



# International Covenant on Civil and Political Rights

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## Human Rights Committee

### Decision adopted by the Committee under the Optional Protocol, concerning communication No. 2568/2015\*, \*\*

<i>Communication submitted by:</i>	D.G., D.G., E.B., M.A., L.L., R.G., E.M., V.H., M.C., E.P., M.C., W.D., J.D., J.B., L.C.F., N.L.V., E.S., E.B., A.P., M.P., R.R., J.B., M.B., L.G., V.C., A.C., A.M., S.Y., J.Y., G.A., C.A.S., A.V.M., T.B., A.B., G.A., I.A., M.S., G.A., F.D., M.C., I.G., R.P., J.E., R.E., P.A., A.O., M.A.O., C.A., G.S., R.M., M.A., A.B., C.E., A.C., D.C., A.B., R.B., C.B., D.L., A.V., M.I.G., C.B., S.B., R.G.B., C.M., J.J., G.G., F.A., L.G., G.R., P.P., S.B., J.P., R.V., A.B., G.L. (on behalf of her deceased son, A.L.), M.H. (on behalf of her deceased husband, A.H.), A.H., D.A., T.A., A.G., N.D., F.P., P.P., J.P., C.S., J.A., P.R., S.C., P.P., G.Q., M.M., S.B., A.G., P.J.G., N.S., N.S., K.A., J.V.J., R.G. and A.B. (represented by Bret Thiele, Lauren Carasik and Melona R. Daclan)
<i>Alleged victims:</i>	The authors
<i>State party:</i>	The Philippines
<i>Date of communication:</i>	25 March 2013 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rule 92 of the Committee's rules of procedure, transmitted to the State party on 13 February 2015 (not issued in document form)
<i>Date of adoption of decision:</i>	13 March 2020
<i>Subject matter:</i>	Forced eviction; lack of access to an effective remedy; right to privacy
<i>Procedural issues:</i>	Non-exhaustion of domestic remedies; level of substantiation of claims
<i>Substantive issues:</i>	Forced eviction; right to remedy; right to life; violence and use of excessive force in the context

\* Adopted by the Committee at its 128th session (2–27 March 2020).

\*\* The following members of the Committee participated in the examination of the communication: Yadh Ben Achour, Arif Bulkan, Ahmed Amin Fathalla, Christof Heyns, Bamariam Koita, Marcia V.J. Kran, Duncan Laki Muhumuza, Photini Pazartzis, Hernán Quezada Cabrera, Vasilka Sancin, José Manuel Santos Pais, Yuval Shany, Hélène Tigroudja, Andreas Zimmermann and Gentian Zyberi.



of forced eviction; torture and cruel, inhuman or degrading treatment or punishment

*Articles of the Covenant:* 2 (3), 6, 7 and 17

*Articles of the Optional Protocol:* 2 and 5 (2) (b)

1. The authors of the communication,<sup>1</sup> D.G., D.G., E.B., M.A., L.L., R.G., E.M., V.H., M.C., E.P., M.C., W.D., J.D., J.B., L.C.F., N.L.V., E.S., E.B., A.P., M.P., R.R., J.B., M.B., L.G., V.C., A.C., A.M., S.Y., J.Y., G.A., C.A.S., A.V.M., T.B., A.B., G.A., I.A., M.S., G.A., F.D., M.C., I.G., R.P., J.E., R.E., P.A., A.O., M.A.O., C.A., G.S., R.M., M.A., A.B., C.E., A.C., D.C., A.B., R.B., C.B., D.L., A.V., M.I.G., C.B., S.B., R.G.B., C.M., J.J., G.G., F.A., L.G., G.R., P.P., S.B., J.P., R.V., A.B., G.L. (on behalf of her deceased son, A.L.), M.H. (on behalf of her deceased husband, A.H.), A.H., D.A., T.A., A.G., N.D., F.P., P.P., J.P., C.S., J.A., P.R., S.C., P.P., G.Q., M.M., S.B., A.G., P.J.G., N.S., N.S., K.A., J.V.J., R.G. and A.B., dated 25 March 2013, claim that the State party has violated their rights under articles 2 (3), 7 and 17 of the Covenant.<sup>2</sup> The authors M.H. (on behalf of her deceased husband A.H.) and G.L. (on behalf of her deceased son A.L.) also claim violations of article 6 of the Covenant. The authors R.V. and A.B. claim to be facing fabricated criminal charges for purported multiple murder because of their role and support in the fight against forced evictions and demolition in Metropolitan Manila.<sup>3</sup> The Optional Protocol entered into force for the Philippines on 22 August 1989. The authors are represented by counsel.<sup>4</sup>

#### **The facts as submitted by the authors**

2.1 In the communication, the authors denounce the forced eviction that took place on 11 January 2012 at Barangay Corazon de Jesus, San Juan City, Philippines. The authors submit that the eviction, which was accompanied by violence and the harassment of leaders from the evicted community, was carried out in order to allow for the construction of a city hall and commercial structures.

2.2 The authors maintain that the property concerned had historically been public land that was considered as a safe area.<sup>5</sup> On 6 October 1987, then-President of the Philippines, Corazon Aquino, issued proclamation No. 164, which excluded certain parcels of land from additional development, because they had been used for residential purposes since the

<sup>1</sup> Additional authors, O.A., J.B., W.C., D.P. and J.A., were named in the original list of authors, but no power of attorney was provided for them. In response to the question regarding the issue of representation posed in the contact letter dated 8 March 2014 from the Committee, Mr. Thiele requested on 17 June 2014 that those names be removed from among the authors of the communication, unless received the powers of attorney. The authors A.H., D.A., T.A., A.G., N.D., F.P., P.P., J.P., C.S., J.A., P.R., S.C., P.P., G.Q., M.M., S.B., A.G., P.J.G., N.S., N.S., K.A., J.V.J., R.G. and A.B. were added to the list of authors contained in the most recent submissions from counsel, dated 22 May 2014 and 12 January 2015. Powers of attorney and relevant facts were provided for each of the new authors.

