

PHILIPPINES

Follow-up - Jurisprudence Action by Treaty Bodies

CCPR A/57/40, vol. I (2002)

Chapter VI. Follow-up activities under the optional protocol

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228. The previous annual report of the Committee (A/56/40, vol. I, chap. VI) contained a detailed country-by-country survey of follow-up replies received or requested and outstanding as of 30 June 2001. The list that follows updates that survey, indicating those cases in which replies are outstanding, but does not include responses concerning the Committee's Views adopted during the seventy-fourth and seventy-fifth sessions, for which follow-up replies are not yet due. In many cases there has been no change since the previous report.

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Philippines: Views in two cases with findings of violations:

788/1997 - Cagas (annex IX); and

869/1999 - Piandong et al. (A/56/40); no follow-up replies received;

The Special Rapporteur held consultations with representatives of the Permanent Mission of the Philippines at the seventy-fourth session. No further information has been supplied.

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229. For further information on the status of all the Views in which follow-up information remains outstanding or in respect of which follow-up consultations have been or will be scheduled, reference is made to the follow-up progress report prepared for the seventy-fourth session of the Committee (CCPR/C/74/R.7/Rev.1, dated 28 March 2002), discussed in public session at the Committee's 2009th meeting on 4 April 2002 (CCPR/C/SR.2009). Reference is also made to the Committee's previous reports, in particular A/56/40, paragraphs 182 to 200.

CHAPTER VI. Follow-up activities under the Optional Protocol

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223. The previous annual report of the Committee¹ contained a detailed country-by-country survey of follow-up replies received or requested and outstanding as of 30 June 2002. The list that follows updates that survey, indicating those cases in which replies are outstanding, but does not include responses concerning the Committee's Views adopted during the seventy-seventh and seventy-eighth sessions, for which follow-up replies are not yet due in the majority of cases. In many cases there has been no change since the previous report.*

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Philippines: Views in three cases with findings of violations:

788/1997 - *Cagas* (A/57/40); for follow-up reply see paragraph 246 below;

869/1999 - *Piandiong et al.* (A/56/40); no follow-up replies received. The Special Rapporteur held consultations with representatives of the Permanent Mission of the Philippines during the seventy-fourth session. No further information from the State party has been received; 1077/2002 - *Carpo et al.* (annex VI); follow-up reply not yet received.

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Overview of follow-up replies received during the reporting period, Special Rapporteur's follow-up consultations and other developments

224. The Committee welcomes the follow-up replies that have been received during the reporting period and expresses its appreciation for all the measures taken or envisaged to provide victims of violations of the Covenant with an effective remedy. It encourages all States parties that have addressed preliminary follow-up replies to the Special Rapporteur to conclude their investigations in as expeditious a manner as possible and to inform the Special Rapporteur of their results. The follow-up replies received during the period under review and other developments are summarized below.

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246. **Philippines:** case No. 788/1997 - *Cagas et al.* (A/57/40): the authors informed the Committee, by letters of 22 October and 4 November 2002, that the Committee's Views had not been published. The presiding judge of the Regional Court allegedly consistently refused to rule on the case.

Notes

1. [*Official Records of the General Assembly*], *Fifty-seventh Session, Supplement No. 40(A/57/40)*, vol. I, chap. VI.

* The document symbol A/[Session No.] /40 refers to the *Official Record of the General Assembly* in which the case appears; annex VI refers to the present report, vol. II.

CCPR CCPR/C/80/FU/1 (2004)

Follow-Up Progress Report submitted by The Special Rapporteur for Follow-Up on Views

Follow-up progress report

1. The current report updates the previous Follow-up Progress Report, (CCPR/C/71/R.13) [*Ed. Note: CCPR/C/71/R.13 is not publicly available*] which focused on cases in which, by the end of February 2001, no or only incomplete follow-up information had been received from States parties, or where follow-up information challenged the findings and recommendations of the Committee. In an effort to reduce the size of the follow-up report, this current report only reflects cases in which information was received from either the author or the State party from 1 March 2001 to 2 April 2004. It is the intention of the Special Rapporteur to update this report on an annual basis.

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Philippines:

Cagas v. Philippines, Case no. 788/1997, Views adopted on 23 October 2001

Violations found: Articles 9, paragraph 3, and 14, paragraphs 2, and 3 (c).

Issues of case: Preventative: Detention without bail; undue pre-trial delay.

Remedy recommended: Adequate compensation for the time the authors have been unlawfully detained.

Deadline for State party follow-up information: Not available

Follow-up information received from State party: None

Follow-up information received from author: The authors informed the Committee, by letters of 22 October and 4 November 2002, that the Views have not been published and that the presiding Judge of the Regional Court has consistently refused to rule on the case.

Special Rapporteur's recommendation: A reminder should be sent to the State party.

Carpo v. Philippines, Case no. 1077/2002, Views adopted on 28 March 2003

Violation found: Article 6, paragraph 1

Issues of case: Mandatory nature of death penalty

Remedy recommended: Commutation

Deadline for State party follow-up information: 12 August 2003

Follow-up information received from State party: None

Follow-up information received from author: On 3 February 2004, author's counsel informed the Secretariat that on the bases of the Views a petition for a Writ of Habeas Corpus had been heard before the Supreme Court but was denied. A motion for reconsideration was subsequently filed and is pending. The author sent a letter to the Office of the President seeking some action pursuant to the Committee's Views but no response has been forthcoming. Counsel requests the Committee to urge the State party to implement its Views.

Special Rapporteur's recommendations: A reminder should be sent to the State party and a meeting should be arranged with a representative of the State party.

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CCPR, CCPR/C/SR.2194 (2004)

Human Rights Committee
Eightieth session

Summary record of the second part (public) of the 2194th meeting
Held at Headquarters, New York, on
Friday, 2 April 2004, at 10 a.m.

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Follow-up on Views under the Optional Protocol

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3. **Mr. Scheinin** said that, with regard to reconsideration, if the State party complained that the Committee was mistaken as to the facts, the answer should be that the Committee's decision was made only on the basis of the facts provided by the parties. The Special Rapporteur for follow-up on Views under the Optional Protocol could discuss with the State party and with the Committee the possible effect of the corrected facts with respect to the remedy, but the Views would stand nonetheless. If, on the other hand, the State party was contesting the interpretation of the law, the Special Rapporteur should stand firm, since the interpretation had been arrived at through an adversarial proceeding between the parties. However, he might suggest to the State party that it could raise such issues of law in a general way in its next periodic report.

4. In the face of a failure or refusal to implement the Views, it must be admitted that the Committee itself had little power to induce compliance and would need to call for political support from the United Nations and the other States parties to the Protocol. The Organization as a whole should discuss what mechanisms could be developed.

5. The two cases in the progress report in which the State parties had given a clear indication of their intention not to comply, case No. 716/1996 (*Pauger v. Austria*) and case No. 852/1999 (*Borisenko v. Hungary*), should be the subject of further follow-up and should be published in the Committee's next report... In case No. 1077/2002 (*Carpo v. Philippines*), since the author was still on death row, the Committee should have a meeting with the State party rather than merely sending a reminder...

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CHAPTER VI. FOLLOW-UP ACTIVITIES UNDER THE OPTIONAL PROTOCOL

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230. The previous annual report of the Committee¹ contained a detailed country-by-country survey of follow-up replies received or requested and outstanding as of 30 June 2003. The list that follows updates that survey, indicating those cases in which replies are outstanding, but does not include responses concerning the Committee's Views adopted during the eightieth and eighty-first sessions, for which follow-up replies are not yet due in the majority of cases. In many cases there has been no change since the previous report.*

...

