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HUMAN RIGHTS COMMITTEE
Eighty-fourth session
11 – 29 July 2005

DECISION

Communication No. 1371/2005

Submitted by:	Eduardo Mariategui, Mirta Honorina Mattiusi de Mariategui, Francisco José Mariategui and Alicia Beatriz Fernández de Mariategui (not represented by counsel)
Alleged victim:	The authors
State party:	Argentina
Date of communication:	17 July 2002 (initial submission)
Date of decision:	26 July 2005

Subject matter: Alleged failure to redress damages caused to owners of a company arising from the alleged violation of contracts for public works constructions.

Procedural issues: Author's lack of standing to submit a communication about company rights; domestic remedies instituted or pursued by a company.

Substantive issues: Right to equal treatment before the courts and tribunals, right to access to courts, right to have one's right determined without undue delay.

Articles of the Covenant: 14 (1) and 26

Articles of the Optional Protocol: 1 and 5 (2) (b)

[ANNEX]

* Made public by decision of the Human Rights Committee.

ANNEX

DECISION OF THE HUMAN RIGHTS COMMITTEE UNDER
THE OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT
ON CIVIL AND POLITICAL RIGHTS

Eighty-fourth session

concerning

Communication No. 1371/2005[*]

Submitted by:	Eduardo Mariategui, Mirta Honorina Mattiusi de Mariategui, Francisco José Mariategui and Alicia Beatriz Fernández de Mariategui (not represented by counsel)
Alleged victim:	The authors
State party:	Argentina
Date of communication:	17 July 2002 (initial submission)

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

Meeting on 26 July 2005

Adopts the following:

DECISION ON ADMISSIBILITY

1. The authors of the communication (initial submission of 17 July 2002) are Eduardo Mariategui, Mirta Honorina Mattiusi de Mariategui, Francisco José Mariategui and Alicia Beatriz Fernández de Mariategui, all Argentinean citizens. They claim to be victims of violations by Argentina to articles 2, paragraphs 2 and 3, and articles 14 and 26 of the Covenant. They are not represented by counsel. The Optional Protocol entered into force for Argentina on 8 November 1986.

[*] 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. Maurice Glèlè Ahanhanzo, Mr. Edwin Johnson, Mr. Walter Kälin, Mr. Ahmed Tawfik Khalil, Mr. Rajsoomer Lallah, Mr. Michael O'Flaherty, Sir Nigel Rodley, Mr. Ivan Shearer, Ms. Ruth Wedgwood and Mr. Roman Wieruszewski.

Pursuant to rule 90 of the Committee's rules of procedure, Committee member Mr. Hipólito Solari-Yrigoyen did not participate in the adoption of the present Views.

Factual background

2.1 The authors are the owners of the enterprise "Mariategui Sociedad Anónima Comercial Industrial Minera Agropecuaria Constructora" (referred to hereinafter as the company), which is a limited company created in 1976, and the legal successor of "Mariategui Usandizaga S.A.C.I.M.A.C. another limited company created by the two first authors in 1970. The company participated in take-over bids and became the contract-winning company for the construction of public works for provincial governments in Argentina. The authors allege that these authorities as well as the national government have failed to comply with the contracts for the past 35 years and are indebted to the company for 1.727.883.277.388.410.000.000 (!) US dollars. The authors allege that they are the State's principal private creditors in Argentina.

2.2 *Public work for the Province of Neuquén, allegedly financed by the National Fund for Housing*: the contract for the execution of this public work was signed in March 1976. The costs of construction allegedly rose disproportionately, but the company finished the works in February 1977. On 9 February 1977, the authorities of the Province of Neuquen issued a provisional certificate acknowledging the receipt of the construction. On 17 May 1982, they issued a definitive certificate of acknowledgement. In November 1985, the company filed an administrative complaint with the Governor of the Province of Neuquén. In April 1986, the company filed a suit before the Arbitral Tribunal set out in Law 12.910. On 26 September 1987, the Arbitral Tribunal (*Tribunal Arbitral de Obras Públicas*) decided that it lacked jurisdiction to entertain the complaint. On 28 December 1990, the company filed an independent claim in the National Supreme Court of Justice (*Corte Suprema de Justicia de la Nación*), which in June 1992, decided that it lacked jurisdiction and that the complainant company should have filed its claim in the local courts established in the contract. In May 1993, the company sued the State of Argentina and the Province of Neuquén in the Superior Court of the Province of Neuquén. On 12 July 1994 the Superior Court decided that it had no jurisdiction to hear the case. On 3 February 1995, the Superior Court admitted the appeal filed by the company against the judgment of 12 July 1994. This appeal was dismissed by the Supreme Court of Justice, which considered that the complainant had not properly addressed the matter to the Court for Administrative Affairs of First Instance. On 4 July 1996, two years late, the company filed a complaint in the Court for Administrative Affairs of First Instance. In December 1997, the latter declared itself incompetent to handle the complaint and returned the case file to the Supreme Court. The authors allege that the Supreme Court of Justice "has done nothing" on their complaint from 1997 to the time of the submission of their complaint to the Committee.

