

Human Rights Committee: The Philippines Violates the Right to Fair Trial of People Claiming to Enforce the US Judgment against the Marcos Estate Case

Mariano Pimentel et al. v. The *Philippines*

*By Atty. Gabriella Citroni, Ph. D.**

On 11 October 2004 Mariano Pimentel, Ruben Resus and Hilda Narciso submitted a communication to the Human Rights Committee,¹ alleging that they were victims of violations by the Republic of the Philippines of their rights under Article 2.3.a (right to an effective remedy) 2 of the International Covenant on Civil and Political Rights (which entered into force in the Philippines on 23 January 1987).

The Petitioners



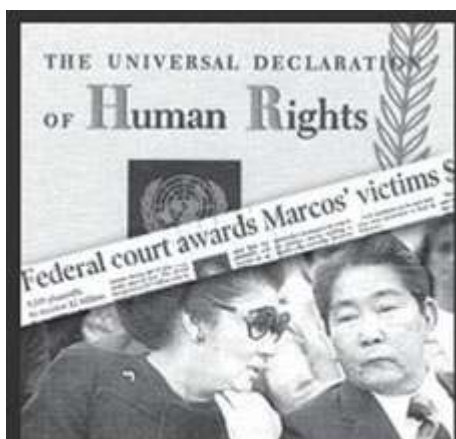
Amparo Diaz, now 77, has been waiting for decades for compensation as a Martial Law victim.
PHOTO BY DABET CASTANEDA
Retrieved from <http://www.bulattlat.com>

Mr. Mariano Pimentel had been arrested in September 1972 by order of President Marcos. He was detained for a total of four years in several detention centers, without ever being charged. Upon return from his final period in detention, he was kidnapped by soldiers, who beat him with rifles, broke his teeth, his arm and leg, and dislocated his rib. He was buried up to his neck in a remote sugar cane field and abandoned, but was subsequently rescued.

In 1974, Mr. Ruben Resus's son, A.S., was arrested by order of President Marcos and taken into military custody. He was tortured during interrogation and kept in detention without ever being charged. He disappeared in 1977.

In March 1983, Mrs. Hilda Narciso was also arrested by order of President Marcos. She was tortured and sexually abused during her interrogation. She was neither charged with nor convicted of any offense.

The Judgement Against Marcos in the United States of America



US Court finds Marcos guilty of gross human rights violations and awards Marcos victims retribution.
Retrieved from www.sherrybroder.com

In April 1986, the three petitioners, together with a class of 9,539 Philippine nationals, brought an action in the United States of America against the estate of late Ferdinand E. Marcos, who was then residing in Hawaii.³

On 3 February 1995, a jury at the United States District Court in Hawaii awarded a total of US \$ 1,964,005,859.90 to the 9,539 victims (or their heirs) of torture, summary executions and disappearance. The jurors found a consistent pattern and

practice of human rights violations in the Philippines during the regime of President Marcos from 1972 to 1986. Where individuals were randomly selected, part of the amount of the judgment is divided per claimant. Individuals, who were not randomly selected but are part of the class, including the three petitioners, will receive part of the award which was made to three classes (victims of torture, of summary executions and of disappearance – or their heirs). However, the amounts were not divided per claimant as it is only after collection of the judgment amount that the United States District Court of Hawaii will allocate amounts to each claimant.

On 17 December 1996, the United States Court of Appeal for the Ninth Circuit affirmed the judgment.⁴

The Judgments in the Philippines

On 20 May 1997, five class members, including Ms. Narciso, filed a complaint against the Marcos estate in the Regional Trial Court of Makati City in the Philippines, with a view to obtaining enforcement of the United States judgment. The defendants counter-filed a motion to dismiss the case, claiming that the PHP 400 (US \$ 7.20) paid by each plaintiff was insufficient as the filing fee.

On 9 September 1998, the Regional Trial Court dismissed the case, holding that the plaintiffs had failed to pay the filing fee of PHP 472 million (US \$ 8.4 million), calculated against the total amount in dispute.

In November 1998, the petitioners filed a motion for reconsideration before the same Court, which was denied in July 1999.

On August 1999, the same five class members filed a motion with the Philippine Supreme Court (case *Mijares et al. v. Hon. Ranada et al.*), on their own behalf and on behalf of the class, seeking a determination that the filing fee was PHP 400 instead of PHP 472 million.

At the same time, the Philippine Supreme Court entered a judgment for the State against the Marcos estate in a forfeiture action and it also directed enforcement of that judgment for over US \$ 650 million.