Philippines: Views in 5 cases with findings of violations:

788/1997 - *Cagas* (A/57/40); for follow-up reply see A/58/40, paragraph 246. In the follow-up report (CCPR/C/80/FU1), adopted by the Committee during its eightieth session the Special Rapporteur recommended that a reminder for a follow-up reply be sent to the State party. During follow-up consultations conducted during the eighty-first session, the State party representative confirmed that the State would send its response to the follow-up in this case;

868/1999 - *Wilson* (annex IX); follow-up reply not yet received;

869/1999 - *Piandiong et al.* (A/56/40); no follow-up replies received. The Special Rapporteur held consultations with representatives of the Permanent Mission of the Philippines during the seventy-fourth session. No further information from the State party has been received;

1077/2002 - *Carpo et al.* (A/58/40); see paragraph 246 below for reply from author. In the follow-up report (CCPR/C/80/FU1), adopted by the Committee during its eightieth session, the Special Rapporteur recommended that a reminder for a follow-up reply be sent to the State party and a meeting arranged with a State party representative. During follow-up consultations conducted during the eighty-first session, the State party representative confirmed that the State would send its response to the follow-up in this case;

1167/2003 - *Ramil Rayos* (annex IX); follow-up not yet due.

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OVERVIEW OF FOLLOW-UP REPLIES RECEIVED DURING THE REPORTING PERIOD,
SPECIAL RAPPORTEUR'S FOLLOW-UP CONSULTATIONS AND OTHER
DEVELOPMENTS

231. The Committee welcomes the follow-up replies that have been received during the reporting period and expresses its appreciation for all the measures taken or envisaged to provide victims of violations of the Covenant with an effective remedy. It encourages all States parties which have addressed preliminary follow-up replies to the Special Rapporteur to conclude their investigations in as expeditious a manner as possible and to inform the Special Rapporteur of their results. The follow-up replies received during the period under review and other developments are summarized below.

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249. Philippines: as to case No. 1077/2002 - *Carpo* (A/58/40): on 3 February 2004, author's counsel informed the Secretariat that on the basis of the Views a petition for a writ of habeas corpus had been heard before the Supreme Court but was denied. A motion for reconsideration was subsequently filed and is pending. The author sent a letter to the Office of the President seeking action pursuant to the Committee's Views but no response has been forthcoming.

Notes

1/ Ibid., *Fifty-eighth Session, Supplement No. 40* (A/58/40), vol. I, chap. VI.

* The document symbol A/[session No.]/40 refers to the *Official Records of the General Assembly* in which the case appears; annex IX refers to the present report, volume II.

CCPR, CCPR/C/SR.2280 (2005)

Human Rights Committee
Eighty-third session

Summary record of the 2280th meeting
Held at Headquarters, New York, on
Friday, 1 April 2005, at 10 a.m.

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Follow-up on views under the Optional Protocol

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2. **Mr. Ando**, speaking as Special Rapporteur for follow-up on Views under the Optional Protocol, presented the Follow-up Progress Report (CCPR/C/83/FU1 and FU2), which updated the Committee's previous annual report (CCPR/C/81/CRP.1/Add.6) on follow-up activities and included information received between the eighty-first and eighty-third sessions. It dealt with 20 different States parties and covered 18 cases...

3. ... In case No. 1077/2002 (*Carpo v. Philippines*), the State party reiterated its assertion that there had been no violation of the relevant Covenant rights. It had been recommended that the State party reconsider its decision not to implement the Committee's recommendation...

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CHAPTER VI. FOLLOW-UP ACTIVITIES UNDER THE OPTIONAL PROTOCOL

224. In July 1990, the Committee established a procedure for the monitoring of follow-up to its Views under article 5, paragraph 4, of the Optional Protocol, and created the mandate of the Special Rapporteur for the follow-up on Views to this effect. Mr. Ando has been the Special Rapporteur since March 2001 (seventy-first session).

225. In 1991, the Special Rapporteur began to request follow-up information from States parties. Such information has been systematically requested in respect of all Views with a finding of a violation of Covenant rights. A total of 391 Views out of the 503 Views adopted since 1979 concluded that there had been a violation of the Covenant.

228. In many cases, the Secretariat has also received information from complainants to the effect that the Committee's Views have not been implemented. Conversely, in rare instances, the petitioner has informed the Committee that the State party has in fact given effect to the Committee's recommendations, even though the State party did not itself provide that information.

229. The present annual report adopts a different format for the presentation of follow-up information compared to previous annual reports. The table below displays a complete picture of follow-up replies from States parties received as of 28 July 2005, in relation to Views in which the Committee found violations of the Covenant. Wherever possible, it indicates whether follow-up replies are or have been considered as satisfactory or unsatisfactory, in terms of complying with the Committee's Views, or whether the dialogue between the State party and the Special Rapporteur for follow-up on Views continues. The notes following a number of case entries convey an idea of the difficulties in categorizing follow-up replies.

230. Follow-up information provided by States parties and by petitioners or their representatives since the last annual report is set out in a new annex VII, contained in Volume II of the present annual report. This, more detailed, follow-up information also indicates action still outstanding in those cases that remain under review.

FOLLOW-UP RECEIVED TO DATE FOR ALL CASES OF VIOLATIONS OF THE COVENANT

State party and number of cases with violation	Communication number, author and location ^a	Follow-up response received from State party and location	Satisfactory response	Unsatisfactory response	No follow-up response	Follow-up dialogue ongoing
...						
Philippines (6)	788/1997, <i>Cagas</i> A/57/40	X A/59/40, A/60/40				X
	868/1999, <i>Wilson</i> A/59/40	X A/60/40		X		X
	869/1999, <i>Piandiong et al.</i> A/56/40				X A/59/40	X
	1077/2002, <i>Carpó et al.</i> A/58/40	X A/59/40, A/60/40 (annex VII)		X		X
	1110/2002, <i>Rolando</i> A/60/40				X	X
	1167/2003, <i>Ramil Rayos</i> A/59/40				X	X

^a The location refers to the document symbol of the *Official Records of the General Assembly, Supplement No. 40*, which is the annual report of the Committee to the respective sessions of the Assembly.

CCPR, A/60/40 vol. II (2005)

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Annex VII

FOLLOW-UP OF THE HUMAN RIGHTS COMMITTEE ON INDIVIDUAL COMMUNICATIONS UNDER THE OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

This report sets out all information provided by States parties and authors or their counsel since the last Annual Report (A/59/40).

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State party	THE PHILIPPINES
Case	Cagas, 788/1997
Views adopted on	23 October 2001
Issues and violations found	Right to be tried without undue delay, right to presumption of innocence, and unreasonable delay in pretrial detention - articles 9, paragraph 3, 14, paragraph 2, 14, paragraph 3 (c).
Remedy recommended	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 remedy, which shall entail adequate compensation for the time they have spent unlawfully in detention. The State party is also under an obligation to ensure that the authors be tried promptly with all the guarantees set forth in article 14 or, if this is not possible, released.
Due date for State party response	9 May 2002
Date of reply	19 August 2004
State party response	The State party submits that it did not provide information on the merits of this case, nor on counsel's supplementary comments, prior to consideration by the Committee as it believed the case to be inadmissible.

As to the issues raised under articles 9, paragraph 3, and 14, paragraph 3, the State party submits that the delay in the trial was

caused by the authors themselves when they questioned the trial court's denial of their petition for bail to the Supreme Court. According to the State party, this was a deliberate attempt by the authors to avoid, or at least delay, the trial of the case. As to the Committee's recommendation on compensation, the State party submits that any liability for unlawful detention would depend on the acquittal of the accused. In the event of an acquittal, the corresponding compensation for the time they have spent unlawfully in detention would have to be determined by the Board of Claims under the Department of Justice and/or by the Philippine Commission on Human Rights, the latter being the agency vested by the Constitution with the authority to provide for compensation to victims of violations of human rights. As to the recommendation of a fair trial, it informs the Committee that as of 22 March 2002, the Regional Trial Court in Pili, Camarines Sur "has concluded the trial of the above-mentioned case and that as from that date the same had already been submitted for decision."

On 3 June 2005, and in response to counsel's submission, the State party informed the Special Rapporteur that on 18 January 2005, the Regional Trial Court of Pili, Camarines Sur, pronounced its judgement. The accused Cagas, Butin, and Astilero were all found guilty by the trial court of multiple murder, qualified by treachery, for the killing of Dr. Dolores Arevalo, Encarnacion Basco, Arriane Arevalo, Dr. Analyn Claro, Marilyn Oporto and Elin Paloma. Cagas and Antillero were sentenced to reclusion perpetua for each of the murders. Butin died before the rendering of the final judgement.

