

## HUMAN RIGHTS COMMITTEE

### Carpo et al. v. Phillipines

Communication No 1077/2002 \*\*

28 March 2003

CCPR/C/77/D/1077/2002

### VIEWS

*Submitted by: Jaime Carpo, Oscar Ibao, Warlito Ibao and Roche Ibao (represented by counsel, Mr. Ricardo A. Sunga III)*

*Alleged victim: The authors*

*State party: The Philippines*

*Date of communication: 6 May 2002*

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

Meeting on 28 March 2003,

Having concluded its consideration of communication No. 1077/2002, submitted to the Human Rights Committee on behalf of Mr. Jaime Carpo, Mr. Oscar Ibao, Mr. Warlito Ibao and Mr. Roche Ibao 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**

1.1 The authors of the communication, dated 6 May 2002, are Jaime Carpo, his sons Oscar and Roche Ibao, and his nephew Warlito Ibao, all Filipino nationals detained at New Bilibid Prison, Muntinlupa City. The authors claim to be victims of violations by the Philippines of articles 6,

paragraph 2, and 14, paragraph 5, of the Covenant. The authors are represented by counsel. The Covenant entered into force for the State party on 23 January 1987, and the Optional Protocol on 22 November 1989.

1.2 On 14 May 2002, the Human Rights Committee, acting through its Special Rapporteur on New Communications, requested the State party pursuant to Rule 86 of its Rules of Procedure not to carry out the death sentence against the authors whilst their case was before the Committee.

### **The facts as presented**

2.1 Prior to 1987, the death penalty existed in the Philippine legal system, with numerous crimes, including murder, that were punishable by death. On 2 February 1987, a new Constitution took effect following approval by the Filipino people consulted by plebiscite. That Constitution, in article 3(19)(1), abolished the death penalty in the following terms:

"Executive fines shall not be imposed, nor cruel, degrading or inhuman punishment inflicted. Neither shall the death penalty be imposed, unless for compelling reasons involving heinous crimes, the Congress hereafter provides for it. Any death penalty already imposed shall be reduced to reclusion perpetua."

2.2 On 13 December 1993, the Philippine Congress, by way of Republic Act No. 7659, re-introduced the death penalty by electrocution in respect of "certain heinous crimes", including murder in various circumstances. 1/ The substance of the offence of murder remained unchanged.

2.3 In the evening of 25 August 1996, a grenade was hurled into the bedroom of the Dulay family. The explosion killed Florentino Dulay, as well as his daughters Norwela and Nissan, and wounded a further daughter, Noemi. On 25 October 1996 and 9 December 1996, the authors Jaime Carpo and Roche Ibao, respectively, were arrested. Thereupon, the remaining authors Oscar and Warlito Ibao gave themselves up.

2.4 On 22 January 1998, the Regional Court of Tayug, Pangasinan, convicted the authors of "multiple murder with attempted murder", sentenced them to death and fixed the sum of civil liability at P600,000. On 4 April 2001, on automatic review of the authors' case, a fifteen judge bench of the Supreme Court affirmed the conviction after extensive review of the facts, and reduced the civil liability to P330,000. As to the sentence of death, the Court considered the case to fall within article 48 of the Revised Penal Code, according to which the most serious penalty for the more serious of several crimes had to be imposed. 2/ As the maximum penalty for the most serious crime committed by the authors, ie. murder, was death, the Court considered article 48 applied, and required the death penalty. The judgment also noted that while four justices of the court maintained their position that the Republic Act No 7659, insofar as it prescribed the death penalty, was unconstitutional, those justices submitted to the majority ruling of the Court that Republic Act No 7659 was constitutional, and accordingly that the death penalty should be imposed in the authors' case.

2.5 The Supreme Court also ordered that the complete records of the case be forwarded to the Office of the Philippine President for possible exercise of executive clemency. To date, the President has not granted any form of executive clemency.

## **The complaint**

3.1 The authors argue that re-imposition of the death penalty and its application to them is inconsistent with the first sentence of article 6, paragraph 2, permitting the imposition of the death penalty in States "which have not abolished the death penalty". Furthermore, the authors argue that as "murder" was not punishable by death before the re-introduction of the death penalty, it cannot constitute a "most serious crime" (to which article 6, paragraph 2, permits application of the death penalty) after the re-introduction of the death penalty, when the offence of murder remained otherwise wholly unchanged in terms of its substantive definition.

