

**HUMAN RIGHTS COMMITTEE**

**Piandiong et al v. The Philippines**

**Communication No. 869/1999**

**19 October 2000**

**CCPR/C/70/D/869/1999**

**VIEWS**

*Submitted by: Mr. Alexander Padilla and Mr. Ricardo  
III Sunga (legal counsel)*

*Alleged victims: Mr. Dante Piandiong, Mr. Jesus Morallos  
and Mr. Archie Bulan (deceased)*

*State party: The Philippines*

*Date of communication: 15 June 1999*

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

Meeting on 19 October 2000

Having concluded its consideration of communication No. 869/1999 submitted to the Human Rights Committee by Mr. Alexander Padilla and Mr. Ricardo III Sunga under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the authors of the communication, and the State party,

Adopts the following:

Views under article 5, paragraph 4, of the Optional Protocol

1.1 The authors of the communication are Alexander Padilla and Ricardo III Sunga. They present the communication as legal counsel to Mr. Dante Piandiong, Mr. Jesus Morallos and Mr. Archie

Bulan, whom they claim are victims of violations of articles 6, 7 and 14 of the International Covenant on Civil and Political Rights by the Philippines.

1.2 On 7 November 1994, Messrs. Piandiong, Morillos and Bulan were convicted of robbery with homicide and sentenced to death by the Regional Trial Court of Caloocan City. The Supreme Court denied the appeal, and confirmed both conviction and sentence by judgement of 19 February 1997. Further motions for reconsideration were denied on 3 March 1998. After the execution had been scheduled for 6 April 1999, the Office of the President, on 5 April 1999, granted a three month reprieve of execution. No clemency was however granted and on 15 June 1999, counsel presented a communication to the Committee under the Optional Protocol.

1.3 On 23 June 1999, the Committee, acting through its Special Rapporteur for New Communications, transmitted the communication to the State party with a request to provide information and observations in respect of both admissibility and merits of the claims, in accordance with rule 91, paragraph 2, of the Committee's rules of procedure. The State party was also requested, under rule 86 of the Committee's rules of procedure, not to carry out the death sentence against Messrs. Piandiong, Morillos and Bulan, while their case was under consideration by the Committee.

1.4 On 7 July 1999, the Committee was informed by counsel that a warrant for execution of Messrs. Piandiong, Morillos and Bulan on 8 July 1999 had been issued. After having contacted the State party's representative to the United Nations Office at Geneva, the Committee was informed that the executions would go ahead as scheduled, despite the Committee's request under rule 86, since the State party was of the opinion that Messrs. Piandiong, Morillos and Bulan had received a fair trial.

1.5 Counsel for Messrs. Piandiong, Morillos and Bulan filed a petition with the Supreme Court seeking an injunction, which was refused by the Court on 8 July 1999. Counsel also met personally with the Government's Justice Secretary and asked him not to carry out the death sentence in view of the Committee's request. In the afternoon of 8 July 1999, however, Messrs. Piandiong, Morillos and Bulan were executed by lethal injection.

1.6 By decision of 14 July 1999, the Committee requested from the State party clarifications of the circumstances surrounding the executions. On 21 July 1999, the Special Rapporteur for New Communications and the Committee's Vice-chairperson met with the State party's representative.

## **The complaint**

2.1 Counsel states that Messrs Piandiong and Morillos were arrested on 27 February 1994, on suspicion of having participated, on 21 February 1994, in the robbery of passengers of a jeepney in Caloocan City, during which one of the passengers, a policeman, was killed. After arriving in the police station, Messrs Piandiong and Morillos were hit in the stomach in order to make them confess, but they refused. During a line up, the eyewitnesses failed to recognize them as the robbers. The police then placed them in a room by themselves, and directed the eyewitnesses to point them out. No counsel was present to assist the accused. During the trial, Messrs. Piandiong, Morillos and Bulan testified under oath, but the judge chose to disregard their testimony, because of lack of independent corroboration.

2.2 Counsel further complains that the death sentence was wrongly imposed, because the judge considered that an aggravating circumstance existed, as the crime was committed by more than three armed persons. According to counsel, however, this was not proven beyond reasonable doubt. Moreover, counsel states that the judge should have taken into account the mitigating circumstance of voluntary surrender, since Messrs. Piandiong, Morillos and Bulan came with the police without resisting.

2.3 Counsel further states that the testimonies of the eyewitnesses deserved no credence, because the eyewitnesses were close friends of the deceased and their description of the perpetrators did not coincide with the way Messrs. Piandiong, Morillos and Bulan actually looked. Counsel also states that the judge erred when he did not give credence to the alibi defence.

2.4 Finally, counsel complains that the death penalty was unconstitutional and should not have been imposed for anything but the most heinous crime.