Author's response

On 24 October 2004, authors' counsel commented that the denial of bail was pursued to the Supreme Court as it was considered unlawful and unfair, and was not for the purposes of delaying the trial. The delay was brought about by the judiciary's failure to schedule the case for trial, even after the issue of bail had been considered. Counsel denies that this case has been heard. He states that the date of submission of the last pleading to the court was on 2 August 2000, and that according to the court's rules the case should have been heard within 90 days of that date. On 18 July 2003, counsel filed an urgent ex parte plea for a resolution without success. Finally, counsel states that the State party omitted to inform the Committee that one of the authors, Mr. Wilson Butin, died of natural causes while in preventive detention and while waiting for a judgement in this case.

Further action

The Special Rapporteur met with a representative of the State party

taken/required	during the eighty-fourth session. See below.
State party	PHILIPPINES
Case	Wilson, 868/1999
Views adopted on	30 October 2003
Issues and violations found	Mandatory death penalty for rape after unfair trial - "most serious" crime. Compensation after acquittal - articles 7, 9, paragraphs 1, 2, and 3, 10, paragraphs 1, and 2.
Remedy recommended	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.
Due date for State party response	10 February 2004
Date of reply	12 May 2005
State party response	The State party is "disinclined" to accept the Committee's findings of facts, more particularly its assessment of evidence. It submits that the findings rests on faulty appreciation of facts and it is doubtful if the facts disclosed by the complainant would by themselves support the findings. It contests the finding that the compensation provided was inadequate. It submits that the author failed to discharge the burden of proof; ex parte statements made by the complainant are not considered evidence and do not constitute sufficient proof of the

facts alleged. An investigation conducted by the City jail Warden of the Valenzuela City Jail, where the author was confined, disputed all allegations made by the author. The author had failed to provide specific acts of harassment to which he was supposedly subjected to while in prison and did not identify the prison guards who allegedly extorted money from him. As the author had already flown home while the communication was pending before the Committee he could not have feared for his security by naming those who had allegedly ill-treated him. It reiterates its submission that the author failed to exhaust domestic remedies. Finally, it considers that the compensation provided is adequate that the author has not yet sent an authorized representative to claim the checks on his behalf and that by insisting that the State party make available to the complainant all monetary compensation due to him, "the Committee might have exceeded its competency and caused great injustice to the State party."

Further action taken/required The Special Rapporteur met with a representative of the State party during the eighty-fourth session. See below.

State party **PHILIPPINES**

Case Carpo, 1077/200

Views adopted on 28 March 2003

Issues and violations found Death sentence - article 6, paragraph 1.

Remedy recommended 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.

Due date for State party response 37844

Date of reply 5 October 2004

State party response The State party submitted that as to the finding of a violation of article 6, paragraph 2, the Committee's finding that the offence of murder entails a very broad definition, "requiring simply the killing of another individual", is incorrect and there exists in the State party's Penal Code a clear distinction between different types of

unlawful killings. Thus, the State party cannot be held liable for arbitrary deprivation of life on the basis of such an unfounded conclusion.

It also submits that it cannot be concluded that the imposition of the death penalty was made by automatic imposition of article 48 of the Revised Penal Code. Such a conclusion rests on the false assumption that article 48 provides for the mandatory imposition of the death sentence in cases where a single act results in several unlawful killings. It is argued that there is no indication in the phraseology of this provision which indicates that the term “maximum period” alludes to the penalty of death. Article 48 merely prescribes that if one single act results in two or more offences, the penalty for the most serious crime will be imposed i.e. a penalty lower than the aggregate of the penalties for each offence, if imposed separately.

Similarly, the State party submits that there is nothing in this provision which authorizes local courts to disregard the personal circumstances of the offender as well as the circumstances of the offence in considering cases which involve complex crimes. In its view, no persuasive basis was laid down to justify the conclusion that the imposition of the death penalty upon the authors was made “without regard being able to be paid to the authors’ personal circumstances or the circumstances of the particular offence.”

Finally, as to the conclusion that the authors did not receive a real review in the Supreme Court, which practically foreclosed the presentation of any new evidence, the State party submits that this Court is not a “trier” of facts and is not obliged to repeat the proceedings before the trial courts. A review by the Supreme Court is meant to ensure that the conclusions of the trial court are consistent with prevailing laws and procedures. In addition, it adds that there is nothing on record to show that the authors were going to present new evidence not previously considered by the trial court.

**Further action
taken/required**

On 21 July 2005, the Special Rapporteur held follow-up consultations with a representative of the State party. He noted that two follow-up replies remained outstanding and that other replies might be construed as not being satisfactory, constituting in reality belated merits submissions rather than follow-up submissions. The State party representatives pledged to secure follow-up information in the outstanding cases (1167/2003, Ramil Rayos, and 1110/2002, Rolando) and to seek confirmation as to whether there would be additional follow-up submissions in the other cases, notably in the

cases of Wilson (868/1999) and Piandiong (869/1999).

CCPR, CCPR/C/SR.2392 (2006)

HUMAN RIGHTS COMMITTEE

Eighty-seventh session

SUMMARY RECORD OF THE 2392nd MEETING

Held at the Palais Wilson, Geneva,
on Wednesday, 26 July 2006, at 11 a.m.

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FOLLOW-UP TO CONCLUDING OBSERVATIONS ON STATE REPORTS AND TO
VIEWS UNDER THE OPTIONAL PROTOCOL (agenda item 7)

Report of the Special Rapporteur for follow-up on Views (CCPR/C/87/R.3)

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32. Mr. ANDO said that the report would be amended in accordance with Mr. Solari Yrigoyen's suggestion. On the issue of the death penalty cases in the Philippines, he said that information had recently been received from the Government of the Philippines stating that capital punishment had been abolished. The Committee should request further information on how that legislative change would affect the communications in practice.

33. Ms. WEDGWOOD suggested that the Committee should remind the Government of the Philippines of the provisions of article 15 of the Covenant concerning a convicted person's right to benefit from a lighter penalty in the event of a change in the law on punishment.

34. The CHAIRPERSON agreed with Ms. Wedgwood.

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CHAPTER VI FOLLOW-UP ACTIVITIES UNDER THE OPTIONAL PROTOCOL

227. In July 1990, the Committee established a procedure for the monitoring of follow-up to its Views under article 5, paragraph 4, of the Optional Protocol, and created the mandate of the Special Rapporteur for follow-up to Views to this effect. Mr. Ando has been the Special Rapporteur since March 2001 (seventy-first session).

228. In 1991, the Special Rapporteur began to request follow-up information from States parties. Such information has been systematically requested in respect of all Views with a finding of a violation of Covenant rights; 429 Views out of the 547 Views adopted since 1979 concluded that there had been a violation of the Covenant.

229. All attempts to categorize follow-up replies by States parties are inherently imprecise and subjective: it accordingly is not possible to provide a neat statistical breakdown of follow-up replies. Many follow-up replies received may be considered satisfactory, in that they display the willingness of the State party to implement the Committee's recommendations or to offer the complainant an appropriate remedy. Other replies cannot be considered satisfactory because they either do not address the Committee's Views at all or only relate to certain aspects of them. Some replies simply note that the victim has filed a claim for compensation outside statutory deadlines and that no compensation can therefore be paid. Still other replies indicate that there is no legal obligation on the State party to provide a remedy, but that a remedy will be afforded to the complainant on an *ex gratia* basis.

230. The remaining follow-up replies challenge the Committee's Views and findings on factual or legal grounds, constitute much-belated submissions on the merits of the complaint, promise an investigation of the matter considered by the Committee or indicate that the State party will not, for one reason or another, give effect to the Committee's Views.

231. In many cases, the Secretariat has also received information from complainants to the effect that the Committee's Views have not been implemented. Conversely, in rare instances, the petitioner has informed the Committee that the State party had in fact given effect to the Committee's recommendations, even though the State party had not itself provided that information.

232. The present annual report adopts the same format for the presentation of follow-up information as the last annual report. The table below displays a complete picture of follow-up replies from States parties received up to 7 July 2006, in relation to Views in which the Committee found violations of the Covenant. Wherever possible, it indicates whether follow-up replies are or have been considered as satisfactory or unsatisfactory, in terms of their compliance with the Committee's Views, or whether the dialogue between the State party and the Special Rapporteur for follow-up to Views continues. The Notes following a number of

case entries convey an idea of the difficulties in categorizing follow-up replies.