3.2 As to the complaint under article 14, paragraph 5, the authors contend that, under the automatic review procedure, they received "no real review in the Supreme Court". They claim that they had "no real opportunity to be heard", since the Court did not allow any oral argument and "practically foreclosed the presentation of any new evidence". Therefore, according to the authors, the automatic review by the Supreme Court was neither genuine nor effective in enabling a determination of the sufficiency, or soundness, of the conviction and sentence.

3.3 The authors state that the same matter has not been submitted for examination under any other procedure of international investigation or settlement.

## **The State party's submissions on admissibility and merits**

4.1 By submission of 8 July 2002, the State party argued that the communication was unsubstantiated and inadmissible in respect of all claims advanced.

4.2 Concerning article 6, paragraph 2, the State party considers the argument advanced to be "a normative one" that cannot be considered by the Committee. It is said to be purely an argument on the wisdom of imposing the death penalty for certain offences, while the determination of which crimes should so qualify is purely a matter of domestic discretion. According to the State party, the Covenant does not purport to limit the right of the State party to determine for itself the wisdom of a law that imposes the death penalty. The State party contends that the constitutionality of the death penalty law was a matter for the State party itself to decide, and noted that its Supreme Court had upheld the constitutionality of the law in question. <sup>3/</sup> The State party further argues that it does not fall to the Committee to interpret a State party's constitution for purposes of determining that State party's compliance with the Covenant.

4.3 The State party distinguishes between States that presently have death penalty laws and those that have re-imposed the death penalty after abolition or suspension. It points to the specific provision in the constitutional article abolishing the death penalty that provides for the possibility of Congress to re-impose it. The Covenant does not prevent such a re-imposition, for article 6, paragraph 2, refers simply to countries that have existing death penalty statutes. The requirement of the Covenant is rather that the death penalty be imposed following strict respect for due process rules. In this case, there is no argument that the State party has failed to comply with its own domestic processes.

4.4 Concerning the authors' argument that the death penalty was imposed for crimes that are not

the "most serious", the State party notes that States have a wide discretion in interpreting this provision in the light of culture, perceived necessities and other factors, as the notion "most serious crimes" is not defined any more explicitly in the Covenant. The State party finds fallacious the authors' reasoning that as the death penalty could not be imposed on any crime before re-imposition, no crime could be deemed a "most serious" one that could be punished by the death penalty after re-imposition - the crime of murder remained, and remains, amongst the most serious in the domestic order, including as measured by gravity of possible punishment then available.

4.5 As to article 14, paragraph 5, the State party rejects the author's arguments, for each person sentenced to death automatically receives an appeal. Moreover, the failure to grant a hearing on oral argument does not indicate lack of genuine review, for the long-standing practice of the Court is only to hear oral argument in cases presenting novel questions of law. As to executive clemency, the State party notes that, under its law, this prerogative remains within the purely discretionary power of the President. While any such request for clemency will be received and acted upon, the substance of the outcome remains within the President's discretion.

#### **The author's comments**

5.1 By letter of 24 November 2002, the authors responded to the State party's submissions. They observe that by becoming party to the Covenant and the Optional Protocol, the State party accepted the ability of the Committee to assess whether its actions are consistent with the provisions of those instruments. By reference to article 6, paragraph 6, of the Covenant, the authors identify an "abolitionist stance" in the Covenant that does not envisage a retreat from abolition, as made by the State party. As to the State party's alleged discretion to determine the content of the notion of "most serious crimes", the authors note that international consensus restricts these to crimes not going beyond intentional crimes with lethal or other extremely grave consequences. 4/ The authors note, by contrast, that the lengthy list of offences punishable by death in the State party includes such crimes as kidnapping, drug-related offences, plunder and qualified bribery.

5.2 Regarding article 14, paragraph 5, the authors note that the absence of oral argument in the authors' case prevented the Supreme Court from making its own assessment of witness testimony and required it to rely on the assessment of the lower court. The authors argue that no effective review is possible where the Court has to weigh the credibility of the accused against that of the victim without being able to hear the testimony of key witnesses.

