensation, *inter alia* for the time of his detention and imprisonment.

Follow-up:

None known.

Pagdayawon Rolando v. Philippines, Communication No. 1110/2002, U.N. Doc. CCPR/C/82/D/1110/2002 (2004).

Summary of facts: Death penalty, unfair trial, arbitrary arrest

The author was arrested and detained at a police station, without a warrant. He was told that he was being detained after allegations made by his wife of the rape of his stepdaughter. He was not shown a copy of his arrest warrant or the complaint made against him and he was not informed of his right to silence or his right to a lawyer. He was released without being brought before a judicial authority or formally charged with an offence. He was later arrested again and charged with rape. He was found guilty and sentenced to death (mandatory sentence).

The Supreme Court automatically reviewed the case and followed its usual practice of not hearing the testimony of any witnesses during the review process, relying solely upon the lower courts' appreciation of the evidence. It reiterated its position about the weight given to the testimony of young women who make allegations of rape, by stating that "[t]he testimony of a rape victim, who is young and of tender age, is credible and deserves full credit, especially where the facts point to her having been the victim of a sexual assault. Certainly would not make public the offence and, undergo the trial and humiliation of a public trial if she had not in fact been raped."

The procedure relating to execution sets out that the condemned individual shall only be notified of the execution date at dawn on the date of execution and that the execution must take place within 8 hours of the accused being so informed. No provision is made for notifying the family of the condemned person. The only contact that the accused may have is with a cleric or with his lawyer. Contact can only take place through a mesh screen.

Violations: Articles 6, paragraph 1, 9, paragraphs 1, 2, 3, and 14, paragraph 3 (d).

Remedy:

The Committee concludes that the author is entitled to an appropriate remedy including commutation of his death sentence. The State party is under an obligation to avoid similar violations

in the future.

Follow-up:

A/61/40

State party response

On 27 January 2006, the State party had submitted that the Committee's finding that the author is entitled to commutation of his sentence was referred to the Department of Justice on 1 August 2005, to the Executive Secretary and to the Chief Presidential Legal Counsel on 19 January 2006. It recalled that this decision rests in the hand of the President and that all death penalty cases upon completion are automatically forwarded by the Supreme Court to the office of the President for the exercise of his pardoning power.

On 31 May 2006, the State party submitted that the author was granted executive clemency. His death sentence was reduced to *reclusion perpetua*, a lengthy form of imprisonment. However, the Philippine Revised Penal Code, provides that any person sentenced to *reclusion perpetua* shall be pardoned after 30 years.

Committee's Decision

In light of the commutation of the author's sentence, the Committee does not intend to consider this matter any further under the follow-up procedure unless the situation changes.

Ramil Rayos v. Philippines, Communication No. 1167/2003, U.N. Doc. CCPR/C/81/D/1167/2003 (2004).

Summary of facts: Death penalty, unfair trial

The author was drunk and was taken to the municipal jail to sleep off his intoxication. In the morning he was not permitted to leave and was informed that he was the suspect of a murder. He was forced to sign a confession, after allegedly being threatened with a gun. A lawyer – not of the author's own choosing – was present "to assist [him] in giving a written confession." He did not have a lawyer prior to the confession. For the trial, the author had a different lawyer with whom he was only able to communicate for a few minutes at a time each day during the trial court proceedings. He was found guilty and sentenced to death (mandatory sentence).

Violations: Articles 6, paragraph 1 and 14, paragraph 3 (b).

Remedy:

The State party is under an obligation to provide the author with an effective and appropriate remedy, including commutation of his death sentence. The State party is under an obligation to avoid similar violations in the future.

Follow-up:

A/61/40

State party response

On 27 January 2006, the State party had submitted that the Committee's finding that the author is entitled to commutation of his sentence was referred to the Department of Justice on 1 August 2005 and to the Executive Secretary and the Chief Presidential Legal Counsel on 19 January 2006. It recalled that this decision rested in the hand of the President and that all death penalty cases upon completion are automatically forwarded by the Supreme Court to the office of the President for the exercise of his pardoning power.

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Committee's Decision

In light of the commutation of the author's sentence, the Committee does not intend to consider this matter any further under the follow-up procedure unless the situation changes.

Albert Wilson v. Philippines, Communication No. 868/1999, U.N. Doc. CCPR/C/79/D/868/1999 (2003).