233. Follow-up information provided by States parties and by petitioners or their representatives subsequent to the last annual report (A/60/40, vol. I, chap. VI) is set out in annex VII to volume II of the present annual report.

FOLLOW-UP RECEIVED TO DATE FOR ALL CASES OF VIOLATIONS OF THE COVENANT

State party and number of cases with violation	Communication number, author and location	Follow-up response received from State party and location	Satisfactory response	Unsatisfactory response	No follow-up response received	Follow-up dialogue ongoing
...						
Philippines (7)	788/1997, <i>Cagas</i> A/57/40	X A/59/40, A/60/40, A/61/40				X
	868/1999, <i>Wilson</i> A/59/40	X A/60/40, A/61/40		X		X
	869/1999, <i>Piandiong et al.</i> A/56/40	X N/A				
	1077/2002, <i>Carpo et al.</i> A/58/40	X A/59/40, A/60/40, A/61/40	X (A/61/40)			
	1110/2002, <i>Rolando</i> A/60/40	X A/61/40	X (A/61/40)			
	1167/2003, <i>Ramil Rayos</i> A/59/40	X A/61/40	X (A/61/40)			
	1089/2002, <i>Rouse</i> A/60/40				X	X
	1421/2005, <i>Larranaga</i>	Not due				

	A/61/40					
...						

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Annex VII

FOLLOW-UP OF THE HUMAN RIGHTS COMMITTEE ON INDIVIDUAL COMMUNICATIONS UNDER THE OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

This report sets out all information provided by States parties and authors or their counsel since the last Annual Report (A/60/40).

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State party	PHILIPPINES
Case	Cagas, 788/1997
Views adopted on	37186
Issues and violations found	Right to be tried without undue delay, right to presumption of innocence, and unreasonable delay in pretrial detention - Articles 9, paragraph 3, 14, paragraph 2, 14, paragraph 3 (c)
Remedy recommended	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 remedy, which shall entail adequate compensation for the time they have spent unlawfully in detention. The State party is also under an obligation to ensure that the authors be tried promptly with all the guarantees set forth in article 14 or, if this is not possible, released.
Due date for State party response	9 May 2002
Date of State party's response	10 February 2006 (The State party had replied on 19 August 2004)
State party response	<p>The Committee will recall that, as set out in its 84th report, the State party submitted that it had not provided information on the merits of this case, prior to consideration by the Committee, as it believed the case to be inadmissible. It then proceeded to respond on the merits.</p> <p>On 3 June 2005, and in response to counsel's submission, the State party informed the Special Rapporteur that on 18 January 2005, the Regional Trial Court of Pili, Camarines Sur, had pronounced its judgement. The accused Cagas, Butin, and Astilero were all found</p>

guilty by the trial court of multiple murder, qualified by treachery, for the killing of Dr. Dolores Arevalo, Encarnacion Basco, Arriane Arevalo, Dr. Analyn Claro, Marilyn Oporto and Elin Paloma. Cagas and Antillero were sentenced to *reclusion perpetua* for each of the murders. Butin died before the rendering of the final judgement.

On 10 February 2006, the State party submitted that the accused Cagas and Astillero appealed the decision to the Court of Appeal where it remains pending. It submits that the rendition of the judgement was made in accordance with the Committee's recommendation. However, it is not in a position to award the authors with compensation while the case is still before the Court of Appeal. It reiterates that the payment of compensation, under the Republic Act No. 7309, is for those who have been unjustly deprived of their liberty and would hinge on the acquittal of the accused. The corresponding compensation for the time spent in prison would then be determined by the Board of Claims which is under the State party's Department of Justice.

Author's response	None
Case	Carpo, 1077/2002
Views adopted on	28 March 2003
Issues and violations found	Death sentence - Article 6, paragraph 1.
Remedy recommended	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.
Due date for State party response	12 August 2003
Date of State party's response	31 May 2006 (had replied on 5 October 2004)
State party response	On 5 October 2004, the State party had submitted the following. As to the finding of a violation of article 6, paragraph 2, the Committee's finding that the offence of murder entails a very broad definition, "requiring simply the killing of another individual", is incorrect and there exists in the State party's penal code a clear distinction between different types of unlawful killings. Thus, the State party cannot be held liable for arbitrary deprivation of life on the basis of such an unfounded conclusion. It also submitted that it cannot be concluded that

the imposition of the death penalty was made by automatic imposition of article 48 of the Revised Penal Code. Such a conclusion rests on the false assumption that article 48 provides for the mandatory imposition of the death sentence in cases where a single act results in several unlawful killings. It was argued that there is no indication in the phraseology of this provision which indicates that the term “maximum period” alludes to the penalty of death. Article 48 merely prescribes that if one single act results in two or more offences, the penalty for the most serious crime will be imposed i.e. a penalty lower than the aggregate of the penalties for each offence, if imposed separately.

Similarly, the State party submitted that there is nothing in this provision which authorizes local courts to disregard the personal circumstances of the offender as well as the circumstances of the offence in considering cases which involve complex crimes. In its view, no persuasive basis was laid down to justify the conclusion that the imposition of the death penalty upon the authors was made “without regard being able to be paid to the authors’ personal circumstances or the circumstances of the particular offence”.

Finally, as to the conclusion that the authors did not receive a real review in the Supreme Court, which practically foreclosed the presentation of any new evidence, the State party submitted that this Court is not a “trier” of facts and is not obliged to repeat the proceedings before the trial courts. A review by the Supreme Court is meant to ensure that the conclusions of the trial court are consistent with prevailing laws and procedures. In addition, it added that there is nothing on record to show that the authors were going to present new evidence not previously considered by the trial court.

On 31 May 2006, the State party submitted that the four authors were granted executive clemency. Their death sentences were reduced to *reclusion perpetua*, a lengthy form of imprisonment. However, the Philippine Revised Penal Code, provides that any person sentenced to *reclusion perpetua* shall be pardoned after 30 years.

**Further action
taken**

On 21 July 2005, the Special Rapporteur had held follow-up consultations with a representative of the State party. He noted that two follow-up replies remained outstanding and that other replies might be construed as not being satisfactory, constituting in reality belated merits submissions rather than follow-up submissions. The State party representatives pledged to secure follow-up information in the outstanding cases (1167/2003, Ramil Rayos, and 1110/2002, Rolando) and to seek confirmation as to whether there would be additional follow-up submissions in the other cases, notably in the

cases of Wilson (868/1999) and Piandiong (869/1999).

Committee's Decision	In light of the commutation of the author's sentence, the Committee does not intend to consider this matter any further under the follow-up procedure unless the situation changes.
Case	Pagdawayon, 1110/2002
Views adopted on	3 November 2004
Issues and violations found	Death penalty, unfair trial, arbitrary arrest - Articles 6, paragraph 1, 9, paragraphs 1, 2, 3, and 14, paragraph 3 (d).
Remedy recommended	Pursuant to article 2, paragraph 3 (a), of the Covenant, the Committee concludes that the author is entitled to an appropriate remedy including commutation of his death sentence. The State party is under an obligation to avoid similar violations in the future.
Due date for State party response	7 March 2005
Date of State party's response	31 May 2006 (had replied on 27 January 2006)
State party response	<p>On 27 January 2006, the State party had submitted that the Committee's finding that the author is entitled to commutation of his sentence was referred to the Department of Justice on 1 August 2005, to the Executive Secretary and to the Chief Presidential Legal Counsel on 19 January 2006. It recalled that this decision rests in the hand of the President and that all death penalty cases upon completion are automatically forwarded by the Supreme Court to the office of the President for the exercise of his pardoning power.</p> <p>On 31 May 2006, the State party submitted that the author was granted executive clemency. His death sentence was reduced to <i>reclusion perpetua</i>, a lengthy form of imprisonment. However, the Philippine Revised Penal Code, provides that any person sentenced to <i>reclusion perpetua</i> shall be pardoned after 30 years.</p>
Author's response	None
Committee's Decision	In light of the commutation of the author's sentence, the Committee does not intend to consider this matter any further under the follow-up procedure unless the situation changes.
Case	Rayos, 1167/2003

