



**International covenant  
on civil and  
political rights**

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HUMAN RIGHTS COMMITTEE  
Ninety-fourth session  
13 to 31 October 2008

**VIEWS**

**Communication No. 1560/2007**

<u>Submitted by:</u>	Mr. Orly Marcellana and Mr. Daniel Gumanoy (represented by Ms. Marie Hilao-Enriquez [Alliance for the Advancement of People's Rights- Karapatan])
<u>Alleged victims:</u>	Ms. Eden Marcellana and Mr. Eddie Gumanoy
<u>State party:</u>	The Philippines
<u>Date of communication:</u>	9 March 2006
<u>Document references:</u>	Special Rapporteur's rule 97 decision, transmitted to the State party on 7 May 2007 (not issued in document form)
<u>Date of adoption of Views:</u>	30 October 2008

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\* Made public by decision of the Human Rights Committee.

*Subject matter:* Human rights defenders summarily executed

*Substantive issues:* Arbitrary deprivation of life. Right to security of the person. Adequacy of investigation. Effectiveness of remedy.

*Procedural issues:* Another procedure of international investigation or settlement. Lack of substantiation. Abuse of right of submission. Remedies unreasonably prolonged.

*Articles of the Covenant:* 2, paragraphs 1 and 3; 6, paragraph 1; 7; 9, paragraph 1; 10, paragraph 1; 17; and 26

*Articles of the Optional Protocol:* 2; 3; and 5, paragraph 2 (a) and (b)

On 30 October 2008, the Human Rights Committee adopted the annexed text as the Committee's Views, under article 5, paragraph 4, of the Optional Protocol in respect of communication No. 1560/2007.

[ANNEX]

**ANNEX**

Views of the Human Rights Committee under article 5, paragraph 4, of  
the Optional Protocol to the International Covenant on Civil and Political rights

Ninety-fourth session

concerning

**Communication No. 1560/2007\***

<u>Submitted by:</u>	Mr. Orly Marcellana and Mr. Daniel Gumanoy (represented by Ms. Marie Hilao-Enriquez [Alliance for the Advancement of People's Rights- Karapatan])
<u>Alleged victims:</u>	Ms. Eden Marcellana and Mr. Eddie Gumanoy
<u>State party:</u>	The Philippines
<u>Date of communication:</u>	9 March 2006

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

Meeting on 30 October 2008,

Having concluded its consideration of communication No. 1560/2007, submitted to the  
Human Rights Committee on behalf of Ms. Eden Marcellana and Mr. Eddie Gumanoy under the  
Optional Protocol to the International Covenant on Civil and Political Rights,

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

Adopts the following:

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

1.1 The authors of the communication are Mr. Orly Marcellana and Mr. Daniel Gumanoy.  
They submit the communication on behalf of their relatives, Ms. Eden Marcellana and Mr. Eddie  
Gumanoy, who were both found dead near each other in Bansud (Mindoro Oriental, Philippines),

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\* The following members of the Committee participated in the examination of the present  
communication: Mr. Prafullachandra Natwarlal Bhagwati, Ms. Christine Chanet, Mr. Maurice  
Glèlè Ahanhanzo, Mr. Yuji Iwasawa, Ms. Helen Keller, Mr. Ahmed Tawfik Khalil,  
Mr. Rajsoomer Lallah, Mr. Michael O'Flaherty, Ms. Elisabeth Palm, Mr. Rafael Rivas Posada,  
Sir Nigel Rodley and Mr. Ivan Shearer.

on 22 April 2003. They allege violations by the Philippines of the victims' rights under article 2, paragraphs 1 and 3; article 6, paragraph 1; article 7; article 9, paragraph 1; article 10, paragraph 1; article 17; and article 26 of the Covenant. They are represented by Ms. Marie Hilao-Enriquez, from the Alliance for the Advancement of People's Rights- Karapatan.

1.2 The Covenant entered into force for the State party on 23 January 1986 and the Optional Protocol on 22 November 1989.

### **Factual background**

2.1 Ms. Marcellana was the former Secretary General of Karapatan-Southern Tagalog (a human rights organisation) and Mr. Eddie Gumanoy was the former chairperson of Kasama Tk (an organization of farmers). From 19 April 2003 to 21 April 2003, they were leading a fact-finding mission in the province of Mindoro Oriental, to enquire about the abduction of three individuals in Gloria town allegedly committed by elements of the 204<sup>th</sup> infantry brigade, under the command of one Col. Jovito Palparan, and the killing and disappearance of civilians and burning of properties by the military in the town of Pinamalayan.

