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Human Rights Committee

Communication No. 1815/2008

Views adopted by the Committee at its 103rd session, 17 October–4 November 2011

Submitted by:	Alexander Adonis (represented by counsel, H. Harry L. Roque)
Alleged victim:	The author
State party:	The Philippines
Date of communication:	3 July 2008 (initial submission)
Document references:	Special Rapporteur's rule 97 decision, transmitted to the State party on 24 September 2008 (not issued in document form)
Date of adoption of Views:	26 October 2011
Subject matter:	Imprisonment of a radio broadcaster for alleged defamation
Procedural issues:	Exhaustion of domestic remedies
Substantive issues:	Right to freedom of expression, due process guarantees
Articles of the Optional Protocol:	2; 5, paragraph 2 (b)
Articles of the Covenant:	14, paragraph 3 (b), (c) and (d); 19, paragraphs 2 and 3

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 (103rd session)

concerning

Communication No. 1815/2008*

Submitted by:	Alexander Adonis (represented by counsel, H. Harry L. Roque)
Alleged victim:	The author
State party:	The Philippines
Date of communication:	3 July 2008 (initial submission)

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

Meeting on 26 October 2011,

Having concluded its consideration of communication No. 1815/2008, submitted to the Human Rights Committee on behalf of Mr. Alexander Adonis 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. The author of the communication, dated 3 July 2008, is Alexander Adonis, a Filipino national born in 1964. He claims to be a victim of violations by the Philippines of articles 14, paragraph 3 (b), (c) and (d), and 19, paragraphs 2 and 3 of the Covenant. He is represented by Counsel H. Harry L. Roque.

Facts as submitted by the author

2.1 The author worked as a radio broadcaster at Bombo Radyo,[1] in Davao city, Philippines. On 27 July 2001, the author received a news dispatch from Bombo Radio

* The following members of the Committee participated in the examination of the present communication: Mr. Lazhari Bouzid, Ms. Christine Chanet, Mr. Ahmad Amin Fathalla, Mr. Cornelis Flinterman, Mr. Yuji Iwasawa, Mr. Rajsoomer Lallah, Ms. Zonke Zanele Majodina, Ms. Iulia Antoanella Motoc, Mr. Gerald L. Neuman, Mr. Michael O'Flaherty, Mr. Rafael Rivas Posada, Mr. Fabían Omar Salvioli, Mr. Krister Thelin and Ms. Margo Waterval.
The text of two individual opinions signed by Committee members Mr. Fabian Omar Salvioli and Mr. Rajsoomer Lallah are appended to the present Views.

[1] Bombo Radyo Philippines is one of the largest radio networks in the Philippines.

News Centre involving a congressman's purported "illicit" relationship with a married television personality. This same news had been reported by two other national newspapers, the *Manila Standard* and the *Abante Tonight*. Upon receipt of this news dispatch, the station manager instructed the author to verify the information received and to contact the persons involved. The author immediately tried to contact these persons but did not succeed. At 7 a.m. that same day, the author conducted his regular news programme, together with the station manager, during which the referred information was reported without disclosing any names. The same information also became the subject of a debate during the author's radio programme at 11.30 a.m.

2.2 On 23 October 2001, the congressman filed two criminal complaints for libel, one against the author, in conspiracy with the radio manager, for the 7 a.m. news broadcast, and a second complaint against the author for the 11 a.m. programme. Charges were based on article 353 of the Revised Penal Code of the Philippines, which defines libel as "a public and malicious imputation of a crime, or of a vice or defect, real or imaginary, or any act, omission, condition, status, or circumstance tending to cause dishonour, discredit or contempt of a natural or juridical person".

2.3 The Regional Trial Court of Davao City rendered a joint judgment on 26 January 2007 acquitting the author and the radio manager of the charges brought in the first complaint for lack of sufficient evidence. However, the same court convicted the author of the charge of libel brought under the second complaint, based on article 353 of the Revised Penal Code. The Court considered that the imputation made against the congressman, "if true, consists of a criminal offense of adultery, which is a private crime not related to the official discharge of his function as congressman". The Court added that invocation of the truth by the accused "did not constitute a valid defence" and, in any case, "no proof of any such truth of the imputation had been presented". The Court further considered that the tone and nature of the author's words left no room for doubt as to the malicious and defamatory nature of the statement. The Court concluded that the evidence provided by the prosecution was sufficient to prove the author's guilt beyond reasonable doubt for a malicious, arbitrary, abusive and irresponsible act of maligning the honour, reputation and good name of Congressman … and that of his family" and sentenced him to an indefinite penalty ranging from five months and one day to four years, six months and one day imprisonment, as well as payment of 100,000 Philippine pesos (approximately 2,300 USD) as compensation for moral damages to the victim and another 100,000 pesos amount as "exemplary damages", to serve "as an example for notorious display of irresponsible reporting".