<sup>2</sup> The initial submission was received on 25 March 2013. The Secretariat sent a contact letter to counsel, which responded with the missing power of attorney forms on 17 September 2013. On 18 September 2013, the Secretariat sent an additional contact letter requesting copies of court decisions and additional information. Counsel responded on 3 December 2013. On 8 April 2014, the Secretariat sent another contact letter, to which counsel responded on 22 May 2014. In the latter submission, counsel provided information specifying which alleged violations of the Covenant pertained to which authors and indicating that each incident involved a violation of articles 7 and 17. F.A., P.P., S.B. and J.P. did not appear in that list provided by counsel. In the power of attorney form attached to the letter from counsel dated 12 March 2013, they complained about a series of forced evictions, demolitions of their homes and the deprivation of their livelihoods. R.V. and A.B. do not appear on the list either, given that they are human rights activists facing fabricated criminal charges.

<sup>3</sup> R.V. and A.B. did not invoke the specific articles of the Covenant that were alleged to have been violated.

<sup>4</sup> Bret G. Thiele (Global Initiative for Economic, Social and Cultural Rights), Lauren Carasik (International Human Rights Clinic at Western New England University School of Law) and Melona R. Daclan (Defend Job Philippines).

<sup>5</sup> The authors do not provide further information on what is considered a “safe area”.

1950s. Since that time, governments have refused to respect proclamation No. 164 and have pursued a legal strategy to legitimize the dispossession.

2.3 The authors maintain that, on 1 June 1988, the Corazon de Jesus Homeowners Association filed a petition against the Mayor of the Municipality of San Juan, the Engineer of San Juan and the Curator of the Pinaglabanan Shrine against the removal of families and the demolition of houses in the area. In the petition, the Association claimed that the land parcels that its members were occupying had been awarded to its members under proclamation No. 164. The authors submit that the Court of Appeal granted the petition, but the Supreme Court overturned that decision in 1997.<sup>6</sup> The authors assert that the Supreme Court found proclamation No. 164 to be invalid because Ms. Aquino had assumed power under the reign of a revolutionary government.<sup>7</sup> The Supreme Court relied on Presidential Decree No. 1716, issued in the due exercise of legislative power, which reserved for the Government certain parcels of public land, including in Barangay Corazon de Jesus.

2.4 The authors consider that the circumstances of the forced eviction carried out in the Barangay Corazon de Jesus community comply neither with international standards nor with domestic legislation, namely, the Urban Development and Housing Act of 1992<sup>8</sup> and the Constitution of 1987 of the Philippines.<sup>9</sup>

2.5 On 5 December 2011, 121 families in Barangay Corazon de Jesus were issued a notice of eviction, which was left at the Barangay Hall of Barangay Corazon de Jesus. The notice was neither individualized nor personally given to the residents, and most of them were unaware of its existence. On 6 January 2012, the authorities posted a second notice of eviction on the front door of one of the houses in the community, with no mention of the persons concerned, stating that the residents had three days to vacate their homes. The residents of Barangay Corazon de Jesus were not consulted in any way prior to or during the evictions and had no opportunity to present their opposition to the demolition or to participate in discussions on relocation.

2.6 In the morning on 11 January 2012, the police arrived with demolition teams throughout the community and blocked residents from entering their homes. The demolition teams, armed with stones and water bombs, and police officers, armed with assault rifles and tear gas, violently attacked the residents, who had organized a peaceful human blockade. The demolition teams and police officers made use of bulldozers and fire

<sup>6</sup> The authors cite Supreme Court of the Philippines, Third Division, *Municipality of San Juan, Metro Manila v. Corazon de Jesus Homeowners Association et al*, G.R. No. 125183 of 29 September 1997. A copy was provided with emails from counsel dated 16 September 2013 and 25 May 2014. The facts stated by the authors differ from those presented in the Supreme Court decision, according to which the authors' petition against the Mayor of the Municipality of San Juan was dismissed by the Court of Appeal on 17 July 1991. Thereafter, a second claim was brought by the authors, in the form of an application sent to the Environment Department for a grant under proclamation No. 164. The municipality filed a petition against the authors. The regional court ruled in favour of the municipality, but the Court of Appeal granted the authors' appeal and ruled in their favour. The second case is the object of the recourse before the Supreme Court, which overturned the decision in 1997.

<sup>7</sup> According to the decision, the Supreme Court found proclamation No. 164 to be invalid because Ms. Aquino issued the proclamation after Congress had been convened, that is, after she had lost her legislative power. Indeed, under the Provisional Constitution, the President shall continue to exercise legislative power until a legislature is elected and convened under a new constitution.

<sup>8</sup> The Urban Development and Housing Act of 1992 (Republic Act No. 7279) is the governing law on the matter of "squatting" in the Philippines. Section 28 of the Act states that eviction or demolition may only be allowed: "when government infrastructure projects with available funding are about to be implemented; or when there is a court order for demolition." The Act also provides that there must be adequate consultations on the matter of resettlement with the affected families and the communities on where they are to be relocated and that there must not be any use of heavy equipment for demolition. Section 28 of the Act stipulates that "eviction or demolition as a practice shall be discouraged".