2.2 The authors claim that Ms. Marcellana was threatened several times by the military for her advocacy work. In addition, while conducting their work, mission members were under the impression that they were under constant surveillance. At some point, when trying to see the detainees inside the 204<sup>th</sup> infantry brigade, members of the mission were photographed against their will. On 21 April 2003, the victims decided to conclude the mission and leave Pinamalayan for Calapan City.

2.3 On the same day, at around 7.00 pm, the victims (together with other members of the fact finding mission) were travelling on the highway about 5.5 kilometres from the 204<sup>th</sup> infantry brigade headquarters, when their van was stopped by ten armed men. The assailants specifically asked for Ms. Marcellana, who was forced to reveal her identity. All the belongings of the members of the fact-finding mission, including mobile phones, documents and photos of the mission, were then seized. After the armed men tied them up, they were taken into a vehicle ("jeepney"). The armed men were not all hooded and some of them could be identified as being Aniano "Silver" Flores and Richard "Waway" Falla, former rebels and currently associated with the military.

2.4 At some point, the victims were ordered to step out of the vehicle while the other members of the fact-finding mission stayed inside the vehicle and were later dropped along the roadside in different parts of Bongabong municipality. The dead bodies of Ms. Marcellana and Mr. Eddie Gumanoy were found the following day. Forensic reports and the death certificates indicate that their death was caused by gun-shot wounds.

2.5 The authors filed a complaint for kidnapping and murder before the Department of Justice (DOJ). By resolution of 17 December 2004, the DOJ dismissed the complaint and the charges against one of the alleged perpetrators on the ground of insufficient evidence. The authors filed a Petition for Review on 22 February 2005, which was dismissed on 20 November 2006. On 7 December 2006, the authors filed a Motion for Reconsideration of said resolution, which was dismissed on 17 April 2007. On 24 May 2007, the authors appealed the DOJ's decisions of 20 November 2006 and 17 April 2007 before the Office of the President of the Republic. The appeal

requested that the DOJ decision be reversed and that charges be filed against Aniano “Silver” Flores and Richard “Waway” Falla. That appeal is still pending.

2.6 A complaint was also filed with the Commission on Human Rights of the Philippines. This complaint was later withdrawn, due to the authors’ assessment that they would not obtain justice from this body. Complaints were also filed with the House of Representatives of the Philippines, the Senate, and under the Comprehensive Agreement on respect for Human Rights and International Humanitarian Law, but no action was taken. The authors add that, in spite of widespread and public opposition, one of the principal suspected perpetrators, Col. Palparan, was later promoted to Major General by the President.

2.7 The authors recognize that domestic remedies have not been exhausted, but state that in the present case, remedies have been unreasonably prolonged and are ineffective, as they are unlikely to result in substantial justice and effective redress and do not constitute a remedy for the authors.

### **The complaint**

3. The authors claim a violation by the State party of article 2, paragraphs 1 and 3; article 6, paragraph 1; article 7; article 9, paragraph 1; article 10, paragraph 1; article 17; and article 26 of the Covenant.

### **State party’s observations on admissibility and merits**

4.1 On 3 September 2007, the State party filed its observations on the admissibility and merits of the communication. On admissibility, the State party claims that the authors have not exhausted all available domestic remedies. It states that, although the DOJ complaint was dismissed in December 2004, it could have been appealed to the Secretary of Justice.<sup>1</sup> Should the Secretary of Justice act on the basis of grave abuse of discretion, this decision could be challenged by way of certiorari under Rule 65 of the 1997 Rules of Civil Procedure. As regards the alleged delay in the proceedings at the DOJ, the State party claims that for it to have operative legal adverse effect the delay must be unreasonable and consequently the DOJ cannot be held responsible for any delay. In addition, the DOJ cannot be blamed for dismissing the criminal complaint filed by the authors, as its resolution was not arbitrary but duly considered the claims presented and ultimately concluded that the evidence for the prosecution failed to establish probable cause against the respondents. In the State party, the determination of probable cause for purpose of filing a criminal action in the courts falls within the discretion of the prosecutor<sup>2</sup> subject to the supervision and control of the DOJ Secretary. The authors could still file a criminal complaint if they gather sufficient evidence against the respondents. A

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<sup>1</sup> Section 4, 2000 NPS Rule on Appeal, Department Circular No. 70.