2.4 The author notes that, while his case was still pending before the Regional Trial Court of Davao City, he was transferred by his company to work in Cagayan de Oro City, located six hours away from Davao. The author states that, as a result of the libel case brought against him, he fell into depression and stopped reporting to his new post. At this, his employer stopped paying his private counsel, who immediately withdrew his services. He claims that, since he was not notified of the fact that he was no longer represented and he was not assigned an ex officio counsel, he was convicted in absentia. Also, he could not appeal against this decision within the legally established timeframe of 10 days.

2.5 According to the facts established in the decision rendered by the Regional Trial Court of Davao City attached to the communication, the reason for the author's private counsel's withdrawal of services was that he could not contact the author, who had allegedly absconded, and he was therefore unable to represent the author's interest. Therefore, his private counsel submitted a motion to withdraw appearance as counsel, which was granted on 6 February 2006. Consequently, the author's provisional liberty was lifted and an arrest warrant was issued against the author. According to the same decision, the author's counsel had filed a number of motions and failed to appear to hearings on

several occasions, as a result of which a public counsel had been assigned to the author in two occasions during the proceedings. The Court noted that such actions by counsel had a "patent intention to delay the proceedings".[2]

The complaint

3.1 The author claims that his conviction for defamation under the Philippine Revised Penal Code constitutes an unlawful restriction of his right to freedom of expression under article 19 of the Covenant. He argues that criminalization of defamation is a disproportionate means of addressing the problem of unwarranted attacks on reputation because it discourages critical journalism and generates a chilling effect on freedom of expression, as recognized by the European Court of Human Rights.[3] The author notes that the Human Rights Committee has expressed concern over the misuse of criminal defamation laws which could be used to restrict criticism of the Government or public officials, in its concluding observations regarding a number of countries. According to the author, these laws constitute a breach of the right to freedom of expression in a majority of cases. The author further invokes a joint declaration by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and his counterparts in the Organization of American States (OAS) and Organization for Security and Cooperation in Europe (OSCE), where it was stated that "criminal defamation is not a justifiable restriction on freedom of expression; all criminal defamation laws should be abolished and replaced, where necessary, with appropriate civil defamation laws".[4] The author adds that the criminal nature of the sanction for libel under Philippine law causes permanent damage to a journalist's career and prompts an extremely inhibitory self-censorship amongst journalists. According to the author, such regulation establishes a climate of fear in which writers, editors and publishers become increasingly reluctant to report and publish on matters of public interest.

3.2 The author contends that Philippine libel law, and criminal defamation laws in general, constitute unlawful restrictions on the right to freedom of expression. The sanction of imprisonment for libel fails to meet the standards of necessity and reasonableness laid down by article 19, paragraph 3. Imprisonment is an unnecessary sanction given that other effective means are available for the protection of others' reputation. The author invokes the Committee's Views in the case *Marques de Moraís v. Angola*,[5] where the Committee noted that restrictions on freedom of opinion must be proportional to the value which it seeks to protect.

3.3 The author further contends that Philippine libel law is not a reasonable restriction because it does not permit proof of truth as a complete defence but only allows it under very restricted conditions. Under article 361 of the Revised Penal Code, proof of truth shall only be admitted where the imputation against Government officials relates to the discharge of their official duties. Therefore, he was prevented from invoking truth as a defence in his

[2] The information is contained in the decision of the Regional Trial Court of Davao City of 26 January 2007.

[3] The author invokes the European Court of Human Rights (ECHR) decisions in the cases *Lingens* v. *Austria*, of 8 July 1986, application No. 9815/82, para. 42; *Oberschlick* v. *Austria*, of 23 May 1991, application No. 11662/85, para. 59; and *Lopes Gomes da Silva* v. *Portugal*, of 28 September 2000, application No. 37698/97, para. 30.

[4] Joint declaration by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the OSCE Representative on freedom of the Media and the OAS Special Rapporteur for Freedom of Expression, of 10 December 2002.