Views adopted on	27 July 2004
Issues and violations found	Death penalty, unfair trial - Articles 6, paragraph 1 and 14, paragraph 3 (b).
Remedy recommended	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 and appropriate remedy, including commutation of his death sentence. The State party is under an obligation to avoid similar violations in the future.
Due date for State party response	5 December 2004
Date of State party's response	31 May 2006 (had replied on 27 January 2006)
State party response	<p>On 27 January 2006, the State party had submitted that the Committee's finding that the author is entitled to commutation of his sentence was referred to the Department of Justice on 1 August 2005 and to the Executive Secretary and the Chief Presidential Legal Counsel on 19 January 2006. It recalled that this decision rested in the hand of the President and that all death penalty cases upon completion are automatically forwarded by the Supreme Court to the office of the President for the exercise of his pardoning power.</p> <p>On 31 May 2006, the State party submitted that the author was granted executive clemency. His death sentence was reduced to <i>reclusion perpetua</i>, a lengthy form of imprisonment. However, the Philippine Revised Penal Code, provides that any person sentenced to <i>reclusion perpetua</i> shall be pardoned after 30 years.</p>
Author's response	None
Committee's Decision	In light of the commutation of the author's sentence, the Committee does not intend to consider this matter any further under the follow-up procedure unless the situation changes.
Case	Wilson, 868/1999
Views adopted on	30 October 2003
Issues and violations found	Mandatory death penalty for rape after unfair trial - "most serious" crime. Compensation after acquittal - Articles 7, 9, paragraphs 1, 2, and 3, 10, paragraphs 1, and 2.
Remedy	In accordance with article 2, paragraph 3 (a), of the Covenant, the State

recommended

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.

Due date for State party response

10 February 2004

Date of State party's response

27 January 2006 (It had replied on 12 May 2005)

State party response

The Committee will recall that, as set out in its 84th report, the State party submitted that it was "disinclined" to accept the Committee's findings of facts, more particularly its assessment of evidence. It submitted that the findings rested on an incorrect appreciation of the facts and contested the finding that the compensation provided was inadequate. It submitted that the author failed to discharge the burden of proof; ex parte statements made by the complainant are not considered evidence and do not constitute sufficient proof of the facts alleged. An investigation conducted by the City jail Warden of the Valenzuela City Jail, where the author was confined, disputed all allegations made by the author. The author had failed to provide specific acts of harassment to which he was supposedly subjected to while in prison and did not identify the prison guards who allegedly extorted money from him. As the author had already flown home while the communication was pending before the Committee he could not have feared for his security by naming those who had allegedly ill-treated him. It reiterated its submission that the author failed to exhaust domestic remedies. Finally, it considered that the compensation provided is adequate that the author had not yet sent an authorized representative to claim the checks on his behalf and

that by insisting that the State party make available to the complainant all monetary compensation due to him, "the Committee might have exceeded its competency and caused great injustice to the State party".

On 27 January 2006, the State party submits that the Views were sent to the Department of Justice and the Department (DOJ) of Interior and Local Government (DILG) for appropriate action last 10 August 2005.

DOJ exercises supervision over the Bureau of Immigration while DILG exercises supervision over city jails. An investigation was carried out in 2005 by the City Jail Warden of the Valenzuela City Jail where Mr. Wilson was confined. The investigation revealed the following: (1) The Valenzuela City Jail has no "cages" in which the author could have been confined upon his arrest; and (2) There is no record of a serious shooting incident of an inmate which supposedly occurred ensuring the author's detention and which supposedly traumatised the author. According to the investigation results, the only incident on record was a non-fatal shooting on 17 June 1996 of an inmate who was shot by his jail guard when the former tried to escape from detention. Finally, it submits that the author failed to provide specific acts of harassment to which he was supposedly subjected while in prison and failed to identify the prison guards and officials who allegedly harassed and extorted money from him.

Author's response

On 9 February 2006, the author submitted that the procedure currently under consideration is that of follow-up and that therefore it is inappropriate to resubmit arguments on the merits. He requests information on the current status of follow-up in this case.

On 3 May 2006, the author's counsel responded to the State party's response of 27 January 2006. He submits that the State party's response is inappropriate as 1. it was limited to an investigation only and 2. the investigation conducted was not prompt, comprehensive and/or impartial. Neither the City of Jail Warden, which conducted the investigation nor the DILG which oversaw it, can be considered an external and therefore impartial mechanism. In addition, it is not possible to assess the promptness and effectiveness of the investigation as the authorities never informed the complainant about the investigation, including when it would take place and why the investigation was closed. Counsel points to treaty body jurisprudence as well as jurisprudence of the ECHR for the proposition that a complainant should be invited to take part in such an investigation and to receive information about its progress and outcome. As to the conduct of the investigation, Counsel submits that it is clear that the author's complaints were disregarded. The claim that the author failed to provide specific acts of harassment or to identify the persons

who subjected him to harassment is an attempt to reduce the State party's duty to conduct a thorough investigation – it is precisely the purpose of such investigations to establish such facts. In any event, these claims are untrue and Counsel refers to the communication itself in which the author sets out in detail his complaints.

Counsel highlights that failure of the State party to provide information about the compensation with regard to the breaches of articles 7, 9 and 10 as well as the refunding of the moneys claimed from the author as immigration fees and with respect to the guarantees of non-repetition. Counsel also highlights the authors concerns with the measures the State party should take to prevent similar violations in the future.

...

CHAPTER VI. FOLLOW-UP ACTIVITIES UNDER THE OPTIONAL PROTOCOL

213. In July 1990, the Committee established a procedure for the monitoring of follow-up to its Views under article 5, paragraph 4, of the Optional Protocol, and created the mandate of the Special Rapporteur for follow-up to Views to this effect. Mr. Ando has been the Special Rapporteur since March 2001 (seventy-first session).

214. In 1991, the Special Rapporteur began to request follow-up information from States parties. Such information has been systematically requested in respect of all Views with a finding of a violation of Covenant rights; 452 Views out of the 570 Views adopted since 1979 concluded that there had been a violation of the Covenant.

215. All attempts to categorize follow-up replies by States parties are inherently imprecise and subjective: it accordingly is not possible to provide a neat statistical breakdown of follow-up replies. Many follow-up replies received may be considered satisfactory, in that they display the willingness of the State party to implement the Committee's recommendations or to offer the complainant an appropriate remedy. Other replies cannot be considered satisfactory because they either do not address the Committee's Views at all or only relate to certain aspects of them. Some replies simply note that the victim has filed a claim for compensation outside statutory deadlines and that no compensation can therefore be paid. Still other replies indicate that there is no legal obligation on the State party to provide a remedy, but that a remedy will be afforded to the complainant on an *ex gratia* basis.

216. The remaining follow-up replies challenge the Committee's Views and findings on factual or legal grounds, constitute much-belated submissions on the merits of the complaint, promise an investigation of the matter considered by the Committee or indicate that the State party will not, for one reason or another, give effect to the Committee's Views.

217. In many cases, the Committee secretariat has also received information from complainants to the effect that the Committee's Views have not been implemented. Conversely, in rare instances, the petitioner has informed the Committee that the State party had in fact given effect to the Committee's recommendations, even though the State party had not itself provided that information.

218. The present annual report adopts the same format for the presentation of follow-up information as the last annual report. The table below displays a complete picture of follow-up replies from States parties received up to 7 July 2007, in relation to Views in which the Committee found violations of the Covenant. Wherever possible, it indicates whether follow-up replies are or have been considered as satisfactory or unsatisfactory, in terms of their compliance with the Committee's Views, or whether the dialogue between the State party and the Special Rapporteur for follow-up to Views continues. The Notes following a number of case entries

convey an idea of the difficulties in categorizing follow-up replies.

219. Follow-up information provided by States parties and by petitioners or their representatives subsequent to the last annual report (A/61/40, vol. I, chap. VI) is set out in annex VII to volume II of the present annual report.