5.3 The authors refer to subsequent developments, including a newspaper article, suggesting that even though the President had in early October 2002 announced a ban on executions until further notice in order to provide the Congress with an opportunity to pass abolition legislation, preliminary preparations for the authors' execution had already been taken. While the President had recently granted reprieves to some convicts scheduled for execution, to date the authors had not received any such notice. Additionally, execution of the authors would appear to be unlawful under domestic law, as it would come after the 18 month period prescribed by law as the maximum time that may elapse without execution after judgment has become final.

#### **Subsequent exchanges with the parties**

6.1 Despite invitations to do so by reminders of 27 November 2002 and 8 January 2003, the State

party has not added further submissions on the merits to those supplied concerning admissibility. Issues and proceedings before the Committee

### ***Consideration of admissibility***

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

7.2 The Committee notes that the State party's only contention as to the admissibility of the authors' claims is that they are unsubstantiated, in the light of a variety of argumentation going to the merits of the claim. Accordingly, the Committee considers it more appropriate to deal with the issues raised at that point. In the absence of any further obstacles to admissibility, therefore, the Committee finds the authors' claims admissible.

### ***Consideration of the merits***

8.1 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.

8.2 As to the claim under article 6, paragraph 2, of the Covenant, the Committee observes at the outset, in response to the State party's argument that the Committee's function is not to assess the constitutionality of a State party's law, that its task rather is to determine the consistency with the Covenant alone of the particular claims brought before it.

8.3 The Committee notes that the offence of murder in the State party's law entails a very broad definition, requiring simply the killing of another individual. In the present case, the Committee observes that the Supreme Court considered the case to be governed by article 48 of the Revised Penal Code, according to which, if a single act constitutes at once two crimes, the maximum penalty for the more serious crime must be applied. The crimes committed by a single act being three murders and an attempted murder, the maximum possible penalty for murder - the death penalty - was imposed automatically by operation of the provisions of article 48. The Committee refers to its jurisprudence that mandatory imposition of the death penalty constitutes arbitrary deprivation of life, in violation of article 6, paragraph 1, of the Covenant, in circumstances where the death penalty is imposed without regard being able to be paid to the defendant's personal circumstances or the circumstances of the particular offense. 5/ It follows that the automatic imposition of the death penalty upon the authors by virtue of article 48 of the Revised Penal Code violated their rights under article 6, paragraph 1, of the Covenant.

8.4 In the light of the above finding of a violation of article 6 of the Covenant, the Committee need not address the authors' remaining claims which all concern the imposition of capital punishment in their case.

9. 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 before it

disclose a violation of article 6, paragraph 1, of the Covenant.

10. In accordance with article 2, paragraph 3 (a), of the Covenant, 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.

11. Bearing in mind that, by becoming a State party to the Optional Protocol, the State party has recognised 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 recognised in the Covenant, the Committee wishes to receive from the State party, within 90 days, information about the measures taken to give effect to its 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 also 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 Castllero Hoyos, Ms. Christine Chanet, Mr. Franco Depasquale, Mr. Maurice Glèlè Ahanhanzo, Mr. Walter Kälin, Mr. Ahmed Tawfik Khalil, Mr. Rajsoomer Lallah, Mr. Rafael Rivas Posada, Mr. Nigel Rodley, Mr. Martin Scheinin, Mr. Ivan Shearer, Mr. Hipólito Solari Yrigoyen, Ms. Ruth Wedgwood, Mr. Roman Wieruszewski and Mr. Maxwell Yalden.

\*\* The texts of two individual opinions signed by Committee members Mr. Nisuke Ando and Ms. Ruth Wedgwood are appended to the present document.

**Individual Opinion of Committee Member Mr. Nisuke Ando**  
(dissenting)

I am unable to agree to the majority Views' statement that "[t]he Committee refers to its jurisprudence that mandatory imposition of the death penalty constitutes arbitrary deprivation of life, in violation of article 6, paragraph 1, of the Covenant, in circumstances where the death penalty is imposed without regard being able to be paid to the defendant's personal circumstances or the circumstances of the particular offense" (paragraph 8.3).

Firstly, I doubt if it is the established jurisprudence of the Committee that "mandatory imposition of the death penalty constitutes arbitrary deprivation of life, in violation of article 6, paragraph 1, of the Covenant". The majority Views is based on the Committee's Views in Case No. 806/1998, adopted on 18 October 2000 (Thompson v. St. Vincent & the Grenadines). (The Committee adopted a similar decision in Case No. 845/1998 Kennedy v. Trinidad and Tobago, but the relevant facts in the two cases are different). However, I must point to the fact that two dissenting opinions were appended to the Views by five members (one by Lord Colville; another by Messrs. Kretzmer,

Amor, Yalden and Zakhia). I happened to be absent when the Views were adopted and was unable to express my opinion. Had I been participating in the decision, I would have co-signed both of the dissenting opinions.

