

HUMAN RIGHTS COMMITTEE

Hopu and Bessert v. France

Communication No. 549/1993

30 June 1994

CCPR/C/51/D/549/1993 *

ADMISSIBILITY

Submitted by: Francis Hopu and Tepoaitu Bessert [represented by counsel]

Alleged victims: The authors

State party: France

Date of communication: 4 June 1993 (initial submission)

Documentation references: Prior decisions -Special Rapporteur's rule 91 decision, transmitted to the State party on 11 June 1993 (not issued in document form)

Date of present decision: 30 June 1994

The Human Rights Committee, acting through its Working Group pursuant to rule 87, paragraph 2, of the Committee's rules of procedure, adopts the following decision on admissibility.

Decision on admissibility

1. The authors of the communication are Francis Hopu and Tepoaitu Bessert, both inhabitants of Tahiti, French Polynesia. They claim to be the victims of violations by France of articles 2, paragraphs 1 and 3 (a), 14, 17, paragraph 1, and 23, paragraph 1 and 27 of the International Covenant on Civil and Political Rights. They are represented by counsel, who has provided a duly signed power of attorney.

The facts as submitted by the authors:

2.1 The authors are the descendants of the owners of a land tract (approximately 4.5 hectares) called Tetaitapu, in Nuuroa, on the island of Tahiti. They argued that their ancestors were unjustly dispossessed of their property by jugement de licitation of the Tribunal Civil d'Instance of Papeete

on 6 October 1961. Under the terms of the judgment, ownership of the land was awarded to the Société Hôtelière du Pacifique Sud (SHPS). Since the year 1988, the Territory of Polynesia is the sole shareholder of this company.

2.2 In 1990, the SHPS leased the land to the Société d'Etude et de Promotion Hôtelière, which in turn subleased it to the Société Hôtelière RIVNAC. RIVNAC seeks to begin construction work on a luxury hotel complex on the site, which borders a lagoon, as soon as possible. Some preliminary work - such as the felling of some trees, cleaning the site of shrubs, fencing off the ground - has been carried out.

2.3 The authors and other descendants of the owners of the land peacefully occupied the site in July 1992, in protest against the planned construction of the hotel complex. They contend that the land and the lagoon bordering it represent an important place in the history, the culture and the life of Polynesians. They add that the land encompasses the site of a pre-European burial ground and that the lagoon remains a traditional fishing ground for Polynesians and provides the means of subsistence for some thirty families living next to the lagoon.

2.4 On 30 July 1992, RIVNAC seized the Tribunal de Première Instance of Papeete with a request for an interim injunction; this request was granted on the same day, when the authors and occupants of the site were ordered to leave the ground immediately and to pay 30,000 FPC (Francs Pacifique) to RIVNAC. On 29 April 1993, the Court of Appeal of Papeete confirmed the injunction and reiterated that the occupants had to leave the site immediately. The authors were notified of the possibility to appeal to the Court of Cassation within one month of the notification of the order. Apparently, they have not done so.

2.5 The authors contend that the pursuit of the construction work would destroy their traditional burial grounds and ruinously affect their fishing activities. They add that their expulsion from the land is now imminent, and that the High Commissioner of the Republic, who represents France in Polynesia, will soon resort to police force to evacuate the land and to make the start of the construction work possible. In this context, the authors note that the local press reported that up to 350 police officers (including CRS - Corps Républicain de Sécurité) have been flown into Tahiti for that purpose. The authors therefore ask the Committee to request interim measures of protection, pursuant to rule 86 of the Committee's rules of procedure.

The complaint:

3.1 The authors allege a violation of article 2, paragraph 3(a), juncto 14, paragraph 1, on the ground that they have not been able to petition lawfully established courts for an effective remedy. In this connection, they note that land claims and disputes in Tahiti were traditionally settled by indigenous tribunals ("tribunaux indigènes"), and that the jurisdiction of these tribunals were recognized by France when Tahiti came under French sovereignty in 1880. However, it is submitted that since 1936, when the so-called High Court of Tahiti ceased to function, the State party has failed to take appropriate measures to keep these indigenous tribunals in operation; as a result, the authors submit, land claims have been haphazardly and unlawfully adjudicated by civil and administrative tribunals.