[5] Communication No. 1128/2002, *Marques de Moraís* v. *Angola*, Views adopted on 29 March 2005, para. 6.8.

case. The author cites international jurisprudence and soft law confirming that proof of truth of allegedly defamatory statements should fully absolve defendants of any liability.

3.4 The author notes that Philippine libel law does not allow invoking reasonable publication as a defence. According to the author, defamation cannot be a matter of strict liability as even the best journalists make honest mistakes. To impose criminal sanctions for every false or mistaken statement would undermine the public interest in receiving timely information. He notes that news stories need to be published on time to be relevant. The author refers to the European Court of Human Rights in that the safeguard afforded by article 10 of the European Convention to journalists in relation to reporting on issues of general interest is subject to the proviso that they are acting in good faith in order to provide accurate and reliable information in accordance with the ethics of journalism".[6] The author also refers to national jurisprudence recognizing that, when the press has acted in accordance with professional guidelines, it should benefit from a defence of reasonable publication, taking into account the nature of the information on which the allegations are based, the reliability of the sources and the steps taken to verify the information.[7] He notes that the Regional Trial Court of Davao City failed to consider the evidence submitted by the author proving that the standard of professionalism had been met.

3.5 The author sustains that Philippine libel law is not a reasonable restriction on freedom of expression because it presumes malice in allegedly defamatory statements and places the burden of proof on the accused. A complainant is not required to prove the falsity of the allegedly defamatory statements. Instead, such statements are presumed defamatory unless the defendant can show that they fall under the exceptions established by article 354 of the Revised Penal Code, according to which "every defamatory imputation is presumed to be malicious, even if true, if no good intention and justifiable motive for making it is shown, except in the following cases: 1. A private communication made by any person to another in the performance of any legal, moral or social duty; and 2. A fair and true report, made in good faith, without any comments or remarks of any judicial, legislative or other official proceedings which are not of confidential nature, or of any statement, report or speech delivered in said proceedings, or of any other act performed by public officers in the exercise of their functions." The author refers to the Joint Declaration referenced in paragraph 3.1 above, as well as regional and national jurisprudence that sustain that the plaintiff should bear the burden of proving the falsity of any facts on matters of public concern.[8] The author adds that article 7 (b) of the Principles on Freedom of Expression and Protection of Reputation establishes that "in cases involving matters of public concern, the plaintiff should bear the burden of proving the falsity of any statements on imputations of fact alleged to be defamatory". He notes that the alleged adulterous – and, under Philippine law, criminal – conduct of a congressman, a public official and public figure, is a matter of public concern and interest.

3.6 The author claims that his right to legal aid recognized by article 14, paragraph 3 (d), of the Covenant has been violated because he was not notified of his counsel's withdrawal of services. Since he neither had a counsel to represent him at this stage nor had been informed of the delay to file an appeal, the decision became final. Under Philippine law, all pleading and court proceedings are served on counsel. He invokes the Committee's jurisprudence in the sense that legal assistance should be available at all stages of criminal

[6] ECHR decision on the case *Bladet Tromso and Stensaas* v. *Norway*, application No. 21980/93, of 20 May 1999.

[7] The author cites, among others, a decision by the Supreme Court of Appeal of South Africa, *National Media Ltd and others* v. *Bogoshi*, 1999 LRC 616, p. 631.

[8] In this regard, the author cites the ECHR decision in case *Colombani* v. *France*, of 25 June 2002, Application No. 51279/99, para. 65, as well as other national jurisprudence.

proceedings, as well as jurisprudence of the European Court of Human Right in the same line. The author argues that he should have been appointed a counsel ex officio or a public defender. Instead, he was left without legal representation at the crucial moment of appeal and was not informed of his counsel's withdrawal. As a result, his right to an effective appeal was denied.

3.7 The author claims a violation of his right to be tried in his presence, recognized in article 14, paragraph 3 (d), given that he was convicted in absentia. He was not informed of the resumption of proceedings against him and could not appeal this resumption as he had not been personally notified.

3.8 Finally, the author claims a violation of his right not to be tried without undue delay, recognized in article 14, paragraph 3 (c). He notes that his case remained inactive for over five years. On 26 July 2006, the day initially scheduled for his arraignment, his counsel requested that it be postponed to 28 September 2006. On that date – when the author was no longer represented – the prosecution requested that it be postponed to 14 December 2006. After this long period of inactivity, he was convicted on 26 January 2007.[9]

3.9 The author requests that the Committee declare the violations referenced above, and that it order his immediate release from prison and compensation for the time spent in prison and the loss of his employment as a journalist.