In any event, as emphasized by Mr. Kretzmer et al. as well as by Lord Colville, the Committee's Views in the Thompson case were a departure from the then existing practice of the Committee. Prior to that decision, the Committee had dealt with many communications from persons sentenced to death under legislation which makes a death sentence for murder mandatory. However, in none of them had the Committee stated that the mandatory nature of the sentence involved a violation of article 6 or any other provision of the Covenant. In addition, in fulfilling its function under article 40 of the Covenant, the Committee has considered reports from States parties whose domestic legislation provides for mandatory imposition of the death sentence for murder, but the Committee has never stated in its Concluding Observations that a mandatory death sentence for murder is incompatible with the Covenant. Moreover, in its General Comment No.6 on article 6, the Committee gives no indication that mandatory death sentences are incompatible with article 6. Of course, as Mr. Kretzmer et al. point out, the Committee is not bound by its previous jurisprudence. Nevertheless, if the Committee wishes to change its jurisprudence, it should explain its reasons for change to the State party and person concerned. Unfortunately, such an explanation was lacking in the Committee's Views in the Thompson case. Nor is it supplied in its Views in the present case.

Secondly, Lord Colville clearly states that, under common law jurisdictions, courts have to take into account factual and personal circumstances in sentencing to the death penalty in homicide cases. According to him, factors such as self-defense, provocation by the victim, proportionality of the response by the accused and the accused's state of mind are scrutinized by courts, and a charge of murder may be reduced to that of manslaughter. Likewise, in civil law jurisdictions, various aggravating or extenuating circumstances such as self-defense, necessity, distress and mental capacity of the accused need to be considered in reaching criminal conviction/sentence in each case of homicide. These points must have been dealt with before the relevant courts of the Philippines rendered their decisions in the present case, but the majority Views refers to none of them, merely noting that "the offence of murder in the State party's law entails a very broad definition, requiring simply the killing of another individual" (paragraph 8.3; emphasis supplied).

However, as footnote 1 (paragraph 2.2) indicates, article 248 of the Revised Penal Code of the Philippines defines "murder" as follows: "Any person who ..... shall kill another, shall be guilty of murder and shall be punished ..... to death if committed with any of the following attendant circumstances" such as "[w]ith treachery, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense or of means or persons to insure or afford impunity" or "[b]y means of inundation, fire, poison, explosion, shipwreck, stranding of vessels, derailment or assault upon a railroad, fall of an airship, or by means of motor vehicles, or with the use of any other means involving great waste and ruin". Obviously, the courts in the Philippines looked into these provisions, in addition to the aggravating and extenuating circumstances as described above.

The majority Views state that "the Supreme Court [of the Philippines] considered the case to be

governed by article 48 of the Revised Criminal Code, according to which, if a single act constitutes at once two crimes, the maximum penalty for the more serious crime must be applied. The crimes committed by a single act being three murders and an attempted murder, the maximum possible penalty for murder — the death penalty — was imposed automatically by operation of the provisions of article 48" (paragraph 8.3; emphasis supplied). It seems to me that the quoted provisions of article 48 are standard ones which can be found in the criminal codes of very many States. And yet, the majority Views continues, "It follows that the automatic imposition of the death penalty upon the authors by virtue of article 48 of the Revised Criminal Code violated their rights under article 6, paragraph 1, of the Covenant" (paragraph 8.3; emphasis supplied). The crimes committed by the authors are certainly "the most serious crimes in accordance with the law in force at the time of the commission of the crimes" in the Philippines, and the application of article 48 to them is indeed normal criminal procedure. Considering all the relevant circumstances, I must conclude that to describe the imposition of the death penalty to the authors in the present case as "mandatory" or "automatic" is not at all warranted.

