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HUMAN RIGHTS COMMITTEE
Eighty-ninth session
12 – 30 March 2007

VIEWS

Communication No. 1320/2004

Submitted by:	Mariano Pimentel et al. (represented by counsel, Mr. Robert Swift)
Alleged victim:	The author
State party:	The Philippines
Date of communication:	11 October 2004 (initial submission)
Document references:	Special Rapporteur's rule 97 decision, transmitted to the State party on 20 October 2004 (not issued in document form)
Date of adoption of Views:	19 March 2007

* Made public by decision of the Human Rights Committee.

Subject matter: enforcement of a foreign judgement in the State party

Procedural issue: none

Substantive issues: concept of "suit at law", reasonable delay

Articles of the Covenant: 2, paragraph 3 (a), 14, paragraph 1

Article of the Optional Protocol: 5, paragraph 2 (b)

On 19 March 2007, the Human Rights Committee adopted the annexed text as the Committee's Views, under article 5, paragraph 4, of the Optional Protocol in respect of communication No. 1320/2004.

[ANNEX]

ANNEX

VIEWS OF THE HUMAN RIGHTS COMMITTEE UNDER ARTICLE 5, PARAGRAPH 4, OF THE OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

Eighty-ninth session

concerning

Communication No. 1320/2004[**]

Submitted by:	Mariano Pimentel et al. (represented by counsel, Mr. Robert Swift)
Alleged victim:	The author
State party:	The Philippines
Date of communication:	11 October 2004 (initial submission)

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

Having concluded its consideration of communication No. 1320/2004, submitted to the Human Rights Committee on behalf of Mariano Pimentel et al. under the Optional Protocol to the International Covenant on Civil and Political Rights,

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

Meeting on 19 March 2007

Adopts the following:

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

1. The authors of the communication are Mariano Pimentel, Ruben Resus and Hilda Narcisco, all Philippine nationals. The first author resides in Honolulu, Hawaii, and the others in the Philippines. They claim to be victims of violations by the Republic of the Philippines of their rights under article 2, paragraph 3 (a), of the International Covenant on Civil and Political Rights. The communication also appears to raise issues under article 14, paragraph 1, of the

[**] The following members of the Committee participated in the examination of the present communication: Mr. Prafullachandra Natwarlal Bhagwati, Mr. Maurice Glèlè Ahanhanzo, Mr. Yuji Iwasawa, Mr. Edwin Johnson, Mr. Walter Kälin, Mr. Ahmed Tawfik Khalil, Ms. Zonke Zanele Majodina, Ms. Iulia Antoanella Motoc, Mr. Michael O'Flaherty, Ms. Elisabeth Palm, Mr. José Luis Pérez Sanchez-Cerro, Mr. Rafael Rivas Posada, Sir Nigel Rodley and Ms. Ruth Wedgwood.

Covenant. The Covenant and the Optional Protocol entered into force for the State party on 23 January 1987 and 22 November 1989, respectively. The authors are represented by counsel; Mr. Robert Swift of Philadelphia, Pennsylvania.

Factual background

2.1 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 ("the Marcos estate") for having been subjected to torture during the regime of President Marcos.[1] Ferdinand E. Marcos was residing in Hawaii at the time.

2.2 In September 1972, the first author was arrested by order of President Marcos two weeks after the declaration of martial law in the Philippines. Over the next six years, he was detained for a total of four years in several detention centres, without ever being charged. Upon return from his final period in detention, he was kidnapped by soldiers, who beat him with rifles, broke his teeth, his arm and leg, and dislocated his ribs. He was buried up to his neck in a remote sugar cane field and abandoned, but was subsequently rescued.

2.3 In 1974, the second author's son, A.S., was arrested by order of President Marcos and taken into military custody. He was tortured during interrogation and kept in detention, without ever being charged. He disappeared in 1977. In March 1983, the third author was also arrested by order of President Marcos. She was tortured and gang-raped during her interrogation. She was never charged with nor convicted of any offence.