FOLLOW-UP RECEIVED TO DATE FOR ALL CASES OF VIOLATIONS OF THE COVENANT

State party and number of cases with violation	Communication number, author and location	Follow-up response received from State party and location	Satisfactory response	Unsatisfactory response	No follow-up response received	Follow-up dialogue ongoing
...						
Philippines (9)	788/1997, <i>Cagas</i> A/57/40	X A/59/40, A/60/40, A/61/40				X
	868/1999, <i>Wilson</i> A/59/40	X A/60/40, A/61/40, A/62/40		X A/62/40		X A/62/40
	869/1999, <i>Piandiong et al.</i> A/56/40	X N/A				
	1077/2002, <i>Carpo et al.</i> A/58/40	X A/59/40, A/60/40, A/61/40	X (A/61/40)			
	1110/2002, <i>Rolando</i> A/60/40	X A/61/40	X (A/61/40)			
	1167/2003, <i>Ramil Rayos</i> A/59/40	X A/61/40	X (A/61/40)			
	1089/2002, <i>Rouse</i> A/60/40				X	X
	1320/2004, <i>Pimentel et al.</i> A/62/40	Not yet due				
	1421/2005, <i>Larrañaga</i> A/61/40				X	
...						

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Annex IX

FOLLOW-UP OF THE HUMAN RIGHTS COMMITTEE ON INDIVIDUAL COMMUNICATIONS UNDER THE OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

This report sets out all information provided by States parties and authors or their counsel since the last Annual Report (A/61/40).

...

State party	PHILIPPINES
Case	Wilson, 868/1999
Views adopted on	30 October 2003
Issues and violations found	Mandatory death penalty for rape after unfair trial - "most serious" crime. Compensation after acquittal - Articles 7, 9, paragraphs 1, 2, and 3, 10, paragraphs 1, and 2.
Remedy recommended	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 caused to the author. 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.

Due date for State party response

10 February 2004

Date of reply

17 July 2006 (It had previously replied on 12 May 2005 and 27 January 2006)

State party response

The Committee will recall that, as set out in its 84th report, the State party submitted, on 12 May 2005, that it was “disinclined” to accept the Committee’s findings of facts, more particularly its assessment of evidence. It submitted that the findings rested on an incorrect appreciation of the facts and contested the finding that the compensation provided was inadequate. It submitted that the author failed to discharge the burden of proof; ex parte statements made by the complainant are not considered evidence and do not constitute sufficient proof of the facts alleged. An investigation conducted by the City Jail Warden of the Valenzuela City Jail, where the author was confined, disputed all allegations made by the author. The author had failed to provide specific acts of harassment to which he was supposedly subjected to while in prison and did not identify the prison guards who allegedly extorted money from him. As the author had already flown home while the communication was pending before the Committee he could not have feared for his security by naming those who had allegedly ill-treated him. It reiterated its submission that the author failed to exhaust domestic remedies. Finally, it considered that the compensation provided is adequate that the author had not yet sent an authorized representative to claim the cheques on his behalf and that by insisting that the State party make available to the complainant all monetary compensation due to him, “the Committee might have exceeded its competency and caused great injustice to the State party”.

On 27 January 2006, the State party submitted that the Views were sent to the Department of Justice and the Department (DOJ) of Interior and Local Government (DILG) for appropriate action last 10 August 2005. DOJ exercises supervision over the Bureau of Immigration while DILG exercises supervision over city jails. An investigation was carried out in 2005 by the City Jail Warden of the Valenzuela City Jail where Mr. Wilson was confined. The investigation revealed the following: (1) The Valenzuela City Jail has no “cages” in which the author could have been confined upon his arrest; and (2) There is no record of a serious shooting incident of an inmate which supposedly occurred during the author’s detention and which supposedly traumatised the author. According to the investigation results, the only incident on record was a non-fatal shooting on 17 June 1996 of an inmate who was

shot by his jail guard when the former tried to escape from detention. Finally, it submits that the author failed to provide specific acts of harassment to which he was supposedly subjected while in prison and failed to identify the prison guards and officials who allegedly harassed and extorted money from him.

On 17 July 2006, following a request from the Committee, through the Special Rapporteur on Follow-up, the State party responded to counsel's submission of 3 May 2006. It argues that the investigation was carried out impartially and that no evidence has been provided to demonstrate otherwise. The allegation is merely inferred from the fact that, the jail warden, as a public officer, exercises administrative control over his subordinates and the DILG is not an external accountability mechanism. It argues that sanctions under municipal law would have deterred both the jail warden and the DILG from not acting impartially. The State party contests that unreasonable delay in the progress of the investigation has been established. The author did not express his wish to take part in the investigation, to receive information on its progress to assist in ensuring the prosecution of the alleged perpetrators of torture. The State party argues that the author is obliged to present clear and convincing evidence with respect to the shooting incident and the alleged existence of the cage. Unless and until independent corroborating evidence are adduced the municipal authorities are not obliged to act upon such claims. It concludes that its investigation meets the Covenant standards of impartiality, promptness and thoroughness.

Author's response

On 9 February 2006, the author submitted that the procedure currently under consideration is that of follow-up and that therefore it is inappropriate to resubmit arguments on the merits. He requests information on the current status of follow-up in this case.

On 3 May 2006, the author's counsel responded to the State party's response of 27 January 2006. He submits that the State party's response is inappropriate as 1. It was limited to an investigation only and 2. The investigation conducted was not prompt, comprehensive and/or impartial. Neither the City of Jail Warden, which conducted the investigation nor the DILG which oversaw it, can be considered an external and therefore impartial mechanism. In addition, it is not possible to assess the promptness and effectiveness of the investigation as the authorities never informed the complainant about the investigation, including when it would take place and why the investigation was closed. Counsel points to treaty body jurisprudence as well as jurisprudence of the

ECHR for the proposition that a complainant should be invited to take part in such an investigation and to receive information about its progress and outcome. As to the conduct of the investigation, Counsel submits that it is clear that the author's complaints were disregarded. The claim that the author failed to provide specific acts of harassment or to identify the persons who subjected him to harassment is an attempt to reduce the State party's duty to conduct a thorough investigation - it is precisely the purpose of such investigations to establish such facts. In any event, these claims are untrue and Counsel refers to the communication itself in which the author sets out in detail his complaints.

Counsel highlights that failure of the State party to provide information about the compensation with regard to the breaches of articles 7, 9 and 10 as well as the refunding of the moneys claimed from the author as immigration fees and with respect to the guarantees of non-repetition. Counsel also highlights the author's concerns with the measures the State party should take to prevent similar violations in the future.

**Committee's
Decision**

The Committee regards the State party's response as unsatisfactory and considers the dialogue ongoing.

...

VI. FOLLOW-UP ACTIVITIES UNDER THE OPTIONAL PROTOCOL

187. In July 1990, the Committee established a procedure for the monitoring of follow-up to its Views under article 5, paragraph 4, of the Optional Protocol, and created the mandate of the Special Rapporteur for follow-up to Views to this effect. Mr. Ando has been the Special Rapporteur since March 2001 (seventy-first session).

188. In 1991, the Special Rapporteur began to request follow-up information from States parties. Such information had been systematically requested in respect of all Views with a finding of a violation of Covenant rights; 429 Views out of the 547 Views adopted since 1979 concluded that there had been a violation of the Covenant.

189. All attempts to categorize follow-up replies by States parties are inherently imprecise and subjective: it accordingly is not possible to provide a neat statistical breakdown of follow-up replies. Many follow-up replies received may be considered satisfactory, in that they display the willingness of the State party to implement the Committee's recommendations or to offer the complainant an appropriate remedy. Other replies cannot be considered satisfactory because they either do not address the Committee's Views at all or relate only to certain aspects of them. Some replies simply note that the victim has filed a claim for compensation outside statutory deadlines and that no compensation can therefore be paid. Still other replies indicate that there is no legal obligation on the State party to provide a remedy, but that a remedy will be afforded to the complainant on an *ex gratia* basis.

190. The remaining follow-up replies challenge the Committee's Views and findings on factual or legal grounds, constitute much-belated submissions on the merits of the complaint, promise an investigation of the matter considered by the Committee or indicate that the State party will not, for one reason or another, give effect to the Committee's recommendations.

191. In many cases, the Secretariat has also received information from complainants to the effect that the Committee's Views have not been implemented. Conversely, in rare instances, the petitioner has informed the Committee that the State party had in fact given effect to the Committee's recommendations, even though the State party had not itself provided that information.