<sup>9</sup> Section 10, article XIII, of the Constitution, dealing with social justice and human rights, states that: "Urban and rural poor dwellers shall not be evicted, nor their dwellings demolished, except in accordance with law and in just and humane manner." It further states that: "No resettlement of urban or rural dwellers shall be undertaken without adequate consultation with them and the communities where they are to be relocated."

trucks that blasted the residents with water. They resorted to illegal arrests and brutality, causing multiple injuries to at least 23 residents, as documented,<sup>10</sup> including minor children. Twenty-four residents were illegally arrested, including minor children. Six minor children were released in the evening on 11 January 2012. However, according to the authors, the number of victims exceeds the number of documented cases. The demolition resumed after the arrests, on 11 January 2012, until the evening on 13 January 2012.

2.7 The demolition rendered 121 families homeless, forcing them to relocate to areas declared “danger zones” or to inadequate housing.<sup>11</sup> Moreover, the resettlement arrangements provided by the Government were “far inferior to the living conditions in Barangay Corazon de Jesus”, given that the residents were forced to relocate to danger zones.<sup>12</sup> The authors also suffered inadequate housing, lack of employment and lack of social services.<sup>13</sup> They incurred additional expenses for transportation and other basic needs, such as the monthly rent to occupy a small piece of land.<sup>14</sup> At the time of submission of the initial communication, the authors stressed that more than 1,000 other families in Barangay Corazon de Jesus who were not evicted on 11 January 2012 were under imminent threat of eviction.<sup>15</sup>

2.8 To illustrate the systematic practice of forced evictions and their compounding effects, the authors also claim to have faced obstacles, such as arbitrary arrest,<sup>16</sup> threats, harassment and violence, for seeking redress at the domestic level and for submitting the present communication to the Committee.<sup>17</sup> In an attempt to resist their forced evictions, in 2011, residents of Barangay Corazon de Jesus organized peaceful blockades to prevent the demolition of their homes. In that connection, 24 residents and supporters were illegally arrested and 86 people were injured by demolition teams and police officers, between 25 January 2011 and 11 January 2012, both preceding the forced eviction and during and after the confrontation in the context of resettlement.<sup>18</sup> Forced evictions have also been carried out in other locations and have included patterns of violence and disproportionate use of force. About 10 people have been killed in the Philippines as a result of the violent forced evictions in the Silverio Compound, San Dionisio, Paranaque and Pangarap Village, Caloocan (see para. 3.3 below). The violations of rights continued beyond the actual forced evictions in January 2012. On 29 November 2012, 10 community leaders from Barangay

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<sup>10</sup> In an email dated 22 March 2014, the authors provided “photographic evidence of police brutality as well as documentation demonstrating harassment of human rights defenders and those evicted”. The documentation includes pictures of a wounded resident of Barangay Corazon de Jesus, people who are said to be members of the demolition team kicking residents and throwing stones, women crying and struggling with police officers, policemen with high-powered guns and others using teargas against the protesters.

<sup>11</sup> Families were accommodated in temporary shelters, given that no houses had been built in the relocation sites. In many cases, the sites to which they were relocated are exposed to severe flooding, imposing risks to the health and lives of the evictees.

<sup>12</sup> One of the allocated areas was Lupang Arenda, designated as a danger zone. Another unsuitable relocation site was Southville 1-K-1, Kasiglahan, Rodriguez, Rizal.

<sup>13</sup> Evictees who were relocated to Rodriguez, Rizal, allege that the remoteness of the area thoroughly limited their access to employment, facilities and social services, such as health care and education. Many parents had to withdraw their children from school. No further details are provided in the communication in that regard.

<sup>14</sup> The authors do not specify further what is meant by “other basic needs”.

<sup>15</sup> Demolition Watch, “Forced eviction incidents”. Available at <http://demolitionwatch.wordpress.com/forced-eviction-and-demolition-incidents-and-affected-families-2010-2012>.

<sup>16</sup> No further information is provided on the issue.

<sup>17</sup> In an email dated 22 March 2014, the authors provided a copy of two documents; in one, the Assistant Prosecutor accuses the author A.H. of direct assault in the form of throwing a weapon and a bottle at a police officer during the demolition operations, which resulted in physical injuries; and in the other, the Assistant Prosecutor accuses the author E.B. of direct assault in the form of “aiming a slingshot with a rock bullet in it, a weapon, and releasing the same at” police officers during the demolition operations.

<sup>18</sup> The authors refer to the following post on the Demolition Watch website: <http://demolitionwatch.wordpress.com/2012/02/06/second-formal-complaint-of-corazon-de-jesus-residents-filed-to-the-united-nations-special-rapporteur-on-adequate-housing/>. The post also indicates that the arrests were illegal, but no more details are provided about that issue.

Corazon de Jesus, including the authors, who had been meeting to discuss their complaint were charged with unlawful assembly and issued arrest warrants.<sup>19</sup> One of the authors, M.B., was arrested and detained until 5 December 2012. Although the charges were ultimately dismissed for lack of evidence, on 24 May 2012, the community leaders were charged with “simple disobedience to an agent or a person in authority” for their failure to appear in court.<sup>20</sup>

2.9 The authors claim that the Philippine authorities have harassed, intimidated and threatened the authors, their advocates and their allies. In late 2012, arrest warrants were issued against the authors R.V. and A.B., who are trade union and urban poor leaders and founders of human rights organizations.<sup>21</sup> They were falsely charged with murder and have never seen the substance of the warrants or been provided with documentation of the exact charges against them.<sup>22</sup>

2.10 The authors argue that they have exhausted all available domestic remedies in the Philippines by obtaining, through the Corazon de Jesus Homeowners Association, a negative decision from the Supreme Court, the highest court in the Philippines, on 29 September 1997<sup>23</sup> and having submitted a complaint against the notified forced evictions to the Commission on Human Rights of the Philippines, in 2011, which has remained pending ever since. The authors argue that, given that the Supreme Court refused to acknowledge proclamation No. 164, a decision which remains valid, and that the courts still refuse to accept proclamation No. 164, there are no available domestic remedies for the authors to challenge their forced eviction.