Summary of facts: Mandatory death penalty for rape after unfair trial – “most serious” crime. Compensation after acquittal

The author, a British national living in the Philippines, was arrested without a warrant following a complaint of rape filed by the biological father of the author's twelve year old step-daughter. From the outset, he maintained that the allegation was fabricated and pleaded not guilty. The step-daughter's mother and brother testified in support of the author, stating that both of them had been at home when the alleged incident took place, and that it could not have occurred without their knowledge. The police medical examiner, who examined the girl within 24 hours of the alleged incident, made internal and external findings which, according to the author, were wholly inconsistent with alleged forcible rape. Medical evidence procured during the trial also contradicted the allegation, and, according to the author, in fact demonstrated that the act could not have taken place as alleged. There was also evidence of several other witnesses that the story of rape had been fabricated by the step-daughter's natural father, in order to extort money from the author.

The author was sentenced to death. During his detention, both before and after his trial, the author was subjected to regular beatings, poor sanitary and health conditions, extortion and torture.

The Supreme Court, considering the case on automatic review, set aside the conviction, finding it based on allegations "not worthy of credence", and ordered the author's immediate release. On his release from death row, the Bureau of Immigration lifted a Hold Departure Order, on condition that the author paid fees and fines amounting to P22,740.- for overstaying his tourist visa. The order covered the entirety of his detention, and if he had not paid, he would not have been allowed to leave the country for the United Kingdom.

He sought reparations and was awarded P14,000.- but told he must collect it in the Philippines. After applying for a tourist visa to visit his family, the author was informed that as a result of having overstayed his tourist visa and having been convicted of a crime involving moral turpitude, he had been placed on a Bureau of Immigration watch list. When he inquired why the conviction should have such effect after it had been quashed, he was informed that to secure travel certification he would have to attend the Bureau of Immigration in the Philippines itself. The author also sought to lodge a civil suit for reparation, on the basis that the administrative remedy for compensation outline above would not take into account the extent of physical and psychological suffering involved. He was not eligible for legal aid in the Philippines, and from outside the country was unable to secure pro-bono legal assistance.

Violations: Articles 7, 9, paragraphs 1, 2, and 3, 10, paragraphs 1, and 2.

Remedy:

The State party is under an obligation to provide the author with an effective remedy. In respect of

the violations of article 9 the State party should compensate the author. As to the violations of articles 7 and 10 suffered while in detention, including subsequent to sentence of death, the Committee observes that the compensation provided by the State party under its domestic law was not directed at these violations, and that compensation due to the author should take due account both of the seriousness of the violations and the damage to the author caused. In this context, the Committee recalls the duty upon the State party to undertake a comprehensive and impartial investigation of the issues raised in the course of the author's detention, and to draw the appropriate penal and disciplinary consequences for the individuals found responsible. As to the imposition of immigration fees and visa exclusion, the Committee takes the view that in order to remedy the violations of the Covenant the State party should refund to the author the moneys claimed from him. All monetary compensation thus due to the author by the State party should be made available for payment to the author at the venue of his choice, be it within the State party's territory or abroad. The State party is also under an obligation to avoid similar violations in the future.

Follow-up:

A/62/40

State party response

The Committee will recall that, as set out in its 84th report, the State party submitted, on 12 May 2005, that it was “disinclined” to accept the Committee’s findings of facts, more particularly its assessment of evidence. It submitted that the findings rested on an incorrect appreciation of the facts and contested the finding that the compensation provided was inadequate. It submitted that the author failed to discharge the burden of proof; ex parte statements made by the complainant are not considered evidence and do not constitute sufficient proof of the facts alleged. An investigation conducted by the City Jail Warden of the Valenzuela City Jail, where the author was confined, disputed all allegations made by the author. The author had failed to provide specific acts of harassment to which he was supposedly subjected to while in prison and did not identify the prison guards who allegedly extorted money from him. As the author had already flown home while the communication was pending before the Committee he could not have feared for his security by naming those who had allegedly ill-treated him. It reiterated its submission that the author failed to exhaust domestic remedies. Finally, it considered that the compensation provided is adequate that the author had not yet sent an authorized representative to claim the cheques on his behalf and that by insisting that the State party make available to the complainant all monetary compensation due to him, “the Committee might have exceeded its competency and caused great injustice to the State party”.

On 27 January 2006, the State party submitted that the views were sent to the Department of Justice and the Department (DOJ) of Interior and Local Government (DILG) for appropriate action last 10 August 2005. DOJ exercises supervision over the Bureau of Immigration while DILG exercises supervision over city jails. An investigation was carried out in 2005 by the City Jail Warden of the Valenzuela City Jail where Mr. Wilson was confined. The investigation revealed the following: (1) The Valenzuela City Jail has no “cages” in which the author could have been confined upon his arrest; and (2) There is no record of a serious shooting incident of an inmate which supposedly occurred during the author’s detention and which supposedly traumatised the author. According to the investigation results, the only incident on record was a non-fatal shooting on 17 June 1996 of an inmate who was shot by his jail guard when the former tried to escape from detention.