192. The present annual report adopts the same format for the presentation of follow-up information as the last annual report. The table below displays a complete picture of follow-up replies from States parties received up to 7 July 2008, in relation to Views in which the Committee found violations of the Covenant. Wherever possible, it indicates whether follow-up replies are or have been considered as satisfactory or unsatisfactory, in terms of their compliance with the Committee's Views, or whether the dialogue between the State party and the Special Rapporteur for follow-up to Views continues. The notes following a number of case entries convey an idea of the difficulties in categorizing follow-up replies.

193. Follow-up information provided by States parties and by petitioners or their representatives subsequent to the last annual report (A/62/40) is set out in annex VII to volume II of the present annual report.

...						
Philippines (10)	788/1997, <i>Cagas</i> A/57/40	X A/59/40, A/60/40, A/61/40				X
	868/1999, <i>Wilson</i> A/59/40	X A/60/40, A/61/40, A/62/40		X A/62/40		X A/62/40
	869/1999, <i>Piandiong et al.</i> A/56/40	X N/A				
	1077/2002, <i>Carpo et al.</i> A/58/40	X A/59/40, A/60/40, A/61/40	X (A/61/40)			
	1110/2002, <i>Rolando</i> A/60/40	X A/61/40	X (A/61/40)			
	1167/2003, <i>Ramil Rayos</i> A/59/40	X A/61/40	X (A/61/40)			
	1089/2002, <i>Rouse</i> A/60/40				X	X
	1320/2004, <i>Pimentel et al.</i> A/62/40				X A/63/40	X

Philippines (<i>cont'd</i>)	1421/2005, <i>Larrañaga</i> A/61/40				X	
	1466/2006, <i>Lumanog</i> A/63/40					
...						

Annex VII

FOLLOW UP OF THE HUMAN RIGHTS COMMITTEE ON INDIVIDUAL COMMUNICATIONS UNDER THE OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

This report sets out all information provided by States parties and authors or their counsel since the last Annual Report (A/62/40).

...

State party	PHILIPPINES
Case	Pimentel et al., 1320/2004
Views adopted on	19 March 2007
Issues and violations found	Unreasonable length of time in civil proceedings, equality before the Courts - article 14, paragraph 1 in conjunction with article 2, paragraph 3.
Remedy recommended	Adequate remedy including compensation and a prompt resolution of their case on the enforcement of the United States judgement in the State party.
Due date for State party response	3 July 2007
State party response	None
Author's comments	On 1 October 2007, the authors informed the Committee that the State party had failed to date to provide them with compensation and that the action to enforce the class judgement has remained in the Regional Trial Court of Makati following remand of the case in March 2005. It was not until September 2007, that the court determined, per motion for consideration, that service of the complaint on the defendant estate in 1997 was proper. Thus, the authors wish the Committee to request of the State party prompt resolution of the enforcement action and compensation. Following the jurisprudence of the European Court of Human Rights (inter alia <i>Triggiani v. Italy</i> , (1991) 197 Eur.Ct.H.R. (ser. A)) and other reasoning, including the fact that the class action is made up of 7,504 individuals, they suggest a figure of

413,512,296 dollars in compensation.

Committee's Decision The Committee considers the dialogue ongoing.

...

VI. FOLLOW UP ACTIVITIES UNDER THE OPTIONAL PROTOCOL

230. In July 1990, the Committee established a procedure for the monitoring of follow-up to its Views under article 5, paragraph 4, of the Optional Protocol, and created the mandate of the Special Rapporteur for follow-up on Views to this effect. Ms. Ruth Wedgwood has been the Special Rapporteur since July 2009 (ninety-sixth session).

231. In 1991, the Special Rapporteur began to request follow-up information from States parties. Such information had been systematically requested in respect of all Views with a finding of a violation of Covenant rights; 543 Views out of the 681 Views adopted since 1979 concluded that there had been a violation of the Covenant.

232. All attempts to categorize follow-up replies by States parties are inherently imprecise and subjective: it accordingly is not possible to provide a neat statistical breakdown of follow-up replies. Many follow-up replies received may be considered satisfactory, in that they display the willingness of the State party to implement the Committee's recommendations or to offer the complainant an appropriate remedy. Other replies cannot be considered satisfactory because they either do not address the Committee's Views at all or relate only to certain aspects of them. Some replies simply note that the victim has filed a claim for compensation outside statutory deadlines and that no compensation can therefore be paid. Still other replies indicate that there is no legal obligation on the State party to provide a remedy, but that a remedy will be afforded to the complainant on an *ex gratia* basis.

233. The remaining follow-up replies challenge the Committee's Views and findings on factual or legal grounds, constitute much belated submissions on the merits of the complaint, promise an investigation of the matter considered by the Committee or indicate that the State party will not, for one reason or another, give effect to the Committee's recommendations.

234. In many cases, the Secretariat has also received information from complainants to the effect that the Committee's Views have not been implemented. Conversely, in rare instances, the petitioner has informed the Committee that the State party had in fact given effect to the Committee's recommendations, even though the State party had not itself provided that information.

235. The present annual report adopts the same format for the presentation of follow-up information as the last annual report. The table below displays a complete picture of follow-up replies from States parties received up to the ninety-sixth session (13-31 July 2009), in relation to Views in which the Committee found violations of the Covenant. Wherever possible, it indicates whether follow-up replies are or have been considered as satisfactory or unsatisfactory, in terms of their compliance with the Committee's Views, or whether the dialogue between the State party and the Special Rapporteur for follow-up on Views continues. The notes following a number of case entries convey an idea of the difficulties in categorizing follow-up replies.

236. Follow-up information provided by States parties and by petitioners or their representatives subsequent to the last annual report (A/63/40) is set out in annex IX to volume II of the present annual report.

...						
Philippines (11)	788/1997, <i>Cagas</i> A/57/40	X A/59/40, A/60/40, A/61/40				X
	868/1999, <i>Wilson</i> A/59/40	X A/60/40, A/61/40, A/62/40		X A/62/40		X A/62/40
	869/1999, <i>Piandiong et al.</i> A/56/40	X N/A				
	1077/2002, <i>Carpo et al.</i> A/58/40	X A/59/40, A/60/40, A/61/40	X A/61/40			
	1110/2002, <i>Rolando</i> A/60/40	X A/61/40	X A/61/40			
	1167/2003, <i>Ramil Rayos</i> A/59/40	X A/61/40	X (A/61/40)			
	1089/2002, <i>Rouse</i> A/60/40				X	X

Philippines (<i>cont'd</i>)	1320/2004, <i>Pimentel et al.</i> A/62/40	X A/63/40, A/64/40			X A/63/40	X
	1421/2005, <i>Larrañaga</i> A/61/40				X	
	1466/2006, <i>Lumanog</i> A/63/40					
	1560/2007, <i>Marcellana</i> and <i>Gumanoy</i> A/64/40				X	
...						

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Annex IX

Follow-up of the Human Rights Committee on individual communications under the Optional Protocol to the International Covenant on Civil and Political Rights

This report sets out all information provided by States parties and authors or their counsel since the last annual report (A/63/40).

...

State party	Philippines
Case	<i>Pimentel et al., 1320/2004</i>
Views adopted on	19 March 2007
Issues and violations found	Unreasonable length of time in civil proceedings, equality before the Courts - article 14, paragraph 1 in conjunction with article 2, paragraph 3.
Remedy recommended	Adequate remedy, including compensation and a prompt resolution of their case on the enforcement of the United States judgement in the State party.
Due date for State party response	3 July 2007
Date of State party response	24 July 2008
State party response	The State party informs the Committee that on 26 February 2008, the presiding judge of the Regional Trial Court issued an order setting the case for judicial dispute resolution (JDR). Three JDR conferences have already taken place, however due to the confidentiality of the process no further information on the status of the process may be divulged.
Author's comments	On 1 October 2007, the authors had informed the Committee that

the State party had failed to date to provide them with compensation and that the action to enforce the class judgement remained in the Regional Trial Court of Makati following remand of the case in March 2005. It was not until September 2007, that the court determined, per motion for consideration, that service of the complaint on the defendant estate in 1997 was proper. The authors requested the Committee to demand of the State party prompt resolution of the enforcement action and compensation. Following the jurisprudence of the European Court of Human Rights (ECHR), inter alia *Triggiani v. Italy* (1991) (series A No. 197), and other reasoning, including the fact that the class action is made up of 7,504 individuals, they suggest a figure of 413, 512,296 dollars in compensation.