Thirdly, I wonder if the majority Views are justifiable only on the assumption that the death penalty is per se an arbitrary deprivation of life. However, such an assumption is contradictory to the structure of the Covenant, which admits the death penalty for the most serious crimes (article 6, paragraph 2). It is equally contradictory to the fact that the Protocol aiming at the abolition of death penalty is "Optional". The provision of article 6, paragraph 6, suggests that the abolition of the death penalty is desirable, but that desirability does not make the abolition a legal obligation. It is true that, in certain regions of the globe, most States have abolished the death penalty. At the same time, it is also true that, in the other regions of the globe, most States have retained the death penalty. In my opinion, the Human Rights Committee, which is based on the global community of States, should take into account this situation when interpreting and applying any provisions of the International Covenant on Civil and Political Rights.

[signed]

Nisuke Ando

[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.]

**Individual Opinion of Committee Member Ms. Ruth Wedgwood**  
(dissenting)

The Human Rights Committee has concluded that the State party has injured the four authors of this communication by subjecting them to a "mandatory imposition of the death penalty" that "constitutes arbitrary deprivation of life, in violation of article 6, paragraph 1" of the International Covenant on Civil and Political Rights. See Views of the Committee, paragraph 8.3. The Committee asserts that the death penalty was "imposed without regard being able to be paid to ..... the circumstances of the particular offense." Ibid, paragraph 8.3.

The posture in which the Committee considers this issue is problematic at best. The authors' communication did not put forward any complaint concerning supposedly mandatory sentencing, and thus the State party has been deprived of any ability at all to comment on the argument which the Committee now raises on its own motion. The communication from the authors is dated 6 May 2002, well after publication of this Committee's earlier opinions on the question of mandatory death penalties \*, and the authors had the advice of professional legal counsel in declining to raise any similar claims before the Committee. The Committee has not referred the issue of mandatory sentencing to the State party for comment, even though the issue may turn crucially on a construction of the Philippine statutes on murder and so-called multiple offenses. Indeed, the Committee's decision has been undertaken even without a copy of the trial court opinion in hand.

The Committee's earlier jurisprudence disputing death sentences as "mandatory" occurred in cases concerning felony murder (where an unanticipated death occurred in the course of commission of a felony) and an undifferentiated murder statute (in which all intentional killings were subject to the death penalty).\* It is far more radical to suppose that a democratically-adopted criminal code which carefully specifies the aggravating factors that must accompany a murder before the death penalty can be imposed somehow falls afoul of an implied prohibition on mandatory sentencing under article 6 of the International Covenant on Civil and Political Rights. Indeed, the omission of the claim from the authors' petition may reflect the view that such a claim is unpersuasive in these circumstances.

In its review of the convictions and sentences in this case, the Philippines Supreme Court noted that the revised Philippine murder statute provides for the death penalty only if one or more aggravating circumstances has been proven -- here, a willful murder through "treachery." The authors were convicted of the murder of Florentino Dulay and his two daughters, and for the attempted murder of a third daughter. The crimes were accomplished by "hurling a grenade in the bedroom of the Dulays" during the evening hours, while the children lay in their beds. See Opinion of the Philippines Supreme Court, April 4, 2001, at p. 13. The motive, according to the opinion of the Supreme Court, was to prevent Florentino Dulay from testifying against one of the authors of the communication in a separate murder trial. The youngest victim was a five-year-old girl, killed by shrapnel from the grenade. The defendants were identified by an eyewitness who was long acquainted with them, and the trial court rejected their proffered alibis as implausible. The Philippines Supreme Court reviewed the conviction *en banc*, and though four members of the Supreme Court registered their position that the death penalty is inconsistent with the national constitution, they agreed to "submit to the ruling of the Court, by a majority vote, that the law is constitutional and that the death penalty should be accordingly imposed." (Opinion, at p. 16). No claim was made to the Philippines Supreme Court that the death penalty was mandatory and thereby improper.

Article 248 of the *Revised Penal Code* provides for the imposition of the death penalty only if an aggravating circumstance is found, including "treachery" or "explosion" in the commission of the murder. The statutory definition of treachery was met, noted the Supreme Court, for it consists of "taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense or of means or persons to insure or afford impunity." Here, "the victims were sleeping when the grenade was suddenly thrown into their bedroom" and "they were not given a chance to

defend themselves or repel the assault. Obviously, the assault was done without any risk to any of the accused arising from the defense which the victims may make." Opinion at p. 12, note 23. The Supreme Court remarked that the aggravating factor of "explosion" could also have fit the case, though it was not alleged in the criminal information.