Finally, it submits that the author failed to provide specific acts of harassment to which he was supposedly subjected while in prison and failed to identify the prison guards and officials who allegedly harassed and extorted money from him. On 17 July 2006, following a request from the

Committee, through the Special Rapporteur on Follow-up, the State party responded to counsel's submission of 3 May 2006. It argues that the investigation was carried out impartially and that no evidence has been provided to demonstrate otherwise. The allegation is merely inferred from the fact that, the jail warden, as a public officer, exercises administrative control over his subordinates and the DILG is not an external accountability mechanism. It argues that sanctions under municipal law would have deterred both the jail warden and the DILG from not acting impartially. The State party contests that unreasonable delay in the progress of the investigation has been established. The author did not express his wish to take part in the investigation, to receive information on its progress to assist in ensuring the prosecution of the alleged perpetrators of torture. The State party argues that the author is obliged to present clear and convincing evidence with respect to the shooting incident and the alleged existence of the cage. Unless and until independent corroborating evidence are adduced the municipal authorities are not obliged to act upon such claims. It concludes that its investigation meets the Covenant standards of impartiality, promptness and thoroughness. Author's response On 9 February 2006, the author submitted that the procedure currently under consideration is that of follow-up and that therefore it is inappropriate to resubmit arguments on the merits. He requests information on the current status of follow-up in this case. On 3 May 2006, the author's counsel responded to the State party's response of 27 January 2006. He submits that the State party's response is inappropriate as 1. It was limited to an investigation only and 2. The investigation conducted was not prompt, comprehensive and/or impartial. Neither the City of Jail Warden, which conducted the investigation nor the DILG which oversaw it, can be considered an external and therefore impartial mechanism. In addition, it is not possible to assess the promptness and effectiveness of the investigation as the authorities never informed the complainant about the investigation, including when it would take place and why the investigation was closed. Counsel points to treaty body jurisprudence as well as jurisprudence of the ECHR for the proposition that a complainant should be invited to take part in such an investigation and to receive information about its progress and outcome. As to the conduct of the investigation, Counsel submits that it is clear that the author's complaints were disregarded. The claim that the author failed to provide specific acts of harassment or to identify the persons who subjected him to harassment is an attempt to reduce the State party's duty to conduct a thorough investigation – it is precisely the purpose of such investigations to establish such facts. In any event, these claims are untrue and Counsel refers to the communication itself in which the author sets out in detail his complaints.

Counsel highlights that failure of the State party to provide information about the compensation with regard to the breaches of articles 7, 9 and 10 as well as the refunding of the moneys claimed from the author as immigration fees and with respect to the guarantees of non-repetition. Counsel also highlights the author's concerns with the measures the State party should take to prevent similar violations in the future.

Committee's Decision

The Committee regards the State party's response as unsatisfactory and considers the dialogue ongoing.

See also A/61/40 and A/60/40

Further information:

In September 2009 the victim, through a lawyer in the Philippines, brought a petition against several Philippine ministers and officials as respondents before the Supreme Court, founded on the state's non-compliance with the Committee's views. The petition seeks a writ of *mandamus* based on the state party's international law obligations to remedy the violations which occurred, as expressed in the Committee's views.

The government responded to the petition in May 2010, taking the position that the Covenant and

the Optional Protocol do not form part of the laws of the Republic of the Philippines, and the Philippine government is under no obligation to enforce or implement the Committee's decisions or determinations.

The author filed a reply in October 2010. The author awaits a decision from the Supreme Court but has been advised that this could still take a number of years. In July 2012 the author filed a motion for urgent listing for oral hearing, given that there have been no further steps in the proceedings, however no response has been received.

Jaime Carpo, Oscar Ibao, Warlito Ibao and Roche Ibao v. Philippines, Communication No. 1077/2002, U.N. Doc. CCPR/C/77/D/1077/2002 (2003).

Summary of facts: Mandatory nature of death penalty

The authors were found guilty murder and attempted murder after throwing a grenade into the bedroom of a family, killing the father and two daughters and further injuring another daughter. The death penalty had been abolished in the Philippines with the introduction of a new constitution; however it was reintroduced for the most serious crimes. The authors were sentenced to death (mandatory sentence).