<sup>2</sup> “The institution of a criminal action depends upon the sound discretion of the fiscal. He may or may not file the complaint or information, follow or not follow that presented by the offended party, according to whether the evidence in his opinion, is sufficient or not to establish the guilt of the accused beyond reasonable doubt. The reason for placing the criminal prosecution under the direction and control of the fiscal is to prevent malicious or unfounded prosecution by private persons. It cannot be controlled by the complainant”, Supreme Court of the Philippines, *Crespo v. Mogul*, 151 SCRA 465. 467 (1987).

preliminary investigation –such as the one conducted by the DOJ- does not in itself constitute a trial. The authors could also file administrative charges against the military officials allegedly involved before the Office of the Ombudsman, or initiate civil proceedings, in accordance with article 35 of the Civil Code.

4.2 With respect to the withdrawal of the complaint pending before the Philippine Commission on Human Rights, the State party argues that such action is tantamount to accusing the Commission of bad faith, which is inconsistent with the legal presumption that this body acts in accordance with its mandate. It points out that the authors themselves attached to their communication a letter from the Commission inquiring about the probity of the confirmation of Brig. Gen. Palparan, which shows that the Commission has been discharging its mandate properly.

4.3 In the House of Representatives and the Senate, the matter was referred to the pertinent committees. In the Senate, a resolution has been issued urging its Committee on Human Rights to conduct an inquiry into the circumstances surrounding the present case. The House of Representatives and the Senate constitute the legislative branch of the Government and the authors cannot expect any definitive judgment from these bodies.

4.4 In view of the above, the State party argues that the authors have chosen not to pursue available domestic remedies due to impatience and mistrust in the local government. Therefore, it contends that it is premature for the authors to conclude that domestic remedies are ineffective.

4.5 In addition, the State party argues that the communication is inadmissible under article 5, paragraph 2 (a) of the Optional Protocol as the same matter is being examined by the Special Rapporteur on extrajudicial, summary or arbitrary executions, who visited the country from 12-21 February 2007.

4.6 The State party also challenges the admissibility of the communication on grounds of abuse of the right of submission, as the authors refuse to recognize and respect its authority to investigate, prosecute and resolve criminal acts within its territorial jurisdiction. The authors are trying to involve the international community in the handling of a case about the State party's domestic criminal laws, which constitutes an undue interference with the State party's domestic affairs.

4.7 Finally, the State party maintains that the communication does not sufficiently substantiate the alleged violations of the Covenant committed by the State party. The narration of the facts only establishes that Ms. Marcellana and Mr. Gumanoy were kidnapped and murdered, that some armed men were the perpetrators and that three of those men were allegedly identified. However, the required link between those facts and the authorities of the State party has not been established.

4.8 On the merits, the State party states that it actively pursues remedies concerning alleged extra-judicial killings, and refers to Administrative Order No. 157 of 21 August 2006 issued by President Macapagal-Arroyo, which creates an independent commission (the "Melo Commission") to probe the killings of media workers and activists. On 22 February 2007, the Melo Commission released its eighty-six page preliminary report, which is being studied by various branches of the Government. In addition, the Supreme Court of the Philippines has

drafted guidelines for the Special Courts that will handle extrajudicial killing cases. The State party refers to the preliminary report by the Special Rapporteur on extrajudicial, summary or arbitrary executions, which recognizes that efforts have been made by the State party to fight extrajudicial killings.<sup>3</sup>

4.9 Furthermore, the State party contends that the communication fails to establish how the State party has violated the Covenant. It submits that the killings of Ms. Marcellana and Mr. Gumanoy are not attributable to its armed forces or to the State but to individuals acting in their own interest. Nevertheless, it is doing its best to ensure that the fundamental rights and liberties of its citizens are respected. The State party recalls that if a State fails to investigate, prosecute or redress private, non-state acts in violation of fundamental rights; it is in effect aiding the perpetrators of such violations for which it could be held responsible under international law. The establishment of the independent Melo Commission to investigate extrajudicial killings shows the State party's resolve to respond to the problem.

4.10 The State party regrets that human rights organizations have not informed the Commission of the numbers of victims of extrajudicial killings and the reasons why they believe that the military is responsible for those killings. It reiterates that these organizations refused to cooperate with the investigation conducted by bodies created by the State party and instead invoked the Committee's authority.