### **The State party's observations**

3.1 By submission of 13 October 1999, the State party explains that domestic remedies were exhausted with the Supreme Court's decision of 3 March 1998, rejecting the supplemental motions for reconsideration. The convicts and their counsel could have filed a communication with the Human Rights Committee at that date. However, they did not do so, but instead petitioned the President for clemency. On 6 April 1999, the President granted a 90 days reprieve, in order to examine the request for pardon. The request was considered by the Presidential Review Committee, composed of the Secretary of Justice, the Executive Secretary and the Chief Presidential Counsel. After careful study of the case, the Committee found no compelling reason to recommend to the President the exercise of presidential prerogative. The State party explains that the President's power to grant pardon cannot reverse nor review the decision by the Supreme Court. The grant of pardon presupposes that the decision of the Supreme Court is valid and the President is merely exercising the virtue of mercy. According to the State party, in submitting themselves to the President's power, the convicts conceded to the decision of the Supreme Court. The State party argues that, having done so, it is highly inappropriate that they would then go back to the Human Rights Committee for redress.

3.2 The State party explains that the President will exercise his constitutional powers to grant pardon if it is proven that poverty pushed the convicts in committing the crime. According to the State party, this cannot be said to have been the case for the crime of which Messrs. Piandiong, Morillos and Bulan were convicted. In this connection, the State party refers to the Supreme Court's judgement which found that the shooting of the police officer in the jeepney, the subsequent robbery of the shot policeman, and finally the second shooting of him while he was pleading to be brought to hospital, revealed brutality and mercilessness, and called for the imposition of the death penalty.

3.3 With regard to the claim of torture, the State party notes that this was not included in the grounds of appeal to the Supreme Court, and thus the Supreme Court did not look into the issue. According to the State party, the Supreme Court takes accusations of torture and ill-treatment very seriously, and would have reversed the lower court's judgement if it were proven.

3.4 Concerning the claim of lack of legal assistance, the State party notes that the accused had legal assistance throughout the trial proceedings and the appeal. With respect to the right to life, the State party notes that the Supreme Court has ruled on the constitutionality of the death penalty as well as the methods of execution and found them to be constitutional.

3.5 In respect to counsel's request to the Committee for interim measures of protection as a matter of urgency, the State party notes that counsel found no need to address the Committee during the year that his clients were on death row after all domestic remedies had been exhausted. Even after the President granted a 90 day reprieve, counsel waited until the end of that period to present a communication to the Committee. The State party argues that in doing so counsel makes a mockery of the Philippine justice system and of the constitutional process.

3.6 The State party assures the Committee of its commitment to the Covenant and states that its action was not intended to frustrate the Committee. In this connection, the State party informs the Committee that to further enhance the review of cases submitted to the President for pardon, a new body called Presidential Conscience Committee to Review Cases of Death Convicts Scheduled for Execution has been created. Chaired by the Executive Secretary, the Conscience Committee has the following members: one representative from the social sciences, one representative from an NGO involved in anti-crime campaign, and two representatives from church-based organizations. The Committee's function is two-fold, namely: to undertake a review of the cases of death convicts, taking into consideration both humanitarian concerns and the demands of social justice and to submit a recommendation to the President on the possible exercise of his power to grant reprieve, commutations and pardons.

### **Counsel's comments**

4.1 Counsel argues that Messrs. Piandiong, Morillos and Bulan considered resort to the President as a domestic remedy necessary for them to exhaust before presenting their communication to the Human Rights Committee. They argue therefore that it was not improper for them to wait until it became clear that clemency was not going to be granted. With respect to the State party's argument that clemency could not be granted because the crime could not be considered as poverty driven, counsel notes that Messrs. Piandiong, Morillos and Bulan disputed the very finding of their supposed authorship of the crime.

4.2 With regard to the State party's argument that the torture was not made a ground of appeal, counsel submits that at trial Messrs. Piandiong, Morillos and Bulan testified under oath that they were ill-treated, and the matter was brought before the Supreme Court in the Supplemental Motion for Reconsideration. In the opinion of counsel, the ill-treatment betrayed the weakness of the prosecution's evidence, because if the evidence would have been strong, no ill-treatment would have been necessary. In reply to the State party's statement that the Supreme Court takes allegations of torture seriously, counsel argues that this is apparently not so, since the Supreme Court failed to take any action in the present case.

4.3 With regard to the State party's statement that the accused benefited from legal representation, counsel notes that this was only so as of the beginning of the trial. Before trial, at the crucial moment of the police line up, no counsel was present.

4.4 With regard to the State party's argument that the Supreme Court has ruled the death penalty and method of execution constitutional, counsel argues that the Supreme Court's judgement deserves to be reconsidered.

4.5 Concerning the request to the Committee for interim measures, counsel reiterates that they waited to present the communication to the Committee, until all domestic remedies, including the petition for clemency, had been exhausted. Counsel further states that it is hard to take the State party's expressed commitment to the Covenant seriously, in the light of the blatant execution of Messrs. Piandiong, Morallos and Bulan, despite the Committee's request not to do so.

