

HUMAN RIGHTS COMMITTEE

Wilson v. The Philippines

Communication No 868/1999

30 October 2003

CCPR/C/79/D/868/1999*

VIEWS

Submitted by: Albert Wilson (represented by counsel, Ms. Gabriela Echeverria)

Alleged victim: The author

State party: The Philippines

Date of communication: 15 June 1999 (initial submission)

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

Meeting on 30 October 2003,

Having concluded its consideration of communication No. 868/1999, submitted to the Human Rights Committee on behalf of Mr. Albert Wilson 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,

Adopts the following:

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

1. The author of the communication, initially dated 15 June 1999, is Albert Wilson, a British national resident in the Philippines from 1990 until 2000 and thereafter in the United Kingdom. He claims to be a victim of violations by the Philippines of articles 2, paragraphs 2 and 3, 6, 7, 9, 10,

paragraphs 1 and 2, 14, paragraphs 1, 2, 3 and 6. He is represented by counsel.

The facts as presented by the author

2.1 On 16 September 1996, the author was forcibly arrested without warrant as a result of a complaint of rape filed by the biological father of the author's twelve year old step-daughter and transferred to a police station. He was not advised of his rights, and, not speaking the local language, was unaware as to the reasons for what was occurring. At the police station, he was held in a 4 by 4 foot cage with three others, and charged on the second day with attempted rape of his stepdaughter. He was then transferred to Valenzuela municipal jail, where the charge was changed to rape. There he was beaten and ill-treated in a "concrete coffin". This sixteen by sixteen foot cell held 40 prisoners with a six inch air gap some 10 foot from the floor. One inmate was shot by a drunken guard, and the author had a gun placed to his head on several occasions by guards. The bottoms of his feet were struck by a guard's baton, and other inmates struck him on the guards' orders. He was ordered to strike other prisoners and was beaten when he refused to do so. He was also constantly subjected to extortion by other inmates with the acquiescence and in some instances on the direct instruction of the prison authorities, and beaten when he refused to pay or perform the directed act(s). There was no running water, insufficient sanitary conditions (a single non-flush bowl in the cell for all detainees), no visiting facility, and severe food rationing. Nor was he segregated from convicted prisoners.

2.2 Between 6 November 1996 to 15 July 1998, the author was tried for rape. 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 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.

2.3 On 30 September 1998 the author was convicted of rape and sentenced to death, as well as to P50,000 indemnity, by the Regional Trial Court of Valenzuela. According to the author, the conviction was based solely on the testimony of the girl, who admitted she was lying when she first made the allegation of attempted rape, and there were numerous inconsistencies in her trial testimony.

2.4 The author was then placed on death row in Muntinlupa prison, where a thousand death row prisoners were kept in three dormitories. Foreign inmates were continually extorted by other inmates with the acquiescence, and sometimes at the direction of, prison authorities. The author refers to media reports that the prison was controlled by gangs and corrupt officials, at whose mercy the author remained throughout his confinement on death row. Several high-ranking prison officials were sentenced for extortion of prisoners, and large amounts of weapons were found in cells. The

author was pressured and tortured to provide gangs and officials with money. There were no guards in the dormitory or cells, which contained over 200 inmates and remained unlocked at all times. His money and personal effects had been removed from him en route to the prison, and for three weeks he had no visitors, and therefore no basic necessities such as soap or bedding. Food comprised unwashed rice and other inappropriate substances. Sanitation consisted of two non-flushing toilet bowls in an area which was also a 200-person communal shower.

2.5 The author was forced to pay for the eight by eight foot area in which he slept and financially to support the eight others with him. He was forced to sleep alongside drug-damaged individuals and persons who deliberately and constantly deprived him of sleep. He was forcibly tattooed with a permanent gang mark. Inmates were stretched out on a bench on public display and beaten with wood across the thighs, or otherwise "taught a lesson". The author states he lived in constant fear coming close to death and suicidal depression, watching six inmates walk to their execution while five others died violent deaths. Fearing death after a "brutally unfair and biased" trial, he suffered severe physical and psychological distress and felt "total helplessness and hopelessness". As a result, he is "destroyed both financially and in many ways emotionally".

2.6 On 21 December 1999, i.e. subsequent to the submission of the communication under the Optional Protocol, 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. The Solicitor-General had filed a brief with the Court recommending acquittal on the basis that material contradictions in witness testimony, as well as the physical evidence to the contrary, justified the conclusion that the author's guilt had not been shown beyond reasonable doubt.