#### **Authors' comments on the State party's observations**

5.1 On 16 February 2008, the authors commented on the State party's submission. On the issue of exhaustion of domestic remedies, they reiterate that this requirement does not apply when remedies are unreasonably prolonged or ineffective. More than five years to the day the victims were kidnapped and murdered in April 2003 and two years after the communication was submitted to the Committee, the legal action which the authors have tried to pursue remains pending before the Office of the President of the State party. Despite overwhelming evidence and clear identification by four witnesses, one of the alleged perpetrators was discharged when the Chief State Prosecutor dismissed the case in December 2004.

5.2 Prior to such dismissal, congressional investigations were held before the House of Representatives and the Senate in May 2003. The House's Committee on Civil, Political and Human Rights, in its initial report, called for a further probe and the temporary relief of then Col. Palparan while the investigation was ongoing but the latter remained in active duty. The Senate's Committee on Justice and Human Rights, for its part, after conducting an initial hearing, suspended its inquiry due to the preliminary investigation before the DOJ.

5.3 As regards the hearings before the Commission on Human Rights, the authors were compelled to withdraw from them because the Commission displayed only casual interest in the case and was allegedly only going through the motions, and that the hearings were being used to eventually clear Col. Palparan and remove obstacles to his promotion. Hence, the withdrawal from proceedings before this Commission was a legitimate sign of protest. Moreover, reference

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<sup>3</sup> Preliminary note on the visit of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston, to the Philippines (12-21 February, 2007), U.N. Doc. A/HRC/4/20/Add.3, para. 4.

by the State party to the letter sent by the Commission to the Senate is misguided, as the Commission only sent this letter after the survivors and the victims' families complained and criticized the Commission for having allowed the promotion of Col. Palparan, despite serious charges of human rights violations filed against him.

5.4 The authors filed a petition for review of the DOJ dismissal on 22 February 2005, which was dismissed on 20 November 2006, almost two years later, without providing reasons. A new motion for reconsideration was denied by the Secretary of Justice in April 2007, again in a perfunctory manner. Given the excessive time that the DOJ took to resolve the case, and given the way the appeals were disposed of, the authors disagree with the State party that the DOJ cannot be held responsible for the delay. In addition, the explanation provided by the State party on the determination of probable cause, the function of a preliminary investigation and the existence of other remedies are irrelevant to the issue of unreasonable delay.

5.5 The authors point to the pattern of consistent human rights violations, including extrajudicial killings, in the State party, which makes domestic remedies ineffective and meaningless. They add that, despite the claims to the opposite by the State party, not a single perpetrator has been convicted.

5.6 With respect to the claim by the State party that the communication is inadmissible as it is being examined by another procedure of international investigation or settlement, the authors consider it to be inapplicable to the present case. On one hand, the Special Rapporteur on extrajudicial, summary or arbitrary executions has concluded his investigation and therefore the matter is no longer being examined. On the other hand, the visit by a Special Rapporteur to the State party cannot be considered as an international procedure of investigation or settlement for the purposes of article 5, paragraph 2(a) of the Optional Protocol.

5.7 The authors add that their communication does not constitute an abuse of the right of submission. They state that the circumstances that give rise to an abuse of the right of submission, such as deliberate submission of false information or excessive delay in filing a complaint, do not exist in their case. Additionally, the authors are not refusing to recognize the State party's authority, but claim that domestic remedies are ineffective.

5.8 With respect to the alleged lack of sufficient substantiation invoked by the State party, the authors refer to the extensive supporting documentation attached to their initial communication. They assert that the link to the State party's authorities as perpetrator of the crimes was clearly established and validated by the findings and reports of several independent bodies.<sup>4</sup>

5.9 On the merits, the authors recall that the remedies pursued by the State party have not effectively stopped the extrajudicial killings nor have they afforded justice to the victims. With respect to the Melo Commission, they note that its preliminary report was released in February 2007 under much public pressure, but that no final report has been issued since then. The Melo Commission suffered from lack of credibility and had little power to conduct investigations. Furthermore, several months after the release of the preliminary report, the State party is still

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<sup>4</sup> The authors refer to the Permanent People's Tribunal Second Session on the Philippines; the report of the US Women Lawyers Human Rights delegation, and the report of the National Council of Churches in the Philippines, which they attached to their submissions.



studying its recommendations. They invoke the final report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, which states that “[t]he many measures that have been promulgated by the Government to respond to the problem of extrajudicial executions are encouraging. However, they have yet to succeed, and the extrajudicial executions continue”.<sup>5</sup>

5.10 Finally, the authors allege that it is clear from the presentation of the facts as well as the supporting documents that the perpetrators identified were members of the State party’s security forces, i.e. the 204<sup>th</sup> infantry brigade of the Philippine Army under the command of then Col. Jovito Palparan., Jr and the so-called rebel returnees who are under military control and command. The authors refer to the *Sarma* case<sup>6</sup>, where the Committee held Sri Lanka responsible for the disappearance perpetrated by a corporal who abducted a victim, despite the State’s contention that the corporal acted beyond authority and without knowledge of his superior officers.