2.4 In April 1986, the authors, together with other class members, brought an action against the Marcos estate. On 3 February 1995, a jury at the United States District Court in Hawaii awarded a total of US$ 1,964,005,859.90 to the 9,539 victims (or their heirs) of torture, summary execution and disappearance. The jurors found a consistent pattern and practice of human rights violations in the Philippines during the regime of President Marcos from 1972-1986. Where individuals were randomly selected, part of the amount of the judgement is divided per claimant. Individuals, who were not randomly selected but are part of the class, including the authors, will receive part of the award which was made to three subclasses[2]. However, the amounts were not divided per claimant and it is only after collection (in whole or in part) of the judgement amount

[1] United States District Court in Hawaii, Estate of Ferdinand E. Marcos Human Rights Litigation, MDL No. 840. [The authors' names are not mentioned in the judgment. There is a list of around 137 randomly selected "class claims" and the compensatory damages awarded to them (ranging from US$ 10,000 to US$ 185,000) is specified. Judgement for compensatory damages was also awarded to victims in three of the remaining plaintiff subclasses "of all current citizens of the Republic of the Philippines, their heirs and beneficiaries, who between September 1972 and February 1986 were tortured/summarily executed/ disappeared and are presumed dead, while in the custody of the Philippine military or para-military groups, in the aggregate of US$251,819,811.00, US$409,191,760.00 and US$94,910,640.00, to be divided pro-rata. Judgement for US$ 1,197,227,417.90 exemplary damages was also awarded to be divided pro rata among all members of the plaintiff class.]

[2] The subclasses relate to those victims that had been (1) tortured, (2) summarily executed and (3) disappeared and are presumed dead.

that the United States District Court of Hawaii will allocate amounts to each claimant. On 17 December 1996, the United States Court of Appeal for the Ninth Circuit affirmed the judgment.[3]

2.5 On 20 May 1997, five class members, including the third author, filed a complaint against the Marcos estate, in the Regional Trial Court of Makati City, Philippines, with a view to obtaining enforcement of the United States judgment. The defendants counter filed a motion to dismiss, claiming that the PHP 400 (US$ 7.20) paid by each plaintiff was insufficient as the filing fee. On 9 September 1998, the Regional Trial Court dismissed the complaint, holding that the complainants had failed to pay the filing fee of PHP 472 million (US$ 8.4 million), calculated on the total amount in dispute (US$ 2.2 billion). On 10 November 1998, the authors filed a motion for reconsideration before the same Court, which was denied on 28 July 1999.

2.6. On 4 August 1999, the five class members filed a motion with the Philippine Supreme Court, on their own behalf and on behalf of the class, seeking a determination that the filing fee was PHP 400 rather than PHP 472 million. By the time of submission of the communication to the Committee (11 October 2004), the Supreme Court had not acted on this motion, despite a motion for early resolution filed by the petitioners on 8 December 2003. (see para. 4 below for an update).

2.7 According to the authors, since the five class members filed their motion with the Philippine Supreme Court, the same Court entered judgement for the State party against the Marcos Estate in a forfeiture action and directed enforcement of that judgement for over US$ 650 million, even though that appeal was filed over two years after the authors' own petition.

The complaint

3. 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 to a *de facto* denial of their right to an effective remedy to obtain compensation for their injuries, under article 2 of the Covenant. They argue that they are not required to exhaust domestic remedies, as the proceedings before the Philippine courts have been unreasonably prolonged. The communication also appears to raise issues under article 14, paragraph 1, of the Covenant.

The State party's submission on admissibility and merits

4. On 12 May 2005, the State party submitted that the communication is inadmissible for failure to exhaust domestic remedies. It submits that, on 14 April 2005, the Supreme Court handed down its decision in Mijares et al. v. Hon. Ranada et al., affirming the authors' claim that they should pay a filing fee of PHP 410 rather than PHP 472 million with respect to their complaint to enforce the judgment of the United States District Court in Hawaii. The State party denies that the authors were not afforded an effective remedy.

The authors' comments on the State party's submission

5.1 On 12 January 2006, the authors submit that there has been no satisfactory resolution of their claims. They confirm that, on 14 April 2005, the Supreme Court decided in their favour

[3] United States Court of Appeals for the Ninth Circuit, Hilao v. Estate of Marcos, 103 F.3d 767.

with respect to the filing fee. However, despite the Supreme Court's view that there be a speedy resolution to their claim by the trial court, this court has not yet decided on the enforceability of the decision of the United States District Court of Hawaii.

5.2 In addition, the authors argue that an appeal in a parallel case, which is one year older than the appeal in the current case has been pending for over seven years in the Philippine Supreme Court[4].

Additional comments by the parties

6. On 1 June 2006, the State party submitted that, following the Supreme Court decision on the filing fee, the case was reinstated before the trial court. It adds that the authors of the current case are unrelated to the case referred to in paragraph 5.2.