The Committee does not challenge the legitimacy of Article 248 *in se*. Rather, the Committee supposes that there is a mandatory quality to the death sentence because the case was also sentenced under a so-called "multiple crimes" provision found in Article 48 of the *Revised Penal Code*. This is because the conviction included attempted murder as well as multiple murders. Article 48 provides that "When a single act constitutes two or more grave or less grave felonies ..... the penalty for the most serious crime shall be imposed, the same to be applied in its maximum period."

Article 48 is apparently designed to avoid the problem of so-called "multiplicity," that is, the potential multiplication of charges and sentences arising from a single culpable action. The straightforward solution was to provide for the imposition of "the penalty for the most serious crime ..... the same to be applied in its maximum period." It is syntactically doubtful that the phrase "maximum period" references the death penalty\*\*. But in any event, there is nothing in Article 48 that obviates or lessens the separate requirement under the murder statute, Article 248, that a court *must* find an aggravating circumstance before a death penalty is proper.

In other words, the sentence of death properly imposed for a murder with treachery does not become mandatory merely because it was accompanied by an additional conviction of attempted murder. The Committee gives no persuasive basis for its conclusion that the death penalty was imposed "automatically" or "without regard being able to be paid to ..... the circumstances of the particular offense."

There are varying views on the admissibility of the death penalty in modern societies. Article 6(2) of the Covenant by which this Committee is governed provides that "In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious of crimes in accordance with the law in force at the time of the commission of the crime ....." Perhaps wisely, the Committee has not accepted the authors' invitation to conclude that the murder of sleeping children by the explosion of a grenade is not a "most serious crime." Nor has the Committee had occasion to address the authors' claim that the ameliorative constitutional change in the Philippines -- limiting the death penalty to "heinous crimes" — somehow constitutes a forbidden "re-imposition" of the death penalty allegedly barred by Article 6(2). In its attempt to raise a claim that the parties themselves have avoided, the Committee has relied upon a doubtful construction of Filipino law and misconstrues the import of its own past decisions.

[signed]

Ruth Wedgwood

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\* Thompson v. St Vincent & The Grenadines Case No 806/1998, Views adopted on 18 October 2000; and Kennedy v. Trinidad & Tobago Case No 8465/1998, Views adopted on 26 March 2002. I share the doubts expressed by Mr. Ando concerning these prior decisions, but will take them as

a starting point in the instant case.\*\* The Committee asserts without explanation that Article 48 always requires "*the most serious* penalty of the more serious of several crimes." View of the Committee, paragraph 2.4 (emphasis added). But the language of Article 48 actually reads "*the penalty* for the most serious crime ..... the same to be applied in its *maximum period*." (Emphasis added.) Again, one might have wished to solicit the State Party's views on this interpretive question of local law.

[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.]

### Notes

1/ Section 6 of said Act amended article 248 of the Revised Penal Code to read as follows:

"Art.248. *Murder* — Any person who, not falling within the provisions of Article 246 [parricide], shall kill another, shall be guilty of murder and shall be punished by *reclusion perpetua*, to death if committed with any of the following attendant circumstances:

1. With treachery, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense or of means or persons to insure or afford impunity.

2/ In consideration of a price, reward or promise.

3/ By means of inundation, fire, poison, explosion, shipwreck, stranding of vessel, derailment or assault upon a railroad, fall of an airship, or by means of motor vehicles, or with the use of any other means involving great waste and ruin.

4/ On occasion of any of the calamities enumerated in the preceding paragraph, or of an earthquake, eruption of a volcano, destructive cyclone, epidemic, or other public calamity.

5/ With evident premeditation.

6/ With cruelty, by deliberately and inhumanely augmenting the suffering of the victim, or outraging or scoffing at his person or corpse.

7/ Article 48 of the Revised Penal Code provides as follows: "*Penalty for complex crimes*. — When a single act constitutes two or more grave or less grave felonies, or when an offense is a necessary means for committing the other, the penalty for the most serious crime shall be imposed, the same to be applied in its maximum period."

8/ People v Echegaray (GR No 117472, judgment of 7 February 1997).

9/ ECOSOC Resolution 1984/50 of 25 May 1984, as endorsed by GA Resolution 39/118 of 14 December 1984.

10/ Thompson v St Vincent & The Grenadines Case No 806/1998, Views adopted on 18 October 2000; and Kennedy v Trinidad & Tobago Case No 845/1998, Views adopted on 26 March 2002.