2.3 *Bus station of Piedra de Aguila, Neuquén*: a contract was signed on 13 February 1976 between the Province of Neuquén and Mariategui & Usandizaga S.A.C.I.M.A.C, and funded by the National Fund for Transportation. Construction ended in September 1977. The company considered that the costs for carrying out the work had risen disproportionately and, on 7 October 1988, filed and administrative claim against the Province of Neuquén, which was dismissed in 1989, for having been filed out of time. In June 1992, the company filed a separate suit in the National Supreme Court of Justice, against the National Government and that of the Province of Neuquén. By judgment of 24 September 1998, the National Supreme Court of Justice dismissed the suit against the National Government, finding that the latter could not be sued, because the evidence before the court was inconclusive as to whether the National Government had indeed participated in the allocation of funds from the National Fund for Transportation to the Province of Neuquén. The Court also decided that it lacked

jurisdiction to entertain the complaint against the Province, based on the fact that, according to contractual terms, the ordinary courts of the Province were competent tribunals to hear the case.

2.4 *Extension of the telephonic centre of General Roca in the Province of Río Negro for the Argentinean National Telephonic Enterprise (ENTEL)*: the contract was signed on 12 September 1977 between ENTEL and Mariategui & Usandizaga S.A.C.I.M.A.C, and the work was finalized in November 1980. Due to an alleged failure from ENTEL to comply with the contract terms, the company filed an administrative claim against ENTEL in 1987, which was dismissed in May 1988. On 25 September1989, the company filed a suit in the Court for Administrative Affaires of First Instance. While the proceedings were still pending, ENTEL was privatized. On 26 March 1991, the company filed a motion to link the buyers of ENTEL's assets to the proceedings. The purchasing companies (Telefónica Argentina and France Telecom S.A.) filed motions to disengage themselves from the proceedings. The motions were finally decided in October 1995 and March 1996, respectively. Apparently, the proceedings against the buyers are still pending.

2.5 *Works for the urban pavement of Municipality of Mercedes*: the contract was concluded between the Municipality and the first and the second authors in 1969. In 1970, the first author filed an administrative claim against the Municipality in the Supreme Court of the Province of Buenos Aires (*Suprema Corte de Justicia de la Provincia de Buenos Aires*). On 4 October 1977, the Court ruled for the plaintiff, sentenced the defendants to pay the true value of the works, and decided that the plaintiff should liquidate the debt. On 20 December 1977, the Supreme Court of the Province of Buenos Aires approved the liquidation of the debt made by the plaintiff and set in 160 millions of Argentinean pesos the amount that the defendant should pay. The court also ordered the plaintiff to calculate the interests of the debt. On 28 February 1978, the court ordered the defendants to pay 346.511.355 Argentinean pesos. On 28 March 1978, however, the court on its own decided to annul the previous liquidation and ordered a new one. On 18 April 1978, however, the plaintiff and the defendant settled their dispute by signing an extrajudicial agreement, according to which the defendant would pay 300.000.000 Argentinean pesos to the plaintiff, a payment that was effected on 28 April 1978. On 4 June 1978, the Supreme Court of the Province of Buenos Aires approved the agreement concluded by the parties. On 29 June 1995, the first author filed a suit in the National Supreme Court of Justice against the National Government, the Government of the Province of Buenos Aires and the Municipality of Mercedes, for recovery of the damages allegedly inflicted on him by the judgment of the Supreme Court of the Province of Buenos Aires, which had allegedly made several mistakes when handing down its judgment of 4 October 1977 and thereafter in the process of liquidation of the debt. On 15 April 1996, the plaintiff and his wife transferred their rights in the lawsuit to Mariategui S.A.C.I.M.A.C. On 14 October 1999, the Supreme Court dismissed the claim, considering that it had not been filed within the statutory time limits.

2.6 The authors add that a complaint similar to the one submitted to the Committee was presented in March 1998 to the Inter-American Commission on Human Rights. On 21 October 1999, the Commission informed the authors that their case was inadmissible *ratione personae*, and that it could not review judicial decisions in which the alleged victim was not an individual but a company. The Commission added that domestic remedies were exhausted by the company and not by the authors themselves. The authors asked for the reconsideration of the decision taken by the Commission, but the latter dismissed their request. Afterwards, according to the authors, they learned that the former Executive Secretary and a former

member of the Commission had "obstructed" the examination of their case, and they filed a complaint for corruption against them in the OAS General Assembly, which did not act on the matter.

2.7 On 4 July 2003, the Secretariat of the Human Rights Committee sent a letter to the authors, explaining to them that the Committee was unable to examine their complaint, because the former could not in principle review the facts and evidence evaluated by domestic courts and could only examine complaints submitted by individuals.