### **The complaint**

3.1 The authors allege that the State party has violated their rights under articles 2 (3), 7 and 17 of the Covenant. They also allege a violation of article 6 with respect to those who were killed during the eviction, namely, the authors A.H. and A.L., who are represented by members of their family, M.H. and G.L., respectively.

3.2 Given that the Government authorized and carried out the forced and violent eviction of the Barangay Corazon de Jesus community under the colour of law, no effective remedy is available to them before domestic courts, in violation of article 2 (3) of the Covenant. The authors also submit that they were provided neither with appropriate, adequate and timely notice nor with any meaningful forum in which to contest the eviction. The very short time frame between the notification, the eviction and the subsequent demolition<sup>24</sup> of homes deprived the authors of any effective recourse to vindicate the violations of their rights. They further argue that their efforts to gain access to legal

<sup>19</sup> On 22 May 2014, the authors provided a copy of a document dated 25 January 2011 from the city mayor certifying that no rally permit had been issued by his office in connection with the demolition activities.

<sup>20</sup> On 22 May 2014, the authors provided a copy of a court order dated 8 January 2013 lifting the arrest warrant issued on 24 May 2012 against 9 community leaders after posting bail bond. The authors do not provide further information on the arrests referred to or on the outcome of the criminal charges, if any.

<sup>21</sup> The author R.V. is one of the founders of the May First Labour Movement, and the author A.B. founded Defend Job Philippines.

<sup>22</sup> No further information is provided as to their current situation. According to information available on the Internet, the charges were still being maintained as at April 2014. The authors provided an article, which confirmed their accusation on fabricated charges. No further information on the outcome of those charges has been provided.

<sup>23</sup> Although 16 years elapsed between the exhaustion of domestic remedies in 1997 and the authors’ initial submission (received on 25 March 2013), it does not appear to raise an issue of abuse of the right of submission under article 3 of the Optional Protocol, given that the forced eviction occurred in 2012.

<sup>24</sup> Instead of providing notice to each family personally, the notice of eviction was left in the Barangay Hall of Barangay Corazon de Jesus on 5 December 2011. Because of that, most residents were not aware of its existence. On 6 January 2012, the authorities posted a second notice on the front door of a house in the community. The notice stated that the residents had 3 days to vacate their homes, without specifying the names or addresses of those targeted by the eviction. The demolition took place on 11 January 2012.

remedies are summarily denied by the Government or repressed with harassment, violence and other threats. In addition, the authors submit that victims of evictions within the State party are not compensated for the loss of their homes, but are instead provided with inadequate relocation assistance and left in worsened circumstances, with no recourse.

3.3 With regard to article 6, the authors claim that, to date, 10 people have been killed as a result of violent forced evictions carried out by the State party. The victims include the authors A.H., killed on 16 March 2011 while resisting the demolition of his house, and A.L., killed by a gunshot wound on 23 April 2012.<sup>25</sup> The authors stress that the State party has failed in its duty to prevent the deprivation of life through criminal acts and arbitrary killing by its own security forces.<sup>26</sup>

3.4 The authors also claim that the State party violated article 7 of the Covenant by the Government's ongoing threat of eviction, which may itself amount to cruel, inhuman or degrading treatment, the violence and use of force by police officers and demolition teams during the period between 25 January 2011 to 11 January 2012 (see para. 2.8 above) in forcibly evicting them and the harassment and threats against the affected residents by the police and demolition team, which amount to torture as well as cruel, inhuman or degrading treatment or punishment.<sup>27</sup>

3.5 The authors further allege that the State party has violated their rights under article 17 of the Covenant.<sup>28</sup> They refer to previous jurisprudence of the Committee in which it has concluded that forced evictions and demolitions of houses violate article 17 of the Covenant, including in contexts in which the land in question was not owned by the evictees.<sup>29</sup> In *Liliana Assenova Naidenova et al. v. Bulgaria*, the Committee held that forced evictions amounted to a violation of article 17 when they were forced evictions from long-standing homes, when those evicted faced the risk of being rendered homeless or were rendered homeless and when there were no or inadequate consultations regarding the provision of adequate alternative housing. In the present case, the authors maintain that adequate alternative housing was not provided to them and that they were not allowed to meaningfully participate in decisions related to the provision of such resettlement. They argue that the Committee should therefore apply to their case the same reasoning as in *Liliana Assenova Naidenova et al. v. Bulgaria*. They claim that the interference suffered as a result of their eviction, even though provided for under the law, must be deemed arbitrary and as amounting to a violation of article 17 of the Covenant.

3.6 The authors submit that they have no further domestic remedies available to them to appeal the Supreme Court decision and to claim their rights before the State party's courts, due to a denial of their legitimate entitlement to the land, or to challenge their forced eviction or seek remedy for the loss that they have suffered. In particular, the authors claim that the very short time frame between the public posting of the notice and the demolition of houses provided them with no possibility of effective remedy or recourse, given that there was no waiting period in which they could challenge the evictions. Efforts by residents who attempt to gain access to legal remedies to vindicate violations of their rights

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<sup>25</sup> By an email dated 22 May 2014, the authors informed the Committee that their counsel was unable to obtain power of attorney forms from the family members of all of the victims of the alleged article 6 violations and that the only authors were those listed in paragraph 1 above.