3.2 The authors further claim a violation of articles 17, paragraph 1, and 23, paragraph 1, on the

ground that their forceful removal from the disputed site and the realization of the hotel complex would entail the destruction of the burial ground, where members of their family are said to be buried, and because such removal would interfere with their private and family life.

3.3 The authors claim to be victims of a violation of article 2, paragraph 1. They contend that Polynesians are not protected by laws and regulations (such as articles R 361 (1) and 361 (2) of the Cemetery Act, as well as legislation concerning natural sites and archaeological excavations) which have been issued for the territoire métropolitain and which are said to govern the protection of burial grounds. They thus claim to be victims of discrimination.

3.4 Finally, the authors claim a violation of article 27 of the Covenant, since they are denied the right to enjoy their own culture.

Issues and proceedings before the Committee:

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

4.2 The deadline for the State party's submission under rule 91 of the rules of procedure expired on 11 August 1993. No submission has been received from the State party, in spite of three reminders addressed to it between October 1993 and May 1994.

4.3 The Committee notes with concern the absence of cooperation from the State party and recalls that it is implicit in rule 91 of the Committee's rules of procedure that a State party must furnish the Committee, in good faith and within the imparted deadlines, with all the information at its disposal. The above notwithstanding, it is the Committee's duty to ascertain whether all the conditions declaring a communication admissible under the Optional Protocol have been met.

4.4 The Committee has noted that the authors could have appealed the injunction of the Court of Appeal of 29 April 1993 to the Court of Cassation. This appeal, had it been lodged, would however have related to the obligation to vacate the land the authors held occupied, and the possibility to oppose construction of the planned hotel complex; it would not have related to the issue of ownership of the land. In the latter context, the Committee notes that so-called "indigenous tribunals" would be competent to adjudicate land disputes in Tahiti, pursuant to the decrees of 29 June 1880 ratified by the French Parliament on 30 December 1880. There is no indication that the jurisdiction of these courts was ever formally repudiated by the State party; rather, their operation appears to have fallen into disuse, and the authors' claim to this effect has not been contradicted by the State party. Nor has the authors' contention that land claims in Tahiti are adjudicated "haphazardly" by civil or administrative tribunals been contradicted. In the circumstances and in the absence of State party information on this issue, the Committee finds that there are no effective domestic remedies which the authors would be required to exhaust under the terms of the Optional Protocol.

4.5 In respect of the authors' claim under article 27 of the Covenant, the Committee notes that France, upon acceding to the Covenant, declared that "in the light of article 2 of the Constitution of

the French Republic, ... article 27 is not applicable as far as the Republic is concerned". It confirms its previous jurisprudence that the French "declaration" on article 27 operates as a reservation; accordingly, the Committee is not competent to consider complaints directed against France concerning alleged violations of article 27 of the Covenant¹.

4.6 As to the authors' claims under articles 14, paragraph 1, 17, paragraph 1, and 23, paragraph 1, the Committee considers them to be substantiated, for purposes of admissibility, they should, accordingly, be considered on the merits.

5. The Human Rights Committee therefore decides:

(a) that the communication is admissible in so far as it appears to raise issues under article 14, paragraph 1, 17, paragraph 1, and 23, paragraph 1, of the Covenant;

(b) that, in accordance with article 4, paragraph 2, of the Optional Protocol, the State party shall be requested to submit to the Committee, within six months of the date of transmittal to it of this decision, written explanations or statements clarifying the matter and the measures, if any, that may have been taken by it;

(c) that any explanations or statements received from the State party shall be communicated under rule 93, paragraph 3, of the Committee's rules of procedure, to the authors and their counsel, with the request that any comments that they may wish to submit thereon should reach the Committee, in care of the Centre for Human Rights, United Nations Office at Geneva, within six weeks of the date of the transmittal;

(d) that this decision shall be communicated to the State party and to the authors and to their counsel.

[Done in English, French and Spanish, the English text being the original version.]

*/ All persons handling this document are requested to respect and observe its confidential nature.

1/ See inadmissibility decisions on 8 November 1989 in cases No. 220/1987 (T.K. v. France), paragraph 8.6, and No. 222/1987 (M.K. v. France), paragraph 8.6.