2.8 By submission of 3 February 2004, the authors informed that on 13 July 2003 they had filed a complaint in the International Criminal Court against Argentina for an alleged crime against humanity committed against them. The complaint was also filed against other OAS member states for their alleged conspiracy with Argentina. The authors have submitted similar complaints with the World Bank, the International Monetary Fund, and the Inter-American Development Bank.

2.9 By submission of 17 March 2004, the authors contend that Argentina continues to act in bad faith towards them. They explain that the President of the Republic had assured the IMF that the Argentinean Government would begin negotiations with private creditors from 22 March 2004 to 16 April 2004, but that they hardly believed in that promise.

2.10 On 21 May 2004, the authors informed the Committee that they consider the Secretariat's standard letter of 4 July 2003 to be null and void because of formal and substantive errors. They add that the content of the letter violates the UN Universal Declaration of Human Rights and the Covenant.

2.11 By submission of 1 November 2004, the authors inform that Argentinean authorities had approved the Administrative Decree on the Restructuring of National Debt of Private Creditors, and that they had appealed that regulation for being unconstitutional and illegal. They add that they had unsuccessfully attempted to have a meeting with the President of the Republic, and that the Supreme Court of Justice had again ruled that it lacks jurisdiction on their case.

2.12 By letters of 4 May, 27 May, and 4 November 2004, the Secretariat of the Committee reiterated to the authors that the initial complaint of July 2002 and their other submissions could not be examined by the Committee. The authors reply to these letters explaining that they consider them to be null and void due to alleged formal and substantive shortcomings.

2.13 By submission of 14 January 2005, the authors noted that on 10 December 2004, the Argentinean Government adopted a Decree proposing its private creditors an alternative to solve the problem of the internal debt. This Decree was published on 17 January 2005 and granted private creditors 39 days to accept it or to refuse it. The authors contend that the Decree is null and void from a constitutional point of view.

2.14 By submission of 31 January 2005, the authors sent a letter to the Chairperson of the Committee insisting that their case be "promptly examined". By letter of the same date addressed to the UN Secretary General, the authors complain about "serious irregularities" in the handling of their case by the Secretariat of the Committee.

The complaint

3.1 The authors claim that the State party had violated their right to be treated with equality and their right to property by not complying with its contractual obligations. They also claim that there is a denial of justice in their case because they have litigated for more than 30 years in domestic courts without getting any relief. They claim that the violations of the rights of the company constitute simultaneously a violation of their individual rights. The acts and omissions of the State party are said to amount to violations of articles 2, 14 and 26 of the Covenant.

3.2 The authors ask the Committee to intervene as a mediator between them and the government of Argentina. To this effect, they have submitted draft terms for a "transaction". This offer was opened to the Argentinean government until 13 April 2005.

3.3 The authors ask the Committee to grant interim measures of protection against Argentina, ordering the State Party to halt the process of restructuring the internal indebtedness until the proposal "becomes legal". They also ask the Committee to provide them "police personnel for the prevention of crime", because justice has been denied to them for over 34 years.

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 93 of its Rules of Procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

4.2 The Committee has ascertained that the same matter is not being examined under another procedure of international investigation or settlement for the purposes of article 5, paragraph 2(a), of the Optional Protocol.

4.3 The Committee notes that the authors have submitted the communication claiming to be victims of violations of their rights under articles 2, 14 an 26, because of the alleged failure of the State Party to redress the damages caused to them as owners of the company Mariategui S.A.C.I.M.A.C, arising from the alleged violation of four contracts for the construction of public works in which the company acted either as the main creditor or as cessionary of the creditor. However, the Committee considers that the authors are essentially claiming rights that allegedly belong to a private company with an entirely separate legal personality, and not to them as individuals. It recalls its jurisprudence[1] that in regard to a claim such as that at issue in the present case, the authors have no standing under article 1 of the Optional Protocol. It concludes that communication is inadmissible *ratione personae* under that provision.

4.5 The Human Rights Committee therefore decides:

[1] See communication No. 1002/2001, *Franz Wallmann et al. v Austria*, Views adopted 1 April 2004, paragraph 8.13; communication No. 737/1997, *Lamagna v Australia*, decision of 7 April 1999, paragraph 6.2; and communication No. 502/1992, *S.M v Barbados*, decision of 31 March 1994, paragraph 6.2; communication No. 361/1989, *A publication and a private company v Trinidad and Tobago*, decision of 14 July 1989, paragraph 3.2; communication Nº 360/1989, *A newspaper publishing company v Trinidad and Tobago*, decision of 14 July 1989, paragraph 3.2.

(a) That the communication is inadmissible under article 1 of the Optional Protocol;

(b) That this decision shall be transmitted to the State party and to the authors.

[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.]