State party's observations concerning the admissibility and the merits

4.1 By submission of 9 January 2009, the State party notes that the right to freedom of expression is not absolute under either the Covenant or the Philippine Constitution. The exercise of this right shall not be injurious to the equal enjoyment of other persons' rights, nor to the rights of the community or society, as determined by the Philippine Supreme Court. The State party contends that freedom of speech and the press goes no further than matters of public concern or interest and should be exercised with responsibility. It does not confer "unbridled license" that gives immunity for the exercise thereof without responsibility, which can affect other social rights or values that require protection.

4.2 The State party notes that enjoyment of a private reputation is a constitutional right at the same level as the right to life or liberty and property, and the law protects such right from slanderous attacks. For criticism against public officials to fall within the ambit of the right to freedom of expression, it must be directed against their policies or official acts, not against their private affairs. Citing articles 353 and 354 of the Revised Penal Code and national jurisprudence, the State party contends that in both of these cases, defamatory imputations are presumed libellous or malicious.

4.3 With regard to the author's claims under article 14, the State party notes that the Philippine Constitution recognizes the right to free access to the courts (sect. 11) and the "right of any person under investigation for the commission of an offense … to be informed of his right to have competent and independent counsel, preferably of his own choice. If a person cannot afford the services of counsel, he must be provided with one" (sect. 12). Section 14 of the Constitution recognizes the right of the accused to be heard by himself and counsel and to have a speedy, impartial and public trial, among other due process

[9] According to the decision of the Regional Trial Court of Davao City, the author's counsel had submitted numerous motions and incidents that delayed the process. Counsel failed to appear in two occasions at the schedules arraignments in December 2001. Further motions were submitted by counsel in April and August 2002, respectively. Thereafter, pretrial was ordered terminated and trial on the merits was set on 15 April 2003. At this stage, a new counsel joined in the author's representation, together with the existing counsel.

guarantees. However, paragraph 2 of this section determines that "after arraignment, trial may proceed notwithstanding the absence of the accused provided that he has been duly notified and his failure to appear is unjustifiable." The right to be heard personally in one's defence may be constitutionally waived when the accused has already been arraigned, duly notified and his absence is not justifiable.

Author's comments to the State party's observations

5.1 By letter dated 17 May 2010, the author notes that he has complied with the requirement of exhaustion of available domestic remedies, which has not been disputed by the State party. He further notes that the State party has not contested any of his factual statements, including with regard to the lack of notification of his counsel's withdrawal from the case, and the lack of appointment of a public or ex officio counsel at a time that was crucial for the trial. By failing to do that, the State party has recognized its responsibility under article 14 of the Covenant.

5.2 The author informs the Committee that he has served his sentence. However, this fact does not absolve the State party's responsibility under the Covenant, especially since criminal libel remains in the Penal Code and continues to be applied by courts. The State party has not challenged his contention that Philippine libel law violates the standards of necessity and reasonableness of restrictions to freedom of expression, nor that the author's rights under articles 14, paragraph 3, and 19 have been violated. The State party failed to establish that constitutional guarantees supposedly available to an accused in the Philippines have in fact been made available to him. No indication is contained in the State party's submission as to whether these have in fact been observed in the author's case.

5.3. In a letter dated 12 September 2011, the author notes that the Supreme Court of the Philippines has interpreted criminal libel as a constitutional exception to the right to freedom of expression. On this basis, Philippine lower courts have routinely assumed the constitutionality of criminal libel and its consistency with constitutional freedoms. Therefore, Philippine law has maintained criminal libel with imprisonment as a penalty, even though certain exceptions have been allowed, such as public interest and public figure exceptions. However, these exceptions have been implemented unevenly and have not prevented these cases from resulting in prosecutions that run counter to freedom of expression, as in the present case. The author concludes that he has no further recourse under the Philippine judicial system to challenge the violation of his right to freedom of expression.

Issues and proceedings before the Committee

Consideration of admissibility

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

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

6.3 With regard to the author's claims regarding the alleged violation of his right to due process guarantees under article 14, paragraph 3, and to freedom of expression under article 19 of the Covenant, the Committee considers that these claims have been sufficiently substantiated for the purpose of admissibility and proceeds to consider them 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 received, in accordance with article 5, paragraph 1, of the Optional Protocol.