2.7 On 22 December 1999, 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. The ruling was confirmed after an appeal by the British Ambassador to the Philippines, and subsequent efforts directed from the United Kingdom to the Bureau of Immigration and the Supreme Court in order to recover these fees proved similarly unavailing.

2.8 Upon his return to the United Kingdom, the author sought compensation pursuant to Philippine Republic Act 7309. The Act creates a Board of Claims under the Department of Justice for victims of unjust imprisonment or detention, compensation being calculable by month. Upon inquiry, he was informed on 21 February 2001 that on 1 January 2001, he had been awarded P14,000, but that he would be required to claim it in person in the Philippines. On 12 March 2001, he wrote to the Board of Claims seeking reconsideration of quantum, on the basis that according to the legal scale 40 months in prison should result in a sum of P40,000. On 23 April 2001, he was informed that the amount claimed was 'subject to availability of funds' and that the person liable for the author's misfortune was the complainant accusing him of rape. No further clarification on the discrepancy of the award was received.

2.9 On 9 August 2001, 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 watchlist. 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.

2.10 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.

The complaint

3.1 The author alleges a violation of articles 6 and 7 by virtue of the mandatory imposition of the death penalty under s.11 of *Republic Act No. 7659* for the rape of a minor to whom the offender stands in parental relationship.¹ Such a crime is not necessarily a "most serious crime" as it does not involve loss of life, and the circumstances of the offence may vary greatly. For the same reasons, the mandatory death penalty is disproportionate to the gravity of the alleged crime and contrary to article 7. It is further disproportionate and inhuman, as no allowance is made for the circumstances of the individual crime and the individual offender in mitigation.

3.2 The author contends that the time spent on death row constituted a violation of article 7, particularly in the light of the massive procedural deficiencies of the trial. It is argued that there is, in this instance, a violation of article 7 because of the patently unfair proceedings at trial and the manifestly unsound verdict which resulted in the helplessness and anxiety placed on the author given he was wrongly convicted. This was aggravated by the specific treatment and conditions he was subjected to on death row.

3.3 In terms of article 9, the author argues his initial arrest took place without warrant and in violation of domestic law governing arrests. Nor was he informed at the time of his arrest of the reasons therefore in a language he could understand, or promptly brought before a judge.

3.4 As to the claim of a violation of articles 14, paragraphs 1, 2 and 3, the author contends, firstly, that his trial was unfair. He contends that in emotive cases such as rape of children, a single judge is not necessarily immune to pressures on his or her independence and impartiality, and should not be allowed to impose the death penalty; rather, a judge and jury or bench constituted of several judges should determine capital cases. It is alleged that the trial judge was subjected to "enormous pressure" from local individuals who packed the courtroom and desired the author's conviction. According to the author, some of these persons were brought in from other areas.

3.5 Secondly, the author contends that the trial court's analysis was manifestly unsound and violated his right to presumption of innocence, when it observed that the author's defense of denial that the alleged act took place "cannot prevail over the positive assertions of the minor-victim". In the light of the irreversible nature of the death penalty, the author argues capital trials must scrupulously

observe all international standards. Referring to the United Nations Safeguards on the Rights of Those Facing the Death Penalty, the author observes that a capital conviction must be "based upon clear and convincing evidence leaving no room for an alternative explanation of the facts".

3.6 Under article 14, paragraph 6, the author observes that particularly in the light of the compensation procedure provided under domestic law, that the State party was under an obligation to provide fair and adequate compensation for the miscarriage of justice. In this case, the actual award was some one-quarter of his entitlement under that scheme, and this was almost wholly negated by the requirement to pay immigration fines and fees. In a related claim of violation of article 2, paragraph 3, the author contends that instead of being properly compensated for the violations at issue, he was forced himself to pay for the time unjustly held in prison, and remains on the list of excludable aliens, despite having been fully cleared of all charges against him. This violates his right to an effective remedy, amounts to double jeopardy in the form of an additional punishment and contravenes his family rights.

3.7 As to admissibility issues, the author states that he has not submitted his claim to another international procedure, and, concerning the conditions of detention in prison, that he unsuccessfully attempted to raise concerns regarding his treatment and the conditions of detention. This remedy was ineffective as he only had access to the individuals themselves responsible for the incidents in question.