On 22 August 2008, the authors responded to the State party's submission of 24 July 2008. They confirm that they met with the presiding judge on several occasions to discuss settlement and that although they made earnest proposals the Marcos Estate showed no interest in doing so. By order of 4 August 2008, the JDR phase was terminated. According to the authors, the State party's delay in the enforcement proceedings, at the time of their submission extending 11 years, is part of a pattern and practice by the State party to ensure that the class never realizes any collection on its United States judgement, and provides other examples of this practice. The authors require the Committee to quantify the amount of compensation (and other relief), to which they claim the Committee has already held the class to be entitled. (The Order of 4 August 2008 states, "Considering that this case has been pending in the courts for 11 years already, it is imperative that trial on the merits commence without further delay." The records of the case have been sent back to the Regional Trial Court for "proper disposition".)

Committee's Decision

The follow-up dialogue is ongoing.

Case

Lumanog and Santos, 1466/2006

Views adopted on

20 March 2008

Issues and violations found

Undue delay with respect to review of conviction and sentence to higher tribunal - article 14, paragraph 3 (c).

Effective remedy, including the prompt review of their appeal

Remedy recommended before the Court of Appeals and compensation for the undue delay.

Due date for State party response 10 October 2008

Date of State party response 11 May 2009

State party response The State party explains what action has been taken to date since the case in question as brought before the Supreme Court. On 13 August 2008, following a request by the petitioners to declare unconstitutional the penalty of *reclusion perpetua* without the benefit of parole", the third division of the court transferred this case to the Court En Banc. On 19 January 2009, this Court requested the parties to submit their respective memoranda and has been waiting for compliance with this resolution since then.

Author's comments Awaiting comments

Committee's Decision The follow-up dialogue is ongoing.

...

CCPR, CCPR/C/SR.2712 (2010)

Human Rights Committee
Ninety-eighth session

Summary record (partial) of the 2712th meeting
Held at Headquarters, New York,
on Thursday 25 March 2010, at 3pm

...

Follow-up on views under the Optional Protocol

...

2. *Ms. Wedgwood*, speaking as Special Rapporteur for follow-up on Views under the Optional Protocol, introduced the follow-up progress report, which included information received since the Committee's 97th session.

...

8. In case No. 1466/2006 (*Lumanog v. The Philippines*), the Committee might wish to request the State party to respond specifically to the authors' arguments on the issue of undue delay in their appeal of the penalty of "reclusión perpetua", or life imprisonment, without the benefit of parole; in that connection, the State party should set a time limit for deciding the matter, which had been deferred so that similar cases could be considered together. Regarding case No. 1447/2006 (*Amirov v. Russian Federation*), it would be sensible to press the State party to answer the author's specific claims as to why the Russian authorities' explanation of his wife's death remained inadequate.

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17. *The recommendations contained in the follow-up progress report of the Committee on individual communications were approved.*

The discussion covered in the summary record ended at 3.40 p.m.

...

Chapter VI. Follow-up on individual communications under the Optional Protocol

202. The present chapter sets out all information provided by States parties and authors or their counsel since the last annual report (A/64/40).

...

State party	Philippines
Case	<i>Lumanog and Santos, 1466/2006</i>
Views adopted on	20 March 2008
Issues and violations found	Undue delay with respect to review of conviction and sentence to higher tribunal - 14, paragraph 3 (c).
Remedy recommended	Effective remedy, including the prompt review of their appeal before the Court of Appeal and compensation for the undue delay.
Due date for State party response	10 October 2008
Date of State party response	11 May and 24 November 2009
State party response	<p>The State party explains what action has been taken to date since the case in question was brought before the Supreme Court. On 13 August 2008, following a request by the petitioners to declare unconstitutional the penalty of "<i>reclusión perpetua</i> without the benefit of parole", the third division of the court transferred this case to the Court En Banc. On 19 January 2009, this Court requested the parties to submit their respective memoranda and has been waiting for compliance with this resolution since then.</p> <p>On 24 November 2009, the State party informed the Committee that this case has been joined with other cases and thus will be decided jointly. With respect to the issue of compensation, the case will be reviewed and decided upon by the Court of Appeal, after which it may be appealed to the Supreme Court for a final</p>

judgement. The State party submits that it will comply with the final judgement of the Supreme Court.

Author's comments

On 2 July 2009, the author submits that the State party has failed to publish the Views to date and has failed to address the issue of undue delay in the proceedings. It has given no indication so far of any review, refinement or improvement of those procedural rules for automatic intermediate review by the Court of Appeal of cases where the penalty imposed is *recusión perpetua*, life imprisonment to death as embodied in the 2004 ruling in *People vs. Mateo*. As to the remedy, the State party has provided no information as to any measures it intends to take to prevent similar violations in the future with respect to undue delay at the appeal stage and there has been no compensation paid for the undue delay. This case remains before the Supreme Court.

On 16 November 2009, the authors submitted that their case, which has been ready for consideration by the Supreme Court since 5 May 2008, has now been delayed due to the same court's decision on 23 June 2009 to consider this case jointly with several others. As a result of this decision, upon which the authors had no opportunity to comment, the hearing of this case will be further delayed.

Committee's Decision

The follow-up dialogue is ongoing.

Case

Pimentel et al., 1320/2004

Views adopted on

19 March 2007

Issues and violations found

Unreasonable length of time in civil proceedings, equality before the Courts - article 14, paragraph 1, in conjunction with article 2, paragraph 3.

Remedy recommended

Adequate remedy, including compensation and a prompt resolution of their case on the enforcement of the judgment of the United States of America in the State party.

Due date for State party response

3 July 2007

Date of State party

24 July 2008

response

State party response

The State party informs the Committee that on 26 February 2008, the presiding judge of the Regional Trial Court issued an order setting the case for Judicial Dispute Resolution (JDR). Three JDR conferences have already taken place, however due to the confidentiality of the process no further information on the status of the process may be divulged.

Author's comments

On 1 October 2007, the authors informed the Committee that the State party had failed to provide them with compensation and that the action to enforce the class judgement remained in the Regional Trial Court of Makati following remand of the case in March 2005. It was not until September 2007 that the court determined, per motion for consideration, that service of the complaint on the defendant estate in 1997 was proper. The authors requested the Committee to demand of the State party prompt resolution of the enforcement action and compensation. Following the jurisprudence of the European Court of Human Rights (inter alia *Triggiani v. Italy*, (1991) 197 Eur.Ct.H.R. (ser.A)) and other reasoning, including the fact that the class action is made up of 7,504 individuals, they suggest a figure of US\$ 413,512,296 in compensation.

On 22 August 2008, the authors responded to the State party's submission of 24 July 2008. They confirmed that they met with the presiding judge on several occasions to discuss settlement and that although they made earnest proposals the Marcos Estate showed no interest in doing so. By order of 4 August 2008, the JDR phase was terminated. According to the authors, the State party's delay in the enforcement proceedings, at the time of their submission extending 11 years, is part of a pattern and practice by the State party to ensure that the class never realizes any collection on its United States judgement, and provides other examples of this practice. The authors required the Committee to quantify the amount of compensation (and other relief), to which they claim the Committee has already held the class to be entitled. (The Order of 4 August 2008 states, "Considering that this case has been pending in the courts for 11 years already, it is imperative that trial on the merits commence without further delay." The records of the case have been sent back to the Regional Trial Court for "proper disposition".)

On 21 August 2009, the authors renewed their plea to the Committee to quantify the amount of compensation (and other relief) to which the Committee held that they were entitled. They

highlight their views, inter alia, that: the State party has done nothing to advance this case; it has collected tens of millions of dollars in Marcos assets but has failed to distribute any to the victims; the provision of compensation is consistent with General Assembly resolution 60/147 on Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.; the delay in rendering relief to the 9,539 victims who benefit from the Committee's decision encourages the State party to continue to violate human rights.

Committee's Decision

The follow-up dialogue is ongoing.

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