7.2 The Committee notes the author's claims that his rights under article 14, paragraph 3 (d), have been violated because he was not notified of his counsel's withdrawal of services and, as a result, he neither had a counsel to represent him before the Regional Court nor was he informed of the deadline to file an appeal. He adds that, under Philippine law, all pleadings and court proceedings are served on counsel and, therefore, upon withdrawal of his lawyer he should have been appointed a counsel ex officio or a public defender. The State party has not contested these allegations. The Committee further notes the decision of the Regional Trial Court that counsel withdrew his services because he could not contact the author.

7.3 The author claims that, as he was not informed of the resumption of proceedings against him and was convicted in absentia, his right under article 14, paragraph 3, to be tried in his presence was not respected. The State party recalls in this respect that according to section 14, paragraph 2 of the Constitution, trial may proceed notwithstanding the absence of the accused provided that he has been duly notified and his failure to appear is unjustifiable.

7.4 The Committee recalls its jurisprudence that proceedings in the absence of the accused may in some circumstances be permissible in the interest of the proper administration of justice, i.e. when accused persons, although informed of the proceedings sufficiently in advance, decline to exercise their right to be present. Consequently, such trials are only compatible with article 14, paragraph 3 (d), if the necessary steps are taken to summon accused persons in a timely manner and to inform them beforehand about the date and place of their trial and to request their attendance.[10]

7.5 The Committee notes that the State party does not provide evidence showing that the Court sought to notify the author of the withdrawal of his lawyer, and the decision of the Court is unclear as to whether another counsel was appointed to represent the author. The State party does not show evidence either that the author was given timely enough notice of the Court's decision to allow him to file an appeal. Nevertheless, once the decision of 27 January 2007 became final the author was found and arrested.

7.6 In light of all the above, the Committee concludes that the author's rights under article 14, paragraph 3 (d), have been violated. Having reached this conclusion, the Committee will not address the author's claim regarding a violation of his right not to be tried without undue delay.

7.7 The Committee takes note of the author's allegation that his conviction for defamation under the Philippine Penal Code constitutes an illegitimate restriction of his right to freedom of expression because it does not conform to the standards set by article 19, paragraph 3, of the Covenant. The author maintains, in particular, that the criminal sanction of imprisonment established by the Philippine Revised Penal Code for libel is neither necessary nor reasonable, because of the following reasons: (a) there are less severe sanctions available; (b) it admits no proof of truth as a defence except for very limited cases; (c) it does not take into account the public interest as a defence; or (d) it presumes malice in the allegedly defamatory statements placing the burden of proof on the accused.

[10] See general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, *Official Records of the General Assembly, Sixty-second Session, Supplement No. 40*, vol. I (A/62/40 (Vol. I)), annex VI, para. 36.

7.8 Article 19, paragraph 3, lays down specific conditions and it is only subject to these conditions that restrictions may be imposed, i.e. the restrictions must be provided by law; they may only be imposed for one of the grounds set out in subparagraphs (a) and (b) of paragraph 3; and they must conform to the strict tests of necessity and proportionality.[11]

7.9 The Committee recalls its general comment No. 34 according to which "defamation laws must be crafted with care to ensure that they comply with paragraph 3, and that they do not serve, in practice, to stifle freedom of expression. All such laws, in particular penal defamation laws, should include such defences as the defence of truth and they should not be applied with regard to those forms of expressions that are not, of their nature, subject to verification. At least with regard to comments about public figures, consideration should be given to avoiding penalizing or otherwise rendering unlawful untrue statements that have been published in error but without malice. In any event, a public interest in the subject matter of the criticism should be recognized as a defence. Care should be taken by States parties to avoid excessively punitive measures and penalties. … States parties should consider the decriminalization of defamation and, in any case, the application of the criminal law should only be countenanced in the most serious of cases and imprisonment is never an appropriate penalty".[12]

7.10 In light of the above, the Committee considers that, in the present case the sanction of imprisonment imposed on the author was incompatible with article 19, paragraph 3, 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 before the Committee disclose a violation by the Philippines of articles 14, paragraph 3, and 19 of the Covenant.