7.1 On 15 June and 4 July 2006, in response to a request for clarification from the Secretariat regarding the authors' status as "victim[s]" for the purposes of article 1 of the Optional Protocol, the authors stated that a class action in the United States may be brought by any member of the class on behalf of a defined group, in this case, 9,539 victims of torture, summary execution and disappearance. All class members have standing in a class action once it is certified by a court and all have the right to share in a final judgement. A court is free to designate particular class members as "class representatives" for purposes of prosecuting the litigation, but the "class representative" has no more standing on his claim than any other individual class members. Thus, the use of different "class representatives" for the same class in lawsuits filed in the US and the Philippines has no bearing on the authors' standing. The Philippine rule on class actions is derived from and based on the United States rule.

7.2 According to the authors, in a class action filed in the United States, it is not common to file a list of all class members. In this case, where the public record could be inspected by the Philippine Ministry, which might act in reprisal against the living torture victims, caution was exercised. The authors provide evidence to prove that they are members of the U. S. class action: an excerpt from Ms. Narcisco's testimony at the trial on liability in the United States; an excerpt from Mr. Pimentel's deposition in 2002 in the United States, and a United States judgement in which he was certified as a class representative in a subsequent case; and a claim form as required by the court with respect to M. Resus. The authors also confirm that there has been no action taken for the enforcement of the judgement.

Issues and proceedings before the Committee

Consideration of admissibility

8.1 Before considering any claim contained in a communication, the Human Rights Committee must, in accordance with rule 93 of its Rules of Procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

[4] This case relates to Imelda M. Manotoc v. Court of Appeals, which involves an interlocutory appeal from the lower court finding there was sufficient service on Imee Marcos-Manotoc, the daughter of Ferdinand E. Marcos, in an action to enforce a United States judgement against her for the torture and murder of a man.

8.2 The Committee notes that the claim relating to the enforcement of the United States District Court of Hawaii's judgement is currently pending before the State party's Regional Trial Court. Since the last hearing on the filing issue relating to this case, on 15 April 2005, in which the Supreme Court found in favour of the authors, the issue of the enforcement of the judgement has been reinstated before the Regional Trial Court. For this reason, and bearing in mind that the complaint relates to a civil claim for compensation, albeit for torture, the Committee cannot conclude that the proceedings have been so unreasonably prolonged that the delay would exempt the authors from exhausting them. Accordingly, the Committee finds that this claim is inadmissible under article 5, paragraph 2 (b), of the Optional Protocol.

8.3 The Committee observes that since the authors brought their action before the Regional Trial Court in 1997, the same Court and the Supreme Court considered the issue of the required filing fee arising from the authors claim on three subsequent occasions (9 September 1998, 28 July 1999 and 15 April 2005) and over a period of eight years before reaching a conclusion in favour of the authors. The Committee considers that the length of time taken to resolve this issue raises an admissible issue under article 14, paragraph 1, as well as article 2, paragraph 3, and should be considered on the merits.

Consideration of the merits

9.1 The Human Rights Committee has considered the present communication in the light of all the information made available to it by the parties, as provided in article 5, paragraph 1, of the Optional Protocol.

9.2 As to the length of the proceedings relating to the issue of the filing fee, the Committee recalls that the right to equality before the courts, as guaranteed by article 14, paragraph 1, entails a number of requirements, including the condition that the procedure before the national tribunals must be conducted expeditiously enough so as not to compromise the principle of fairness.[5] It notes that the Regional Trial Court and Supreme Court spent eight years and three hearings considering this subsidiary issue and that the State party has provided no reasons to explain why it took so long to consider a matter of minor complexity. For this reason, the Committee considers that the length of time taken to resolve this issue was unreasonable, resulting in a violation of the authors' rights under article 14, paragraph 1, read in conjunction with article 2, paragraph 3, of the Covenant.

10. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol, is of the view that the facts before it disclose a violation of article 14, paragraph 1, read in conjunction with article 2, paragraph 3, as it relates to the proceedings on the amount of the filing fee.

11. The Committee is of the view that the authors are entitled, under article 2, paragraph 3(a), of the Covenant, to an effective 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

[5] *Perterer v. Austria, Communication No. 1015/2001*, Views adopted on 20 July 2004, para. 10.7.

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.

12. Bearing in mind that, by becoming a State party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant or not and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy in case a violation has been established, the Committee wishes to receive from the State party, within 90 days, information about the measures taken to give effect to the Committee's Views.

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