On 14 April 2005, the Supreme Court ruled on the *Mijares et al. v. Hon. Ranada et al.* case affirming the plaintiff's claim that they should pay a filing fee of 400 PHP with respect to their complaint to enforce the judgment of the United States District Court in Hawaii.

Indeed, in spite of this, there has not been to date a judgment on the enforceability of the decision of the United State District Court of Hawaii. The issue is pending before the Regional Trial Court of Makati City.

The Complaint to the Human Rights Committee

In 2004, when the three petitioners filed their complaint to the Human Rights Committee, the Philippine Supreme Court had not yet issued a judgment on their claim. Therefore, they argued that their proceedings in the Philippines on the enforcement of the United States' judgment had been unreasonably prolonged and that the exorbitant filing fee amounted to a de facto denial to their right to an effective remedy for their injuries to obtain compensation, as recognized by article 2.3.a) of the International Covenant on Civil and Political Rights.

The representatives of the Philippines submitted that the communication was not admissible for failure to exhaust domestic remedies. On the contrary, according to the petitioners, they were not required to exhaust domestic remedies as the proceedings before the Philippine courts had been unreasonably prolonged.

The Views of the Human Rights Committee

On 3 April 2007, the Human Rights Committee issued its views on the case Mariano Pimentel, et al.

On the one hand, the communication was considered inadmissible for non-exhaustion of domestic remedies as the claim concerning the enforcement of the United States District Court of Hawaii's judgment was pending before the Regional Trial Court of Makati City. The Human Rights Committee considered that the proceedings were still pending and that the petitioners should have exhausted all domestic remedies. Therefore, the Committee could not pronounce itself on the subject of the enforceability of the US judgment in the Philippines and the related decisions issued by Philippine Courts.



U.S. lead counsel Robert Swift right, of the Marcos human rights litigation listens to his Filipino co-counsel Rod Domingo during a press briefing on Nov. 22, 2006.
AP Photo/Pat Roque

On the other hand, the Committee noted that since the petitioners had brought their action before the Regional Trial Court in 1997, a period of more than eight years had elapsed before reaching a conclusion in favor of the petitioners. In this sense, the Committee considered that the case raised some separate issues under Article 14.1 (right to a fair trial) 5 of the Covenant, as well as Article 2.3. The views of the Committee were thus, focused on the proceedings concerning the amount of the filing fee before domestic tribunals.

As to the length of those proceedings, the Committee recalled that the right to equality before the courts, as granted by Article 14.1, entails a number of requirements, including the condition that the procedure before the national tribunals must be conducted expeditiously enough so as not to compromise the principle of fairness.

Indeed, the fact that the Regional Trial Court and the Philippine Supreme Court spent about eight years and three hearings considering a merely subsidiary issue (determination of the filing fee) and that the Philippines had failed to provide reasons to explain why it took so long to consider a matter of minor complexity, amounted to a violation of Article 14.1 in conjunction with Article 2.3 of the Covenant.

Finally, the Committee recalled that the petitioners are entitled to an effective remedy and that therefore the Philippines is under an obligation to ensure such adequate remedy to the authors including compensation and prompt resolution of their case on enforcement of the US judgment in the Philippines. Further, the Philippines is under an obligation to ensure that similar violations do not occur in the future.

Conclusions

The views issued by the Human Rights Committee, although not binding in nature, represent a significant reference for all the members of the class action against Marcos estate and for the human rights community and civil society.

The Human Rights Committee has called on the Philippines to respect its obligations under the International Covenant and has explicitly mentioned the fact that the State shall provide with compensation and prompt resolution of the case on enforcement of the US judgment to the petitioners.

These views must now be enforced by the Philippine tribunals and, in general, by the Philippine State. They stand as a clear reminder of the most basic obligations the Philippine State has towards thousands of men and women who have been awaiting justice over some of the worst human rights violations for more than 12 years.

A prompt compensation and justice are the first steps to undertake. However, in order to re-establish the human dignity that has been trampled on and to build a sturdy basis for a better future, the truth about what has happened to hundreds of disappeared people during the Marcos regime must also be fully disclosed.

Updates

The Philippine government through the Presidential Commission on Good Government (PCGG) has for years been contesting and countering the claims of victims of human rights violations on the Marcos ill-gotten wealth deposited in banks in several places in the world.

As regards the Merrill Lynch account in New York, the PCGG argued that the claims of the victims must be dismissed from the US court system and instead be settled in Philippine courts. The PCGG argued further that the government owned the money because the US\$2 million with which Marcos created the account in 1972 through a dummy, a Panamanian corporation called Arelma Foundation, Inc., was stolen from government funds. The amount has since then grown to US\$35 million.