<sup>26</sup> The authors refer to the Committee's general comment No. 6 (1982) on the right to life (subsequently replaced by general comment No. 36 (2018) on the right to life).

<sup>27</sup> The authors refer to the Committee's general comment No. 7 (replaced by general comment No. 20 (1992) on the prohibition of torture or other cruel, inhuman or degrading treatment or punishment). The authors also invoke the Committee's concluding observations on the third periodic report of Israel (CCPR/C/ISR/CO/3) and its concluding observations on the second periodic report of Israel (CCPR/CO/78/ISR), in which the Committee accepted that a forced eviction in and of itself may amount to cruel, inhuman or degrading treatment.

<sup>28</sup> The authors cite Commission on Human Rights resolutions 1993/77 of 10 March 1993 and 2004/28 of 16 April 2004; and the Committee's general comment No. 16 (1988) on the right to privacy.

<sup>29</sup> See *Liliana Assenova Naidenova et al. v. Bulgaria* (CCPR/C/106/D/2073/2011). The Dobri Jeliakov community was an established community that received inadequate notices of eviction, whose homes were threatened with demolition and that did not receive adequate alternative housing; see also the Committee's concluding observations on the second periodic report of Kenya (CCPR/CO/83/KEN); and its concluding observations on the second periodic report of Israel (CCPR/CO/78/ISR), para. 16.

to their homes are summarily denied by the Government, which evicted them,<sup>30</sup> or face harassment or violence. The authors argue that, given that there are no remedies that are available or effective, their communication should not be precluded by the requirements of article 5 (2) (b) of the Optional Protocol to the Covenant.<sup>31</sup> The authors also submit that the subject matter of the communication is not being examined under another procedure of international investigation or settlement.

3.7 In that context, the authors request the Committee to declare that the State party has violated articles 2 (3), 6, 7 and 17 of the Covenant and to recommend that the State party provide legal protection against forced evictions, harassment and threats against the Barangay Corazon de Jesus community, as well as to halt all forms of intimidation and retaliation against the authors of the present communication and their advocates. They consider that the State party should also transfer the residents of Barangay Corazon de Jesus who were improperly relocated to a suitable location, with proper access to employment, basic facilities and adequate social services, and ensure that they have the right to actively, freely and meaningfully participate in any decision relating to their lives and living conditions.

### **State party's observations on admissibility and the merits**

4.1 On 22 March 2016, the State party submitted its observations on the admissibility and the merits of the communication, arguing that the communication was inadmissible due to a lack of substantiation and non-exhaustion of all available domestic remedies, pursuant to articles 2 and 5 (2) (b) of the Optional Protocol and rule 96 (b) and (f) of the Committee's rules of procedure.

4.2 The State party contests the authors' assertion that it would be pursuing a "legal strategy to legitimize the dispossession of the concerned land" that a previous president had awarded to them by issuing proclamation No. 164. The authors challenged the State party's exception invalidating the proclamation in the case decided by the Supreme Court. Although the authors were unsuccessful, they maintained that the Supreme Court decision of 29 September 1997 pointed to a concerted effort by the State party to deny them their "legitimate claim to the land" and left them with "no legal recourse to contest their eviction".

4.3 The State party recalls that, on 17 February 1978, then-President of the Philippines, Ferdinand Marcos, issued Proclamation No. 1716 reserving certain parcels of land of the public domain located in the Municipality of San Juan, Metropolitan Manila, as the site of the municipal government centre. The local government of San Juan then constructed separate buildings for its police force, firefighters, trial courts, public prosecutors and post office and a high school on the land. On 6 October 1987, Ms. Aquino issued proclamation No. 164, amending Proclamation No. 1716. Proclamation No. 164 declared certain parcels of land, which were not being used for purposes of the government centre site, but were actually being occupied for residential purposes, as excluded from the scope of Proclamation No. 1716 and therefore available for disposition under the Public Land Act.

4.4 The Supreme Court, however, declared proclamation No. 164 as unconstitutional for being a "clear usurpation of legislative power by the executive branch", given that proclamation No. 164 was issued on 6 October 1987, when sole legislative power had already transferred to Congress.<sup>32</sup> The Supreme Court evaluated the facts and the evidence and ruled on the validity of proclamation No. 164. Contrary to the claims of the authors, the ruling was anchored in the Constitution and did not constitute an arbitrary or unjustified refusal to "acknowledge" or "accept" proclamation No. 164. In the view of the State party, the authors requested the Committee to reassess the evaluation of facts and evidence already carried out by the domestic courts, without substantiating that such evaluation was manifestly arbitrary or amounted to a denial of justice. If a court reached a reasonable

<sup>30</sup> Supreme Court of the Philippines, Third Division, *Municipality of San Juan, Metro Manila v. Corazon de Jesus Homeowners Association et al.*

<sup>31</sup> There has been no information provided as to what remedies, if any, have been exhausted with regard to the authors' claims under articles 6 and 7 of the Covenant.

<sup>32</sup> Supreme Court of the Philippines, Third Division, *Municipality of San Juan, Metro Manila v. Corazon de Jesus Homeowners Association et al.*

conclusion on a particular matter of fact in the light of the evidence available, the decision cannot be held to be manifestly arbitrary or amount to a denial of justice. The authors' claims with regard to the validity of proclamation No. 164 are therefore inadmissible under article 2 of the Optional Protocol.