The State party's submissions on admissibility and merits

4.1 By submission of 5 August 2002, the State party contests the admissibility and merits of the case, arguing that numerous judicial, quasi-judicial or administrative remedies would be available to the author. Article 32 of the Civil Code makes any public officer or private individual liable for damages for infringement of the rights and liberties of another individual, including rights to be free from arbitrary detention, from cruel punishment, and so on. The author may also file a claim of damages for malicious prosecution, and/or a case alleging violations of the revised penal code on crimes against liberty and security or crimes against honour. He may also lodge a complaint to the Philippine Commission on Human Rights, but has not done so. The Supreme Court's decision to vacate the lower court's judgment, which was the result of automatic review on death penalty cases, shows that due process guarantees and adequate remedies are available in the judicial system.

4.2 As to the article 7 claims, the State party contends that it cannot adequately respond to the allegations made, as they require further investigation. In any event, the author should have submitted his claim to a proper forum such as the Philippine Commission on Human Rights.

4.3 On the article 14 claims, the State party states that the case was tried before a competent court, that the author was able to present and cross-examine evidence and witnesses, and that he enjoyed a (successful) right of appeal. Nor is there anything to suggest the trial judge promulgated his decision based on anything other than a good faith appreciation of the evidence.

4.4 As to the inadequate sum of compensation paid, the State party points out that on 24 August

2001, the Board of Claims granted the author an additional amount of P26,000 bringing the compensation to the total P40,000 claimed. Although advised that the check was ready for pick-up, the author has not yet done so and it is therefore no longer valid, although it can readily be replaced. As to the contention that the author was denied civil remedies, the State party points out that he was advised by the Board of Claims to consult a practicing lawyer, but that he has failed to pursue redress through the courts.

The author's comments on the State party's submissions

5.1 By letter of 6 April 2002, the author responds to further aspects of the State party's submissions. On the fair trial issues, he points out that even the Solicitor-General regarded the charge against him as deeply flawed, and that thus, especially in capital cases, the trial judge's good faith "honest belief" is not sufficient to legitimize a wrongful conviction. The Supreme Court's decision makes clear that the proceedings failed to comply with what the author regards as the minimum standards set out in article 14. The author contends that the trial judge's approach was biased against him on account of his gender, substituted his own evaluation of the medical evidence for that of the expert involved, and failed to respect the presumption of innocence.

5.2 Moreover, the author's application to exclude the media from trial was denied and full access to the press was granted even before arraignment. Police parading of suspects before the media in the Philippines is well-documented, and in this case the presence of media from the moment the author was first brought before a prosecutor undermined the fairness of the trial. During trial, the court was packed with people from "children, feminist and anti-crime organizations" that were pressing for conviction. Public and media access enhances the fear of partial proceedings in highly emotive cases.

5.3 The author also argues, with reference to the Committee's decision in Mbenge v Zaire,² that the violation of his article 14 rights led to an imposition of the death sentence contrary to the provisions of the Covenant, and thus in violation of article 6. The author also argues, with reference to the decision in Johnson v Jamaica,³ that as the imposition of the death sentence was in violation of the Covenant, his resulting detention, particularly in the light of the treatment and conditions suffered, was cruel and inhuman punishment, contrary to article 7.

5.4 The author argues generally, with reference to the Committee's General Comment on article 6, that the re-imposition of the death penalty in a State party is contrary to the object and purpose of the Covenant and violates article 6, paragraphs 1 to 3. In any event, the manner in which the Philippines has re-introduced the death penalty violates article 6, paragraph 2, as well as the obligation contained in article 2, paragraph 2, to give effect to Covenant rights. The Republic Act 7659, providing for the death sentence for 46 offences (of which 23 mandatorily), is flawed and affords no protection of Covenant rights.

5.5 At the time of the author's trial, the applicable criminal procedure required a rape charge to be brought by the victim or her parents or guardian, who have not expressly pardoned the offender. The author argues that to provide for a mandatory death penalty for an offence which cannot even be

prosecuted ex officio by the State is a standing invitation for extortion □ fabricating an allegation and seeking money for an express pardon. The author repeatedly asserted at trial that the claimant had sought US\$25,000 in exchange for an "affidavit of desistance". The author's suffering is a direct result of the State's failure to guarantee the most strict legal procedures and safeguards in capital cases generally, and, in particular, in his case.

5.6 As to the descriptions of conditions of detention suffered before conviction in Valenzuela jail, the author refers to the Committee's jurisprudence which has consistently found similar treatment inhumane and in violation of articles 7 and 10.⁴ The conditions in Valenzuela are well-documented in reports of Amnesty International and media sources, and plainly fall beneath what the Covenant requires of all States parties, regardless of their budgetary situation. He also advances a specific violation of article 10, paragraph 2, in that he was not separated from convicted prisoners.