Due to the legal dispute between the Philippine government and the victims, the Merrill Lynch firm in New York asked the US courts to decide on who should get the money. In June 2008, the US Supreme Court dismissed 6 the claims of the human rights victims on the US\$35 million Merrill Lynch account. With this ruling, the PCGG proclaimed its confidence that the government will get the money in a month's time and this will be used "for anti-poverty programs and economic development." However, Atty. Robert Swift, one of the lawyers of the victims, disputed the PCGG claim saying that "the money will revert to Merrill Lynch and remain in the United States." Soon after this, in July 2008, Atty. Swift filed a motion for reconsideration at the US Supreme Court.

The Marcos ill-gotten wealth at the Swiss accounts has a different story. The Swiss government had transferred the amount to the Philippine government following a ruling of the Swiss Federal Court in 1998. The amount was deposited in an escrow account with the Philippine National Bank (PNB). But still, this has not reached the victims.

In an article 7 at posted in the Inquirer.net on 12 August 2008, it was reported that according to the Commission on Audit (COA), the part of the Marcos ill-gotten wealth for the human rights victims

in the amount of some US\$34.14 million was missing. Based on COA's 2007 audit report on the accounts of the PCGG, at least US\$ 34,130,468.05 or US\$ 34.14 million from the Marcos Swiss deposits which was with the Philippine National Bank (PNB) was not turned over to the National Treasury (NT).

In a statement of Claimants 1081 8, the organization of victims represented by its Chairperson Loretta-Pargas- Rosales, it is cited that the group welcomes the COA findings exposing the missing US\$34.14 million from the Marcos' ill-gotten wealth. Claimants 1081 raised its disappointment on the government's manner of handling the Marcos's ill-gotten wealth. They strongly criticized the PCGG's failure to transfer the amount to the NT. The organization expected that said amount would have been transferred to the NT from the PNB after the Supreme Court had ruled on 15 July 2003 that the money was ill-gotten. Claimants 1081 also alleged in the same statement that the missing money was used by the PCGG Chair Camilo Sabio, his friends and relatives for several trips to Singapore and the US "to oppose the US\$1.9 billion judgment of the class suit that the martial law victims had won in 1995." In view of this development, Claimants 1081 called on the COA to order the PCGG to reimburse the missing US\$34.14 million and that the amount must be placed in a special account to be divided among the victims of human rights violations once the "Human Rights Compensation Bill" is enacted into law.

During the August 2008 visit to the Philippines of the Swiss President Pascal Couchepin, President Arroyo briefed him on the status of the Human Rights Compensation bill pending in Congress. She assured the Swiss President that her administration "attaches great importance to the speedy passage of the law so that human rights victims may be justly compensated." However, as of this writing, the bill remains to be among the many bills due to be tabled at the Plenary Session of the Lower House. This bill and other human rights bills are pushed aside in favor of national issues including 'Charter Change or Cha-cha' that seeks to prolong the GMA administration's stay in power beyond the May 2010 elections.

Despite the victims' winning of the case 13 years ago, the actual implementation of the ruling has been too circuitous and tiring. Meanwhile, most of the close to 10,000 victims of human rights violations or their heirs, particularly the parents of victims of enforced disappearance, are already getting much older and physically weaker. In fact, some of them have already died without ever seeing a ray of justice for their loved ones.

(Footnotes)

1 Communication No. 1320/2004.

2 Article 2.3: "Each State Party to the present Covenant undertakes: (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity" [...].

3 United States District Court in Hawaii, Estate of Ferdinand E. Marcos Human Rights Litigation, MDL No. 840.

4 United States Court of Appeals for the Ninth Circuit, Hilao v. Estate of Marcos, 103 F.3d 767.

5 Article 14.1: “1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (*ordre public*) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children”.

6 GMA News. TV, PCGG vows to recover all Marcos ill-gotten wealth, posted 14 June 2008

7 Uy, Jocelyn & Avendano, Christine, COA: Escrow account never transferred to Treasury, *Inquirer.net*, 12 August 2008

8 Etta Pargas-Rosales, Statement on COA Report Re Missing \$34.14 Million Ill-gotten Marcos funds, posted 15 August 2008

9 Erlinda Timbreza-Valerio conducted the research and wrote the updates



* Ph.D. Gabriella Citroni is Researcher in International Law and Professor of International Human Rights Law at the University of Milano-Bicocca (Italy). She was a member of the Italian delegation to the then UN Intersessional Working Group to Elaborate a Draft Legally- Binding Normative Instrument for the Protection of All Persons from Enforced Disappearances.