Violations: Article 6, paragraph 1

Remedy:

The State party is under an obligation to provide the authors with an effective and appropriate remedy, including commutation. The State party is under an obligation to avoid similar violations in the future.

Follow-up:

A/58/40

On 3 February 2004, author's counsel informed the Secretariat that on the bases of the views a petition for a Writ of Habeas Corpus had been heard before the Supreme Court but was denied. A motion for reconsideration was subsequently filed and is pending. The author sent a letter to the Office of the President seeking some action pursuant to the Committee's views but no response has been forthcoming. Counsel requests the Committee to urge the State party to implement its views.

A/61/40

State party response

On 5 October 2004, the State party had submitted the following. As to the finding of a violation of article 6, paragraph 2, the Committee's finding that the offence of murder entails a very broad definition, "requiring simply the killing of another individual", is incorrect and there exists in the State party's penal code a clear distinction between different types of unlawful killings. Thus, the State party cannot be held liable for arbitrary deprivation of life on the basis of such an unfounded conclusion.

It also submitted that it cannot be concluded that the imposition of the death penalty was made by automatic imposition of article 48 of the Revised Penal Code. Such a conclusion rests on the false assumption that article 48 provides for the mandatory imposition of the death sentence in cases where a single act results in several unlawful killings. It was argued that there is no indication in the phraseology of this provision which indicates that the term "maximum period" alludes to the penalty of death. Article 48 merely prescribes that if one single act results in two or more offences, the penalty for the most serious crime will be imposed i.e. a penalty lower than the aggregate of the

penalties for each offence, if imposed separately.

Similarly, the State party submitted that there is nothing in this provision which authorizes local courts to disregard the personal circumstances of the offender as well as the circumstances of the offence in considering cases which involve complex crimes. In its view, no persuasive basis was laid down to justify the conclusion that the imposition of the death penalty upon the authors was made “without regard being able to be paid to the authors’ personal circumstances or the circumstances of the particular offence”.

Finally, as to the conclusion that the authors did not receive a real review in the Supreme Court, which practically foreclosed the presentation of any new evidence, the State party submitted that this Court is not a “trier” of facts and is not obliged to repeat the proceedings before the trial courts. A review by the Supreme Court is meant to ensure that the conclusions of the trial court are consistent with prevailing laws and procedures. In addition, it added that there is nothing on record to show that the authors were going to present new evidence not previously considered by the trial court.

On 31 May 2006, the State party submitted that the four authors were granted executive clemency. Their death sentences were reduced to *reclusion perpetua*, a lengthy form of imprisonment. However, the Philippine Revised Penal Code, provides that any person sentenced to *reclusion perpetua* shall be pardoned after 30 years.

Further action taken

On 21 July 2005, the Special Rapporteur had held follow-up consultations with a representative of the State party. He noted that two follow-up replies remained outstanding and that other replies might be construed as not being satisfactory, constituting in reality belated merits submissions rather than follow-up submissions. The State party representatives pledged to secure follow-up information in the outstanding cases (1167/2003, Ramil Rayos, and 1110/2002, Rolando) and to seek confirmation as to whether there would be additional follow-up submissions in the other cases, notably in the cases of Wilson (868/1999) and Piandiong (869/1999).

Committee’s Decision

In light of the commutation of the author’s sentence, the Committee does not intend to consider this matter any further under the follow-up procedure unless the situation changes.

See also A/60/40

Geniuval M. Cagas, Wilson Butin and Julio Astillero v. The Philippines, Communication No. 788/1997, U.N. Doc. CCPR/C/73/D/788/1997 (2002).

Summary of facts: Right to be tried without undue delay, right to presumption of innocence, and unreasonable delay in pre-trial detention

Six women were found, their hands had been bound and their heads smashed. Although there was no eyewitness to the actual killings, a neighbour claims to have seen four men entering the house, then hearing ‘thudding sounds,’ and later seeing the men drive off in a car, he later identified the three authors as being among the individuals he saw on the evening in question. During the same night, a policeman saw the car in question and wrote down its number plate. The investigation later revealed that the number plate was that of a car owned by Mr. Cagas. The two other co-accused and authors are Mr. Cagas’ employees. According to the investigation, Mr. Cagas was a supplier of medicines in a hospital where Dr. Arevalo was appointed Chief of Hospital sometime before the

incident. It was also reported that Dr. Arevalo refused to purchase medical supplies from Mr. Cagas.