## **Issues and Proceedings before the Committee**

### **Consideration of admissibility**

6.1 Before considering any claims contained in a communication, the Human Rights Committee must, in accordance with article 93 of its rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

6.2 The Committee notes the State party's challenge to the admissibility of the communication on the ground of failure to exhaust domestic remedies. The authors have conceded non-exhaustion of domestic remedies but claim that remedies have been ineffective and unreasonably prolonged. The Committee refers to its case law, to the effect that, for the purposes of article 5, paragraph 2 (b), of the Optional Protocol, domestic remedies must both be effective and available, and must not be unduly prolonged. The victims’ bodies were found in April 2003, and complaints were filed with the legislative bodies and the DOJ soon thereafter.<sup>7</sup> Proceedings at the DOJ were finally closed in April 2007. To date, an appeal filed in May 2007 before the Office of the President has not been resolved and remains pending. The Committee considers that, in the circumstances of the present case, domestic remedies have been unreasonably prolonged. The Committee accordingly finds that article 5, paragraph 2 (b), does not preclude it from considering the complaint.

6.3 The Committee also notes the State party’s contention that the case is inadmissible because the subject matter of the communication is being or was examined by the United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions, who visited the country in February 2007. However, the Committee observes that fact-finding country visits by a Special Rapporteur do not constitute a “procedure of international investigation or settlement” within the meaning of article 5, paragraph 2(a), of the Optional Protocol. The Committee further recalls that

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<sup>5</sup> *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Mission to the Philippines, 27 November 2007*, U.N. Doc. A/HRC/8/3/Add.2, pages 46-47.

<sup>6</sup> Communication No. 950/2000, *Sarma v. Sri Lanka*, Views adopted on 16 July 2003.

<sup>7</sup> Complaints with the House of representative and Senate were filed in May 2003. Information in the file suggests that proceedings at the DOJ were under way in May/June 2003. No information was provided as to the date of the complaint with the Human Rights Commission.

the study of human rights problems in a country by a Special Rapporteur, although it might refer to or draw on information concerning individuals, could not be regarded as being the same matter as the examination of individual cases within the meaning of article 5, paragraph 2 (a), of the Optional Protocol. Accordingly, the Committee considers that the 2007 country visit by the UN Special Rapporteur on extrajudicial, summary or arbitrary executions, does not render the communication inadmissible under article 5, paragraph 2 (a), of the Optional Protocol.<sup>8</sup>

6.4 The State party argues that, by refusing to recognize the State party's authority to investigate, prosecute and resolve criminal acts within its jurisdiction and by involving the international community in a case concerning the State party's domestic laws, the authors have abused their right of submission. The Committee rejects this view: On the contrary, it is clear that pursuant to article 1 of the Optional Protocol "[a] *State party to the Covenant that becomes a party to the [...] Protocol recognizes the competence of the Committee to receive and consider communications from individuals subject to its jurisdiction who claim to be victims of a violation by that State party...*". In the absence of any valid reason offered as to why the present communication constitutes an abuse of right of submission, the Committee is of the view that the case is not inadmissible on this ground.

6.5 As regards the authors' claims relating to article 2, paragraph 1; article 7; article 10, paragraph 1; article 17; and article 26 of the Covenant, the Committee observes that the authors do not provide any explanation on how the victims' rights under these provisions have been violated. The Committee considers that the authors have not substantiated these claims, for purposes of admissibility. The claims under article 2, paragraph 1; article 7; article 10, paragraph 1; article 17; and article 26, are thus inadmissible under article 2 of the Optional Protocol.

6.6 The Committee considers that the facts of the case give rise to issues under article 2, paragraph 3, article 6, paragraph 1; and article 9, paragraph 1, of the Covenant. In the absence of any other obstacles to the admissibility of these claims, the Committee considers them to be sufficiently substantiated, for purposes of admissibility, and proceeds to their consideration on the merits.