### **The State party's failure to respect the Committee's request for interim measures under its Rule 86**

5.1 By adhering to the Optional Protocol, a State party to the Covenant recognizes the competence of the Human Rights Committee to receive and consider communications from individuals claiming to be victims of violations of any of the rights set forth in the Covenant (Preamble and Article 1). Implicit in a State's adherence to the Protocol is an undertaking to cooperate with the Committee in good faith so as to permit and enable it to consider such communications, and after examination to forward its views to the State party and to the individual (Article 5 (1), (4)). It is incompatible with these obligations for a State party to take any action that would prevent or frustrate the Committee in its consideration and examination of the communication, and in the expression of its Views.

5.2 Quite apart, then, from any violation of the Covenant charged to a State party in a communication, a State party commits grave breaches of its obligations under the Optional Protocol if it acts to prevent or frustrate consideration by the Committee of a communication alleging a violation of the Covenant, or to render examination by the Committee moot and the expression of its Views nugatory and futile. In respect of the present communication, the authors allege that the alleged victims were denied rights under Articles 6 and 14 of the Covenant. Having been notified of the communication, the State party breaches its obligations under the Protocol, if it proceeds to execute the alleged victims before the Committee concludes its consideration and examination, and the formulation and communication of its Views. It is particularly inexcusable for the State to do so after the Committee has acted under its rule 86 to request that the State party refrain from doing so.

5.3 The Committee also expresses great concern about the State party's explanation for its action. The Committee cannot accept the State party's argument that it was inappropriate for counsel to submit a communication to the Human Rights Committee after they had applied for Presidential clemency and this application had been rejected. There is nothing in the Optional Protocol that restricts the right of an alleged victim of a violation of his or her rights under the Covenant from submitting a communication after a request for clemency or pardon has been rejected, and the State party may not unilaterally impose such a condition that limits both the competence of the Committee and the right of alleged victims to submit communications. Furthermore, the State party has not shown that by acceding to the Committee's request for interim measures the course of justice would have been obstructed.

5.4 Interim measures pursuant to rule 86 of the Committee's rules adopted in conformity with article

39 of the Covenant, are essential to the Committee's role under the Protocol. Flouting of the Rule, especially by irreversible measures such as the execution of the alleged victim or his/her deportation from the country, undermines the protection of Covenant rights through the Optional Protocol.

### **Issues and proceedings before the Committee**

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

6.2 The Committee notes that the State party has not raised any objections to the admissibility of the communication. The Committee is not aware of any obstacles to the admissibility of the communication and accordingly declares the communication admissible and proceeds without delay with the consideration of the merits.

7.1 The Human Rights Committee has considered the present communication in the light of all the written information made available to it by the parties, as provided in article 5, paragraph 1, of the Optional Protocol.

7.2 Counsel has claimed that the identification of Messrs. Piandiong and Morillos by eyewitnesses during the police line-up was irregular, since the first time around none of the eyewitnesses recognized them, upon which they were put aside in a room and policemen directed the eyewitnesses to point them out. The Court rejected their claim in this respect, as it was uncorroborated by any disinterested and reliable witness. Moreover, the Court considered that the accused were identified in Court by the eyewitnesses and that this identification was sufficient. The Committee recalls its jurisprudence that it is generally for the courts of States parties, and not for the Committee, to evaluate the facts and evidence in a particular case. This rule also applies to questions as to the lawfulness and credibility of an identification. Furthermore, the Court of Appeal, in addressing the argument about the irregularity of the line-up identification, held that the identification of the accused at the trial had been based on in-court identification by the witnesses and that the line-up identification had been irrelevant. In these circumstances, the Committee finds there is no basis for holding that the in-court identification of the accused was incompatible with their rights under article 14 of the Covenant.

7.3 With regard to the other claims, concerning the alleged ill-treatment upon arrest, the evidence against the accused, and the credibility of the eyewitnesses, the Committee notes that all these issues were before the domestic courts, which rejected them. The Committee reiterates that it is for the courts of States parties, and not for the Committee, to evaluate facts and evidence in a particular case, and to interpret the relevant domestic legislation. There is no information before the Committee to show that the decisions by the courts were arbitrary or that they amounted to denial of justice. In the circumstances, the Committee finds that the facts before it do not reveal a violation of the Covenant in this respect.