5.7 The author argues that there is no obligation to report or complain about conditions of detention when to do so would foreseeably result in victimization.⁵ The author provides copies of three letters he did write to the Philippine Commission on Human Rights in 1997, which resulted in him being beaten up and locked in his cell for several days. In 1999, while on death row, the Department of Justice was alerted of threats to the author's life and asked to take steps to protect him. The response was a serious threat to his life, with a gun being placed against his head by a guard (when he had already seen another inmate shot). The author submits that the State party's inability to respond to these claims in their submissions only underlines the lack of an effective domestic 'machinery of control' and the need for investigation and compensation for the violations of article 7 he suffered.

5.8 As to the conditions of detention on death row, it is submitted that they caused serious additional detriment to the author's mental health and constituted a separate violation of article 7. The author suffered extreme anxiety and severe suffering as a result of the detention, with a General Psychiatric Assessment finding the author "very depressed and suffering from severe longstanding [Post Traumatic Stress Disorder] that can lead to severe and sudden self-destructive behaviour". The author refers to the Committee's jurisprudence that while in principle mental strain following conviction does not violate article 7, "the situation could be different in cases involving capital punishment"⁶ and that "each case must be considered on its own merits, bearing in mind the imputability □ on the State party, the specific conditions of imprisonment in the particular penitentiary and their psychological impact on the person concerned".⁷

5.9 In this case, the author's conviction and the conditions of detention fell well below minimum standards and were plainly imputable to the State party. In addition, death row inmates on appeal were not separated from those whose convictions had become final. During the author's detention, six prisoners were executed (three convicted of rape). In one case, a communications failure prevented a presidential reprieve from stopping an execution. In another, three prisoners were executed despite the Human Rights Committee's request for interim measures of protection.⁸ Such events, which took place while the author was on death row, heightened the mental anxiety and helplessness suffered, with detrimental effect on his mental health and thus violated article 7.

5.10 Concerning the State party's contention that adequate remedies are in place, the author submits

that the system lacks effective remedies for accused persons in detention, and that the Supreme Court decision represents only partial reparation, providing no redress for the violations of his rights to be free, for example, from torture or unlawful detention. The Supreme Court decision itself cannot be considered as a form of compensation since it only ended an imminent violation of his right to life, for which no compensation would have been possible. The Court did not order compensation, restitution of legal fees, reparation nor an investigation. The author's mental injury and suffering, as well as damage to reputation and way of life, including stigmatism as a child rapist/paedophile in the United Kingdom, remain without remedy.

5.11 Far from receiving appropriate reparation for the violation suffered, the author was in fact doubly punished by having to pay immigration fees and by being excluded from entering the Philippines, both issues subsequently unresolved despite representations to the Philippine authorities. The exclusion also prevents the author from effectively using any remedies available in the Philippines, even if they were appropriate, which he denies. In particular, the civil remedies the State party invokes are neither "available" nor "effective" if he cannot enter the country, and therefore need not be exhausted.

5.12 In any event, according to the author, the State party's domestic law denies remedies in his author's case. The Constitution requires the State's consent to be sued,⁹ which has neither expressly nor implicitly been given in this case. Under statutory law, the State is only responsible for the wrongful conduct of 'special agents' (a person specially commissioned to perform a particular task). Public officials acting within the scope of their duties are personally liable for damage caused (but may invoke immunity if the suit affects the property, rights or interests of the State). Thus, the State is not liable for illegal acts that are ultra vires and committed in violation of an individual's rights and liberties.¹⁰ The author thus submits there are no available civil remedies to redress adequately the wrongs caused, and that the State party has failed to adopt adequate measures of compensation, especially for damage resulting from fundamental rights protected under articles 6, 7 and 14. Accordingly, it has breached its obligation to provide effective remedies in article 2, paragraph 3.

5.13 Finally, the author argues that such non-judicial remedies as may be available are not effective because of the extremely serious nature of the violations, and inappropriate in terms of quantum. In the first place, if, as the State party contends, there is no record of the author's complaints to the Philippine Human Rights Commission, this underscores the ineffectiveness and inadequacy of this mechanism, especially in terms of protecting rights under articles 6 and 7 of the Covenant. In any case, the Commission simply provides financial assistance, rather than compensation, and such a non-judicial and non-compensatory remedy cannot be considered an effective and adequate remedy for violations of articles 6 and 7.