### **Consideration of the merits**

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

7.2 As to the claim under article 6, paragraph 1, the Committee observes that it is an established fact, as recognized in the decision of the DOJ of 17 December 2004, that Ms. Marcellana and Mr. Gumanoy were kidnapped, robbed and killed by an armed group. In this regard, the Committee recalls its jurisprudence that criminal investigation and consequential prosecution are necessary remedies for violations of human rights such as those protected by

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<sup>8</sup> Communications Nos. 146/1983 ; 148/1983-154/1983, *Baboeram-Adhin et al. v. Suriname*, Views of 4 April 1985, paragraph 9.1; Communication No. 540/1993, *Laureano v. Peru*, Views of 25 March 1996, paragraph 7.1.

article 6.<sup>9</sup> The Committee further recalls its General Comment No. 31 [80], which lays down that where investigations reveal violations of certain Covenant rights, States parties must ensure that those responsible are brought to justice.

7.3 In the present case, though over five years have elapsed since the killings took place, the State party's authorities have not indicted, prosecuted or brought to justice anyone in connection with these events. The Committee notes that the State party's prosecutorial authorities have, after a preliminary investigation, decided not to initiate criminal proceedings against one of the suspects due to lack of sufficient evidence. The Committee has not been provided with any information, other than about initiatives at the policy level, as to whether any investigations were carried out to ascertain the responsibility of the other members of the armed group identified by the witnesses.

7.4 In view of the above, and in the absence of other pertinent explanations on this matter by the State party, the Committee concludes that the absence of investigations to establish responsibility for the kidnapping and murder of the victims amounted to a denial of justice. The State party must accordingly be held to be in breach of its obligation, under article 6, in conjunction with article 2, paragraph 3, properly to investigate the death of the victims and take appropriate action against those found guilty.

7.5 As to the claim under article 9, the authors argue that Ms. Marcellana was threatened several times because of her human rights work and that the military had previously incited violence against her. In addition, while conducting their fact-finding mission, all members of the team felt under constant surveillance. The State party does not challenge these statements, nor does it provide any other pertinent information on this allegation.

7.6 The Committee recalls its jurisprudence<sup>10</sup> on article 9, paragraph 1, and reiterates that the Covenant protects the right to security of person also outside the context of formal deprivation of liberty. An interpretation of article 9 which would allow a State party to ignore threats to the personal security of non-detained persons subject to its jurisdiction would render ineffective the guarantees of the Covenant. Moreover, States parties are under an obligation to take reasonable and appropriate measures to protect these persons.

7.7 In the present case, the Committee observes that, given that the victims were human rights workers and that at least one of them had been threatened in the past, there appeared to have been an objective need for them to be afforded protective measures to guarantee their security by the State. However, there is no indication that such protection was provided at any time. On the contrary, the authors claimed that the military was the source of the threats received by Ms. Marcellana, and that the fact-finding team was under constant surveillance during its mission. In

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<sup>9</sup> Communication No.1436/2005, *Sathasivam v. Sri Lanka*, Views adopted on 8 July 2008, paragraph 6.4. See also the Committee's General Comment 31, Nature of the General Legal Obligation on States Parties to the Covenant, CCPR/C/21/Rev/Add.13 (2004), paragraphs 15, 18.

<sup>10</sup> Communication No. 195/1985, *Delgado Páez v. Colombia*, Views adopted on 12 July 1990, paragraph 5.5, Communication No. 711/1996, *Dias v. Angola*, Views adopted on 20 March 2000, paragraph 8.3; Communication No. 821/1998, *Chongwe v. Zambia*, Views adopted on 25 October 2000, paragraph 5.3.

these circumstances, the Committee concludes that the State party has failed to take appropriate measures to ensure the victims' right to security of person, protected by article 9, paragraph 1, of the Covenant.

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 the facts as found by the Committee reveal a violations by the Philippines of article 2, paragraph 3; article 6, paragraph 1; and article 9, paragraph 1, of the Covenant.

9. 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, including initiation and pursuit of criminal proceedings to establish responsibility for the kidnapping and death of the victims, and payment of appropriate compensation. The State party should also take measures to ensure that such violations do not recur in the future.

10. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant or not and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant, and to provide an effective and enforceable remedy in case a violation has been established, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee's Views. The State party is also requested to publish the Committee's Views.

[Adopted in English, French and Spanish, the English text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]

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