7.4 The Committee has noted the claim made on behalf of Messrs. Piandiong, Morillos and Bulan before the domestic courts that the imposition of the death sentence was in violation of the Constitution of the Philippines. Whereas it is not for the Committee to examine issues of

constitutionality, the substance of the claim appears to raise important questions relating to the imposition of the death penalty to Messrs. Piandiong, Morallos and Bulan, namely whether or not the crime for which they were convicted was a most serious crime as stipulated by article 6(2), and whether the re-introduction of the death penalty in the Philippines is in compliance with the State party's obligations under article 6(1) (2) and (6) of the Covenant. In the instant case, however, the Committee is not in a position to address these issues, since neither counsel nor the State party has made submissions in this respect.

8. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that it cannot make a finding of a violation of any of the articles of the International Covenant on Civil and Political Rights. The Committee reiterates its conclusion that the State committed a grave breach of its obligations under the Protocol by putting the alleged victims to death before the Committee had concluded its consideration of the communication.

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\* The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Prafullachandra Natwarlal Bhagwati, Ms. Christine Chanet, Lord Colville, Ms. Elizabeth Evatt, Ms. Pilar Gaitan de Pombo, Mr. Louis Henkin, Mr. Eckart Klein, Mr. David Kretzmer, Ms. Cecilia Medina Quiroga, Mr. Martin Scheinin, Mr. Hipólito Solari Yrigoyen, Mr. Roman Wieruszewski, Mr. Maxwell Yalden, Mr. Abdallah Zakhia. The text of three individual opinions signed by four members is appended.

[Adopted in English, French and Spanish, the English text being the original version. Subsequently to be translated into Arabic, Chinese and Russian as part of the Committee's Annual Report to the General Assembly.]

#### **Individual opinion by Ms. Christine Chanet (partly dissenting)**

I dissent from the Committee's view with regard to the single issue of its finding that there has been no violation of article 14 of the Covenant.

In my opinion, in cases involving criminal offences punishable by the death sentence, the presence of a lawyer should be required at all stages of the proceedings, regardless of whether the accused requests it or not or whether the measures carried out in the course of an investigation are admitted as evidence by the trial Court.

Since the State party did not provide the accused with a lawyer during the line-up identification, a violation of articles 14.3 (b) and 14.3 (d), and article 6, of the Covenant should, in my opinion, have been found.

Christine Chanet [signed]

**Individual opinion by Ms. Elizabeth Evatt and Ms. Cecilia Medina Quiroga  
(partly dissenting)**

We do not agree with the conclusions of the Committee concerning the alleged defects in the identification parade. The author made allegations which cast doubt on the fairness of the procedure, particularly since this identification was carried out in the absence of a lawyer. The court referred to these allegations, but rejected them on the basis that it did not need to rely on the identification parade and that any problems relating to it had been overcome by the identification of the author by witnesses at the trial. However, the identification of accused in court by witnesses who had taken part in the allegedly faulty identification parade does not in itself overcome any defects which affected the earlier identification of the accused by those witnesses. The court gave no other reasons for rejecting the allegations, and thus the doubts raised by the author remain unanswered and must be given weight. In these circumstances, there remain serious questions about the fairness of the trial which in our view amount to a violation of article 14 (1).

Elizabeth Evatt [signed]

Cecilia Medina Quiroga [signed]

**Individual opinion by Mr. Martin Scheinin (partly dissenting)**

I fully concur in the main finding of the Committee in the present case: that the State party has breached its obligations under the Optional Protocol by executing the three persons on whose behalf the communication was submitted, while their case was pending before the Committee, disregarding a duly communicated Rule 86 request. Also, I concur in that the issues related to the reintroduction of the death penalty after once abolished, and whether the crimes in question constituted "most serious crimes" in the meaning of article 6, paragraph 2, were not sufficiently substantiated to enable the Committee to find a violation of article 6 on these grounds.

Where I dissent is the issue of denial of the assistance of a lawyer. In my opinion the communication included a sufficiently substantiated claim that the fact that all three accused persons were not assisted by a lawyer prior to the commencement of the actual trial constituted a violation of article 14 and, consequently, of article 6 of the Covenant. Although this claim is separate from the claim related to the issue of identification in relation to two of the accused, the importance of the assistance of a lawyer at earlier stages of the proceedings is manifest in the way the courts treated the identification issue when it was finally raised before them.

As has been emphasised by the Committee in several previous cases, it is axiomatic under the Covenant that persons facing the death penalty are assisted by a lawyer at all stages of the proceedings (see, e.g., Conroy Levy v. Jamaica, Communication No. 179/1996, and Clarence Marshall v. Jamaica, Communication No. 730/1996). The alleged victims were detained for 6 to 8 months prior to their trial. Irrespective of the characterization of the stages of investigation

conducted prior to the commencement of the trial as judicial or non-judicial, and irrespective of whether the accused explicitly requested for a lawyer, the State party was under an obligation to secure the assistance of the lawyer to them during this period of time. Failure to do so in a case that resulted in the imposition of capital punishment constitutes a violation of article 14, paragraphs 3 (b) and 3 (d), and, consequently, of article 6.

Martin Scheinin [signed]