4.5 The State party adds, on the basis of the records of the National Housing Authority,<sup>33</sup> that only 51 of the 101 authors of the communication were verified to have been residents of Barangay Corazon de Jesus in San Juan City, where the allegedly violent forced evictions took place. Moreover, the names of certain authors of the communication were listed twice, pointing to the inaccuracy of the claims made and to an intent to mislead the Committee.

4.6 The National Housing Authority records also indicate that the author D.G. was not qualified for relocation because he had previously been awarded a housing unit in Dasmariñas Bagong Bayan, Cavite City, as part of a government relocation program. D.G., however, sold that property and thereafter settled illegally at Barangay Corazon de Jesus, in violation of the Urban Development and Housing Act. Moreover, the allegations of a lack of consultations, use of violence, threats of arbitrary arrest, harassment and violence, as well as hazardous and unacceptable resettlement sites, have not been sufficiently substantiated. Such claims have no basis in fact.

4.7 With regard to the State party's relocation and resettlement policies, as provided under section 28 of the Urban Development and Housing Act, the law discourages eviction or demolition, except when persons or entities occupy dangerous areas, when government infrastructure projects with available funding are about to be implemented or when there is a court order for eviction and demolition. Furthermore, section 28 stipulates procedural requirements in carrying out eviction or demolition orders involving underprivileged and homeless citizens, including notice upon the affected persons or entities at least 30 days prior to the date of eviction or demolition, adequate consultations of those concerned, the presence of local government officials or their representatives during eviction or demolition, proper identification of all persons taking part in the demolition and adequate relocation, whether temporary or permanent. Sections 21 and 22 of the Urban Development and Housing Act mandate the local government unit concerned or the National Housing Authority to provide resettlement areas with basic services and facilities, such as potable water, electricity or sewage, while requesting government agencies to prioritize the provision of livelihood programmes and grant livelihood loans to beneficiaries of resettlement programs. Given that the State party complied with all the substantive and procedural requirements of the law, it categorically denies all the allegations in the communication as baseless and unwarranted.

4.8 The State party also refutes the authors' allegations that the Government employed violent and brutal measures to evict the informal settlers in Barangay Corazon de Jesus. On the contrary, 321 families volunteered to relocate to the resettlement area provided for them at Southville 8-B and 8-C, Rodriguez, Rizal.

4.9 In addition, the State party denies the allegations that the authors were not duly informed, given that the records show that the local government duly complied with the requirements of notice and adequate consultations under the Urban Development and Housing Act. Individual notices of eviction were sent to the residents concerned on 27 May, 4 June and 9 December 2010. However, a number of residents refused to receive the individual notices served on them. Accordingly, public notices were also posted in conspicuous areas such as in the Barangay Hall, in waiting sheds, along major roads and streets and in day-care centres. Government agencies conducted adequate consultations with the affected residents prior to, during and after the relocation. The Social Welfare and Development Office of San Juan City conducted three consultative meetings attended by local government officials and residents on 8 October and 28 and 29 December 2010. The local government conducted another dialogue with residents on 9 September 2010. On 21 January 2011, the housing board in San Juan City also conducted a meeting with the residents to provide them with information on the relocation site in Rodriguez, Rizal, the amenities and services already available at the site and the payment schedule, after the one-

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<sup>33</sup> The National Housing Authority is the primary government agency charged with providing housing for the underprivileged and homeless.



year moratorium on their amortization payments. During the meeting, the residents were given the chance to ask questions on their resettlement, the procedure for the award of the housing units to them and the financial, transportation and medical assistance from the Government, while relocated.

4.10 The actual relocation occurred on 25 January 2011. The local government provided the residents with transportation services to the resettlement area and trucking services for their belongings. Each family was also given financial assistance, a sack of rice and groceries and medical services. Consultation meetings with residents were also conducted by the local inter-agency committee on 9, 12 and 18 March 2011.

4.11 The violence that occurred on the day of the relocation was solely attributable to certain residents and members of other interest groups. The State party has submitted for the consideration of the Committee a video taken on 25 January 2011 at Barangay Corazon de Jesus. In the video, it can be seen that, far from organizing a “peaceful human blockade”, some residents and outsiders violently attacked the police officers who attended the relocation in order to maintain peace and order. While a senior police official was peacefully negotiating with the residents to vacate the premises, a group of unruly civilians started throwing rocks, concrete blocks and Molotov cocktails at the police officers. The police officers were armed only with shields to protect themselves from the mob. Contrary to the allegations of the authors, they were not armed with rifles or guns, nor did they use tear gas on the crowd. Water from fire trucks was used only to prevent the mob from advancing towards the police ranks. Six police officers and 12 members of the relocation team were injured by the mob. No bulldozer was used during the relocation. A pay loader, which was parked in the area, was only used to shield the police officers from being attacked by the crowd, including those who were throwing rocks. The State party also refutes allegations that the residents of Barangay Corazon de Jesus were relocated to Lupang Arenda, Taytay, Rizal or in Southville 1-K-1, Rodriguez, Rizal, precisely because those areas were not suitable. Families that had voluntarily agreed to the relocation were provided with housing units at Southville 8-B and 8-C, Rodriguez, Rizal. The resettlement area was only one hour away from Barangay Corazon de Jesus and transportation facilities are accessible. It has adequate water, electricity, sewage facilities, schools, day-care centres, health centres, police outposts, a public market and livelihood centres.