5.14 Secondly, the administrative compensation mechanism awarding the author some compensation cannot be considered a substitute for a judicial civil remedy. The Committee has observed that "administrative remedies cannot be deemed to constitute adequate and effective remedies within the meaning of article 2(3) of the Covenant, in the event of particular serious violations of human rights";¹¹ rather, access to court is required. In any event, the compensation provided is inadequate in terms of article 14, paragraph 6, and the inability to enter the country renders the remedy

ineffective in practice. Even though the P40,000 amount awarded was the maximum amount permissible, it is a token and symbolic amount, even allowing for differences between countries in levels of compensation. After deducting the immigration fees charged, some P18,260 (US\$343) remained.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claims contained in a communication, the Human Rights Committee must, in accordance with article 87 of its rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

6.2 As to the exhaustion of domestic remedies, the State party contends that the author could lodge a complaint with the Philippine Human Rights Commission and a civil claim before the courts. The Committee observes that the author did in fact complain to the Commission while in prison, but received no response to these replies, and that the Commission is empowered to grant "financial assistance" rather than compensation. It further observes that a civil action may not be advanced against the State without its consent, and that there are, under domestic law, extensive limitations on the ability to achieve an award against individual officers of the State. Viewing these elements against the backdrop of the author's exclusion from entry to the Philippines, the Committee considers that the State party has failed to demonstrate that the remedies advanced are both available and effective, and that it is not precluded, under article 5, paragraph 2(b) of the Optional Protocol, from considering the communication.

6.3 The State party suggests that the Supreme Court's decision and subsequent compensation raise issues of admissibility concerning some or all of the author's claims. The Committee observes that the communication was initially submitted well prior to the Supreme Court's decision in his case. In cases where a violation of the Covenant is remedied at the domestic plane prior to submission of the communication, the Committee may consider a communication inadmissible on grounds of, for example, lack of 'victim' status or want of a 'claim'. Where the alleged remedy occurs subsequent to submission of a communication, however, the Committee may nevertheless address the issue whether there was a violation of the Covenant and then go to the sufficiency of the afforded remedy. (See, for example, Dergachev v Belarus).¹² It follows that the Committee regards the events referred to the State party by way of remedy, as relevant to the issues of determination of the merits of a communication and an adequacy of the remedy to be granted to the author for any violations of his Covenant rights, rather than amounting to an obstacle to the admissibility of claims already submitted.

6.4 As to the claim under article 14, paragraphs 1 and 3, of the Covenant, concerning an unfair trial, the Committee observes that these claims have not been substantiated by relevant facts or arguments. Contrary to what is suggested by the author, the Supreme Court did not find the author's trial unfair, but rather reversed his conviction after reassessment of the evidence. Consequently, this part of the communication is inadmissible under article 2 of the Optional Protocol.

6.5 As to the author's claims under article 14, paragraph 2, of the Covenant concerning the presumption of innocence, the Committee observes that events occurring after the point that the author no longer faced a criminal charge, subsequent events fall outside the scope of article 14, paragraph 2. This claim is accordingly inadmissible *ratione materiae* under article 3 of the Optional Protocol.

6.6 Concerning the claim under article 14, paragraph 6, of the Covenant, the Committee, the Committee notes that the author's conviction was reversed in the ordinary course of appellate review and not on the basis of a new or newly-discovered fact. In these circumstances, this claim falls outside the scope of article 14, paragraph 6 and is inadmissible *ratione materiae* under article 3 of the Optional Protocol.

6.7 In the absence of any further obstacles to admissibility, the Committee regards the author's remaining claims as sufficiently substantiated, for purposes of admissibility, and proceeds to their examination on the merits.

Consideration of the merits

7.1 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.

7.2 As to the author's claims relating to the imposition of the death penalty, including passing of sentence of death for an offence that under the law of the State party, enacted subsequent to capital punishment having once been removed from the criminal code, carried mandatory capital punishment, without allowing the sentencing court to pay due regard to the specific circumstances of the particular offence and offender, the Committee observes that the author is no longer subject to capital punishment, as his conviction and hence the imposition of capital punishment was annulled by the Supreme Court in late December 1999, after the author had spent almost 15 months in imprisonment following sentence of death. In these circumstances, the Committee considers it appropriate to address the remaining issues related to capital punishment in the context of the author's claims under article 7 of the Covenant instead of separately determining them under article 6.

