HUMAN RIGHTS COMMITTEE

E. A. et al. v. Philippines

Communication No. 503/1992

14 October 1993

CCPR/C/49/D/503/1992*/

ADMISSIBILITY

Submitted by: E. A., J. B. C. and L. L. P. (names deleted)

Alleged victims: The authors

State party: The Philippines

Date of communication: 27 May 1992 (initial submission)

Documentation references: none

Date of present decision: 14 October 1993

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 E. A., J. B. C. and L. L. P., all Filipino citizens currently detained at the Bureau of Corrections at Muntinlupa, Metro Manila, the Philippines. They claim to be victims of violations by the Philippines of articles 6, 7, 9, 10, 14 and 26 of the International Covenant on Civil and Political Rights. The Optional Protocol entered into force for the Philippines on 22 November 1989.

The facts as submitted by the authors:

2.1 The authors were arrested between 1974 and 1978, when the country was governed by martial law decreed by the late president Ferdinand Marcos. In particular, L. L. P. states that, in the afternoon of 15 July 1974, on his way home from high school, he ran into a group of soldiers who arbitrarily arrested him; he was charged with illegal possession of firearms and ammunitions, as well

as with homicide.

2.2 J. B. C., a former truck driver, states that, on 4 June 1978, while delivering goods, he was arbitrarily arrested by a group of soldiers; upon requesting to be informed of the reasons for his arrest, he was told that he was charged with robbery, with homicide and with illegal possession of firearms and ammunitions. No warrant for his arrest and detention was produced by the soldiers.

2.3 E. A. was arrested and detained on 31 March 1977, on charges of attempted robbery and homicide. All three authors were subsequently tried, convicted and sentenced to death by a military commission. The authors, who claim to be innocent, do not provide any details about their respective trials before this military jurisdiction.

2.4 On 1 October 1986, habeas corpus proceedings were initiated in the Supreme Court of the Philippines to test the lawfulness of the continued detention of 217 "political detainees" (among them the authors) arrested during the period of martial rule. Following its earlier decision in Olaquer et al. vs. Military Commission No. 34 et al.[1], the Supreme Court, on 15 April 1988, declared all proceedings before courts martial in cases involving civilians (as in the authors' cases) null and void. It directed the Department of Justice to "file the cases against the persons concerned in the courts having jurisdiction over the offences involved, within 180 days after notification of this decision, without prejudice to the reproduction of the evidence submitted by the parties and admitted by the Military Commission". The Supreme Court further ruled that, "if eventually convicted, the period of the petitioners' detention shall be credited in their favour", and directed the courts in which the cases were to be filed "to conduct with dispatch the necessary proceedings, including those for the grant of bail which may be initiated by the accused".

2.5 The authors submit that, since 15 April 1988, the authorities have not undertaken any action concerning their cases; proceedings before a civil court have not been initiated, and they continue to be detained. They add that all efforts to obtain redress through administrative and judicial channels (by numerous petitions to the President, the Department of Justice, the Supreme Court, and the national Human Rights Commission) have been in vain. In this context, the authors enclose a resolution of the Supreme Court, dated 18 June 1992, stating that "the Court resolved to refer the letters of L. L. P. and J. B. C., both dated 11 May 1992, to the Honourable Secretary of Justice for consideration and action in line with its [above mentioned] decision". In respect of Mr. J. B. C., another letter is enclosed, dated 15 June 1993, from the Board of Pardons and Parole, informing him that in respect of his request for the grant of executive clemency, the Board, on 11 November 1986, had recommended to the President that the author's petition for pardon be rejected, for lack of merit.

2.6 The authors reiterate that it has never been proven beyond reasonable doubt that they were guilty of the crimes they were convicted of by the military commission. They indicate that the records of their cases were burned during the attempted coup of 28 August 1987; it is submitted that this, however, does not justify the delay in the review of their cases by the competent courts. Reference is further made to the case of a senator who reportedly paid a large sum of money for his release on bail; the author submit that they, as poor persons, cannot afford to apply for release on bail; this, according to them, amounts to unlawful and unjustified discrimination.

The complaint:

3. The authors contend that the refusal of the authorities to comply with the decision of the Supreme Court, and their continued detention based on unlawful proceedings, violate their rights under articles 6, 7, 9, 10, 14 and 26 of the Covenant.

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 the Committee's rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant. As part of this process, rule 91, paragraph 2, provides that no communication can be declared admissible unless the State party concerned has received a copy thereof and has been given an opportunity to furnish written information or observations relevant to the question of admissibility. Accordingly, the communication was transmitted to the State party on 8 July 1992 with a request that its information or observations in respect of the question of admissibility should reach the Committee not later than 8 September 1992. In spite of three reminders (dated 3 November 1992, 22 March and 4 October 1993) no information has been received from the State party. While silence in this regard may be understood as implying that the State party has no objection to the communication being declared admissible, it nevertheless remains for the Committee to determine whether the communication satisfies the conditions for admissibility set out in the Optional Protocol.

4.2 As to the question of exhaustion of domestic remedies, the authors have provided detailed information about the remedies which have been pursued. In the absence of any information to the contrary, the Committee concludes that the requirement of prior exhaustion of domestic remedies, as provided in article 5, paragraph 2(b), of the Optional Protocol, has been met.

4.3 In respect of the communication before it, the Committee observes that it can only take into account the information relating to the period of time after the entry into force of the Optional Protocol for the Philippines on 22 November 1989. It considers that, in respect of their situation after that time, the authors have failed to substantiate, for the purposes of admissibility, that they have a claim under articles 6 and 26 of the Covenant. This part of the communication is therefore inadmissible under article 2 of the Optional Protocol.

4.4 As to the authors' claims that the State party, by failing to implement the Supreme Court's decision of 15 April 1988, and by keeping them in detention, violates their rights under articles 9 and 14 of the Covenant, the Committee finds that these claims, insofar as they concern the authors' continued detention after the entry into force of the Optional Protocol for the Philippines on 22 November 1989, may raise issues under these provisions. The Committee further observes that the authors' continued detention may also raise issues under article 7 and 10 of the Covenant. These claims should, accordingly, be considered on their merits.

5. The Human Rights Committee therefore decides:

(a) that the communication is admissible insofar as it may raise issues under articles 7, 9, 10 and 14 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 it;

(c) that any explanations or statements received from the State party shall be communicated by the Secretary-General under rule 93, paragraph 3, of the rules of procedure to the authors, with the request that any comments which they may wish to submit thereon should reach the Human Rights 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.

(Done in English, French, and Spanish, the English text being the original version.)

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

[1] 150 SCRA 144. In Olaquer the Supreme Court affirmed that: "[...] a military commission or tribunal cannot try and exercise jurisdiction, even during the period of martial law, over civilians for offences allegedly committee by them as long as the civil courts are open and functioning, and that any judgement rendered by such body relating to a civilian is null and void for lack of jurisdiction on the part of the military tribunal concerned".