4.12 The State party categorically denies the allegations that residents and community leaders were subjected to threats of arbitrary arrest, harassment or violence by government authorities. Police records show that persons who participated in the violence on 25 January 2011 were arrested and charged with illegal assembly, direct assault, illegal possession of deadly weapons, or alarm and scandal. Weapons such as slingshots, ice-picks, kitchen knives, fan knives and jungle bolo knives were recovered from the suspects. Furthermore, all the suspects were released on 27 January 2011.

4.13 In addition, the State party claims that the communication is inadmissible, because the authors failed to exhaust all available and effective domestic remedies. In 2011, a complaint was filed with the Commission on Human Rights of the Philippines against local government officials, police officers and other persons in connection with the government relocation activities in Barangay Corazon de Jesus, which remains pending with the Commission. The Commission is a constitutional body mandated to investigate all forms of violations of civil and political rights committed within the State party’s territory or against its citizens. Under the national legal system, there are other legal remedies and grievance mechanisms available to the authors of the communication, if it were true that their rights were violated by the Government. The authors could charge erring government officials before the courts, the Ombudsman, the Civil Service Commission and other quasi-judicial bodies to enforce their criminal, civil and administrative accountability. Moreover, the authors could have filed a case in court prior to the relocation in order to question the compliance by government agencies with the substantive and procedural requirements of demolition or eviction activities under the Urban Development and Housing Act.

4.14 On the merits, the State party categorically denies that it violated the authors’ rights under articles 2, 6, 7 and 17 of the Covenant. With regard to the claims under article 2, the State party submits that the residents of Barangay Corazon de Jesus were provided with individual notices of relocation. Public notices were also prominently posted in conspicuous places in the area concerned. Consultations were conducted with the affected residents, and the residents were relocated in a resettlement area with adequate services and

facilities. The State party denies the allegations of a violation of article 6 of the Covenant, without elaborating any details. It submits that there was likewise no violation of article 7 of the Covenant. The relocation of the residents of Barangay Corazon de Jesus was done in a humane manner and in compliance with the substantive and procedural requirements of the law. The State party also submits that there was no violation of article 17 of the Covenant, denying the authors' claims. The relocation was reasonable in the particular circumstances of that case. The residents were provided with satisfactory replacement housing made available to them immediately. The State party did not interfere arbitrarily with the authors' homes so as to constitute a violation of their rights under article 17 of the Covenant.

4.15 The State party concludes by reiterating that Philippine law, including the law on relocation and resettlement, is fully compliant with the obligations of the Philippines under international human rights law, including the Covenant. The State party maintains that it did not commit any violations of its obligations under the Covenant and other relevant human rights instruments.

#### **Authors' comments on the State party's observations on admissibility and the merits**

5.1 On 9 March 2017, the authors submitted comments on the State party's observations on admissibility and the merits.

5.2 The authors argue that the Urban Development and Housing Act does not provide any justification for forced evictions. Regardless of the legal effect of proclamation No. 164, the forced eviction of the authors was in violation of the Covenant, and the State party failed to protect the authors' rights. Since they were denied access to justice, they were consequently not able to challenge the eviction in order for the State party to meet the burden of proof of establishing exceptional circumstances justifying any eviction, or establishing that all feasible alternatives to eviction had been explored with the authors. Furthermore, the eviction rendered the authors homeless and vulnerable to violations of other human rights.

5.3 In the view of the authors, the Urban Development and Housing Act is flawed, because it fails to incorporate the obligations regarding the prohibition of forced eviction, as articulated in general comment No. 4 (1991) on the right to adequate housing and general comment No. 7 (1997) on forced evictions of the Committee on Economic, Social and Cultural Rights. The State party failed to observe the requirements that are contained in the Act in carrying out the forced eviction of the authors. Although the Act allows for evictions in exceptional circumstances and after exploring all feasible alternatives to eviction, it also adds as a requirement "or when there is a court order for eviction and demolition".

5.4 The authors further argue that international human rights law requires that access to justice be provided in determining whether or not an eviction is justified. What is required is not just any court order, but an order by the court that expressly finds that the exceptional circumstances exist and that all feasible alternatives to eviction have been undertaken, as well as that ensures that evictions do not occur on a discriminatory basis or render persons homeless or vulnerable to other human rights violations.

5.5 Given that the Urban Development and Housing Act is flawed and it was not interpreted in accordance with the State party's obligations under international human rights law, the State party's argument that the forced evictions were conducted in such a way that the requirements of the Act were observed does not mean that the authors' rights under the Covenant were not violated.

5.6 In its concluding observations on the combined fifth and sixth periodic reports of the Philippines, the Committee on Economic, Social and Cultural Rights expressed its concern about the Urban Development and Housing Act legalizing forced evictions and demolitions, the large number of forced evictions carried out in the name of urban development and the inadequate measures taken to provide appropriate relocation sites or adequate compensation to the forcibly evicted families, who had to live in substandard living conditions without infrastructure and basic amenities, health care, education and transport facilities<sup>34</sup> and urged

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<sup>34</sup> E/C.12/PHL/CO/5-6, para. 49.

the State party to amend the Act and to adopt a legal framework establishing procedures to be followed in the case of evictions, in line with international standards, including general comment No. 7 of the Committee on Economic, Social and Cultural Rights.<sup>35</sup>

5.7 Furthermore, the authors argue that the previous relocation of the author D.G. is irrelevant to the present case, given that he was relocated to a housing unit in Dasmariñas Baghong Bayan, Cavite City, as part of a previous government relocation programme, but he was not required to remain in that housing for life. Having enjoyed the freedom of movement, he relocated again, given that the lack of livelihood opportunities at Dasmariñas Baghong Bayan, Cavite City, rendered his housing inadequate.