7.3 As to the author's claims under articles 7 and 10 regarding his treatment in detention and the conditions of detention, both before and after conviction, the Committee observes that the State party, rather than responding to the specific allegations made, has indicated that they require further investigation. In the circumstances, therefore, the Committee is obliged to give due weight to the author's allegations, which are detailed and particularized. The Committee considers that the conditions of detention described, as well as the violent and abusive behaviour both of certain prison guards and of other inmates, as apparently acquiesced in by the prison authorities, are seriously in violation of the author's right, as a prisoner, to be treated with humanity and in with respect for his

inherent dignity, in violation of article 10, paragraph 1. As at least some of the acts of violence against the author were committed either by the prison guards, upon their instigation or with their acquiescence, there was also a violation of article 7. There is also a specific violation of article 10, paragraph 2, arising from the failure to segregate the author, pre-trial, from convicted prisoners.

7.4 As to the claims concerning the author's mental suffering and anguish as a consequence of being sentenced to death, the Committee observes that the authors' mental condition was exacerbated by his treatment in, as well as the conditions of, his detention, and resulted in documented long-term psychological damage to him. In view of these aggravating factors constituting further compelling circumstances beyond the mere length of time spent by the author in imprisonment under a sentence of death,¹³ the Committee concludes that the author's suffering under a sentence of death amounted to an additional violation of article 7. None of these violations were remedied by the Supreme Court's decision to annul the author's conviction and death sentence after he had spent almost fifteen months of imprisonment under a sentence of death.

7.5 As to the author's claims under article 9 the Committee notes that the State party has not contested the factual submissions of the author. Hence, due weight must be given to the information submitted by the author. The Committee concludes that the author was not informed, at the time of arrest, of the reasons for his arrest and was not promptly informed of the charges against him; that the author was arrested without a warrant and hence in violation of domestic law; and that after the arrest the author was not brought promptly before a judge. Consequently, there was a violation of article 9, paragraphs 1, 2 and 3, of the Covenant.

8. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts as found by the Committee reveal violations by the Philippines of article 7, article 9, paragraphs 1, 2 and 3, and article 10, paragraphs 1 and 2, of the Covenant.

9. 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. 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.

10. Bearing in mind that, by becoming a 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. The State party is also requested to publish the Committee's Views.

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

* The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Nisuke Ando, Mr. Prafullachandra Natwarlal Bhagwati, Mr. Alfredo Castillero Hoyos, Ms. Christine Chanet, Mr. Franco Depasquale, Mr. Maurice Gili Ahanhanzo, Mr. Walter Kulin, Mr. Ahmed Tawfik Khalil, Mr. Rajsoomer Lallah, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Martin Scheinin, Mr. Ivan Shearer, Mr. Hipólito Solari Yrigoyen, Ms. Ruth Wedgwood, Mr. Roman Wieruszewski and Mr. Maxwell Yalden.

Notes

1. S.11 *Republic Act 7659* provides that: "the death penalty shall also be imposed if the crime of rape is committed with any of the following attendant circumstances: 1. When the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step parent, guardian".

2. Case No. 16/1977, Views adopted on 25 March 1983.

3. Case No. 592/1994, Views adopted on 20 October 1998.

4. The author refers, by way of example, to Carballal v Uruguay Case No 33/1978, Views adopted on 27 March 1981; Massiotti v Uruguay Case No 25/1978, Views adopted on 26 July 1982; Marais v Madagascar Case No 115/1982, Views adopted on 1 April 1985; Antonaccio v Uruguay Case No 63/1979, Views adopted on 28 October 1971; Estrella v Uruguay Case No 74/1989, Views adopted on 29 March 1983; Wight v Madagascar Case No 115/1981, Views adopted on 1 April 1985; and Tshisekedi v Zaire Case No 242/1987, Views adopted on 2 November 1989.

5. The author refers to Philip v Jamaica Case No 594/1992, Views adopted on 20 October 1998.

6. Pratt & Morgan v Jamaica Case Nos. 210/1986 and 225/1987, Views adopted on 6 April 1989.

7. Francis v Jamaica Case No 606/1994, Views adopted on 25 July 1995.
8. Piandiong et al. v The Philippines Case No 869/1999, Views adopted on 19 October 2000.
9. Article XVI, Section 3.
10. C Sangco : *Philippine Law on Torts and Damages* (1994).
11. Bautista Arellana v Colombia Case No 563/1993, Views adopted on 27 October 1995.
12. Case No 921/2000, Views adopted on 2 April 2002.
13. Johnson v Jamaica Case No 588/1994, Views adopted on 22 March 1996; Francis v Jamaica Case No 606/1994, Views adopted on 25 June 1995.