The authors were detained and denied bail. At the time of the Committee's hearing they had spent 9 years in pre-trial detention.

Violations: Articles 9, paragraph 3, 14, paragraph 2, 14, paragraph 3 (c)

Remedy:

The State party is under an obligation to provide the authors with an effective remedy, which shall entail adequate compensation for the time they have spent unlawfully in detention. The State party is also under an obligation to ensure that the authors be tried promptly with all the guarantees set forth in article 14 or, if this is not possible, released.

Follow-up:

A/57/40

The authors informed the Committee, by letters of 22 October and 4 November 2002, that the Committee's views had not been published. The presiding judge of the Regional Court allegedly consistently refused to rule on the case.

A/60/40

State party response

The State party submits that it did not provide information on the merits of this case, nor on counsel's supplementary comments, prior to consideration by the Committee as it believed the case to be inadmissible.

As to the issues raised under articles 9, paragraph 3, and 14, paragraph 3, the State party submits that the delay in the trial was caused by the authors themselves when they questioned the trial court's denial of their petition for bail to the Supreme Court. According to the State party, this was a deliberate attempt by the authors to avoid, or at least delay, the trial of the case. As to the Committee's recommendation on compensation, the State party submits that any liability for unlawful detention would depend on the acquittal of the accused. In the event of an acquittal, the corresponding compensation for the time they have spent unlawfully in detention would have to be determined by the Board of Claims under the Department of Justice and/or by the Philippine Commission on Human Rights, the latter being the agency vested by the Constitution with the authority to provide for compensation to victims of violations of human rights. As to the recommendation of a fair trial, it informs the Committee that as of 22 March 2002, the Regional Trial Court in Pili, Camarines Sur "has concluded the trial of the above-mentioned case and that as from that date the same had already been submitted for decision."

On 3 June 2005, and in response to counsel's submission, the State party informed the Special Rapporteur that on 18 January 2005, the Regional Trial Court of Pili, Camarines Sur, pronounced its judgement. The accused Cagas, Butin, and Astilero were all found guilty by the trial court of multiple murder, qualified by treachery, for the killing of Dr. Dolores Arevalo, Encarnacion Basco, Arriane Arevalo, Dr. Analyn Claro, Marilyn Oporto and Elin Paloma. Cagas and Antillero were sentenced to *reclusion perpetua* for each of the murders. Butin died before the rendering of the final judgement.

Author's response

On 24 October 2004, authors' counsel commented that the denial of bail was pursued to the Supreme Court as it was considered unlawful and unfair, and was not for the purposes of delaying the trial. The delay was brought about by the judiciary's failure to schedule the case for trial, even

after the issue of bail had been considered. Counsel denies that this case has been heard. He states that the date of submission of the last pleading to the court was on 2 August 2000, and that according to the court's rules the case should have been heard within 90 days of that date. On 18 July 2003, counsel filed an urgent ex parte plea for a resolution without success. Finally, counsel states that the State party omitted to inform the Committee that one of the authors, Mr. Wilson Butin, died of natural causes while in preventive detention and while waiting for a judgement in this case.

Further action taken/required

The Special Rapporteur met with a representative of the State party during the eighty-fourth session.

A/61/40

State party response

The Committee will recall that, as set out in its 84th report, the State party submitted that it had not provided information on the merits of this case, prior to consideration by the Committee, as it believed the case to be inadmissible. It then proceeded to respond on the merits. On 3 June 2005, and in response to counsel's submission, the State party informed the Special Rapporteur that on 18 January 2005, the Regional Trial Court of Pili, Camarines Sur, had pronounced its judgement. The accused Cagas, Butin, and Astilero were all found guilty by the trial court of multiple murder, qualified by treachery, for the killing of Dr. Dolores Arevalo, Encarnacion Basco, Arriane Arevalo, Dr. Analyn Claro, Marilyn Oporto and Elin Paloma. Cagas and Antillero were sentenced to *reclusion perpetua* for each of the murders. Butin died before the rendering of the final judgement. On 10 February 2006, the State party submitted that the accused Cagas and Astillero appealed the decision to the Court of Appeal where it remains pending. It submits that the rendition of the judgement was made in accordance with the Committee's recommendation. However, it is not in a position to award the authors with compensation while the case is still before the Court of Appeal. It reiterates that the payment of compensation, under the Republic Act No. 7309, is for those who have been unjustly deprived of their liberty and would hinge on the acquittal of the accused. The corresponding compensation for the time spent in prison would then be determined by the Board of Claims which is under the State party's Department of Justice.