5.8 The authors also claim that domestic remedies are unavailable, ineffective or unreasonably delayed, referring to the jurisprudence of the Human Rights Committee to the effect that authors must meet the requirement of exhaustion of all available domestic remedies, insofar as such remedies appear to be effective in the given case.<sup>36</sup> In the present case, domestic remedies are unavailable or ineffective. The State party does not mention one domestic remedy that it claims has been available, except the pending complaint with the Commission on Human Rights of the Philippines. However, as the State party acknowledges in its submission, the complaint filed with the Commission has languished before the Commission for six years, and filing that complaint failed to prevent the forced eviction of the community, given that no injunction was granted halting the evictions pending a final decision by the Commission. Consequently, that domestic remedy has been unreasonably delayed and proven to be ineffective in preventing or remedying the alleged violations of the Covenant.

5.9 The State party's observations on the merits have offered categorical statements, without any evidence or substantiation. The authors reaffirm that the notice of eviction was inadequate, because they were not given individualized notices and the posted notice gave only three days' notice to vacate their homes and did not name the specific homes or addresses subject to eviction. Furthermore, some of the inhabitants were resettled in an area without adequate services and facilities. The authors conclude by maintaining that the pattern of violence continued beyond January 2012 at the relocation sites.

## Issues and proceedings before the Committee

### *Consideration of admissibility*

6.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 97 of its rules of procedure, whether the communication is admissible under the Optional Protocol to the Covenant.

6.2 The Committee has ascertained, as required under article 5 (2) (a) of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

6.3 The Committee observes however the State party's objection to the admissibility of the communication due to a manifest lack of substantiation, as well as non-exhaustion of all available domestic remedies, pursuant to articles 2 and 5 (2) (b) of the Optional Protocol. With respect to the requirement of exhaustion of domestic remedies, the Committee notes the State party's argument that the authors' complaint submitted in 2011 to the Commission on Human Rights of the Philippines remains pending with the Commission and that the authors could have filed a case prior to and pending their eviction and relocation before the courts, the Ombudsman, the Civil Service Commission and other quasi-judicial bodies to seek accountability of the erring officials (see para. 4.13 above). The Committee notes the authors' arguments that domestic remedies are unavailable and ineffective, given that the Corazon de Jesus Homeowners Association obtained a negative decision from the Supreme Court, the highest court in the Philippines, on 29 September 1997, which remains valid, and that they therefore cannot challenge their forced eviction (see para. 2.3 above), that the

<sup>35</sup> Ibid., para. 50.

<sup>36</sup> See, for example, *Gilberg v. Germany* (CCPR/C/87/D/1403/2005), para. 6.5; see also *P.L. v. Germany* (CCPR/C/79/D/1003/2001), para. 6.5; and *Riedl-Riedenstein et al v. Germany* (CCPR/C/82/D/1188/2003), para. 7.2.

complaint filed with the Commission on Human Rights has languished before the Commission for six years and that it failed to prevent the forced eviction of the community, given that no injunction was granted halting the evictions pending a final decision by the Commission (see para. 2.10 above) and that the State party did not show that any other specific domestic remedies, except the case pending before the Commission, would be available and effective in practice (see para. 5.8 above). However, the Committee notes the absence of information by the authors about any attempts to seek judicial or other remedies other than the complaint to the Commission, which was submitted in 2011, before the events referred to in the present communication, for the alleged violations of article 17 of the Covenant in the context of the forced eviction of 11 January 2012 or any steps taken to exhaust available domestic remedies in relation to the alleged violations of articles 6 and 7 of the Covenant. The Committee recalls its jurisprudence according to which the author must exhaust, for the purpose of article 5 (2) (b) of the Optional Protocol, all judicial or administrative remedies insofar as such remedies offer a reasonable prospect of redress and are de facto available to the author.<sup>37</sup> Although the recourse to non-judicial bodies does not have to be exhausted to fulfil the requirements of that article, when such recourse has not been effective in cases of forced evictions, as evidenced in the present case, the authors do not convincingly explain why the judicial remedies that the State party identified as available for addressing forced evictions would not have been effective in their case. The Committee recalls its jurisprudence that mere doubts about the effectiveness of domestic remedies do not absolve authors of the requirement to exhaust them.<sup>38</sup> Accordingly, the Committee considers that the requirements of article 5 (2) (b) of the Optional Protocol have not been met with regard to alleged violations of article 17, read alone and in conjunction with article 2 (3), and of articles 6 and 7 of the Covenant. In the light of the above, the Committee will not consider further whether the authors' allegations in that regard lack sufficient substantiation.

7. The Human Rights Committee therefore decides:

- (a) That the communication is inadmissible under article 5 (2) (b) of the Optional Protocol;
- (b) That the present decision shall be communicated to the State party and to the authors of the communication.

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<sup>37</sup> See, for example, *Patiño v. Panama* (CCPR/C/52/D/437/1990), para. 5.2; *P.L. v. Germany* (CCPR/C/79/D/1003/2001), para. 6.5; *Riedl-Riedenstein et al v. Germany*, para. 7.2; *Gilberg v. Germany*, para. 6.5; *Warsame v. Canada* (CCPR/C/102/D/1959/2010), para. 7.4; and *H.S. et al v. Canada* (CCPR/C/125/D/2948/2017), para. 6.4.

<sup>38</sup> See, for example, *Kaaber v. Iceland* (CCPR/C/58/D/674/1995), para. 6.2.