9. Pursuant to article 2, paragraph 3 (a), of the Covenant, the Committee considers that the State party is under an obligation to provide the author with an effective remedy, including adequate compensation for the time served in prison. The State party is also under an obligation to take steps to prevent similar violations occurring in the future, including by reviewing the relevant libel legislation.

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 or subject to its jurisdiction the rights recognized in the Covenant and to provide an effective remedy when it has been determined that a violation has occurred, 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. In addition, it requests the State party 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.]

[11] General comment No. 34, para. 22.

[12] Ibid., para. 47.

Appendix

Individual opinion by Committee member, Mr. Fabían Omar Salvioli (partially dissenting)

1. I fully agree with the decision of the Human Rights Committee concerning a violation of article 19 of the International Covenant on Civil and Political Rights in the case *Adonis v. the Philippines*, communication No. 1815/2008. The Committee has rightly determined that the facts as established constitute a violation of the right to freedom of expression.

2. However, for the reasons set out below, I consider that the Committee should have concluded that in the case at hand the State party has also committed a violation of article 2, paragraph 2, of the International Covenant of Civil and Political Rights. The Committee should also have indicated that in its view, the State should amend the legislation which was applied to the detriment of the author and which is incompatible with the Covenant.

(a) Competence of the Committee to find violations of articles not referred to in the complaint

3. Since I became a member of the Committee, I have taken the view that the Committee has of its own volition and incomprehensibly restricted its competence to determine a violation of the Covenant in the absence of a specific legal claim, provided the facts clearly demonstrate such a violation. The legal basis and explanation of why this does not mean that States will be left without a defence may be found in paragraphs 3–5 of my partially dissenting opinion in the case of *Weerawansa v. Sri Lanka* to which I refer.[1]

(b) The violation of article 2, paragraph 2, of the Covenant

4. The international responsibility of the State may be engaged, inter alia, by an act or omission on the part of any of its branches, including, of course, the legislative branch or any other branch with legislative powers in accordance with the Constitution. Article 2, paragraph 2, of the Covenant specifies: "Where not already provided for by existing legislative or other measures, each State party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant." Although the obligation laid down in article 2, paragraph 2, is of a general nature, failure to fulfil it may engage the international responsibility of the State. The provision in question is of a self-executing nature. The Committee, quite rightly, has indicated that: "The obligations of the Covenant in general and article 2 in particular are binding on every State party as a whole. All branches of government (executive, legislative and judicial), and other public or governmental authorities, at whatever level (national, regional or local) are in a position to engage the responsibility of the State party."[2]

[1] *Anura Weerawansa v. Sri Lanka*, communication 1406/2005; partially dissenting opinion of Mr. Fabian Salvioli.

[2] General comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, *Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 40*, vol. I (A/59/40 (Vol. I)), annex III, para. 4.

5. Just as States parties to the Covenant may not adopt measures which violate recognized rights and freedoms, failure to adjust domestic legislation to the provisions of the Covenant in my view implies per se a violation of the obligations laid down in its article 2, paragraph 2. In the case at hand, Adonis, the author specifically alleges that the norm established by the Philippine Criminal Code implies a violation of the Covenant (see paragraph 3.1 in fine and paragraph 3.2 of the Committee's decision).

6. In this case, the Committee concludes that *the sanction imposed on the author is incompatible with article 19, paragraph 3, of the Covenant* (para. 7.10) and consequently decides that the facts disclose a violation of this article (para. 8).

7. The said sanction was imposed on the author by the court because it was provided for by the Criminal Code; consequently, that sanction is incompatible with the Covenant and its continued presence in the Philippine Criminal Code is a violation of the duty to adapt domestic legislation to the Covenant, which is specifically required by article 2, paragraph 2. As the sanction has been imposed, the Committee would not be deciding "*in abstracto*" in respect of the legislative policy of the State party. Consequently, the Committee should have found that in this case there has been a violation of article 2, paragraph 2, to the detriment of Alexander Adonis.

(c) Reparation

8. The Committee is inconsistent if it finds that a norm is incompatible with the Covenant but fails expressly to draw attention to the need to amend it: in paragraph 9 of its decision, it indicates that the State party should review its legislation. Does the State provide reparation merely by reviewing its Criminal Code? What happens if after such a review the State does not change the norm? Clearly, a norm that is considered by the Committee to be incompatible with the Covenant will remain in force. In this case, how will the State comply with that part of the Committee's decision in which it states that "*The State party is also under an obligation to take steps to prevent similar violations occurring in the future*"? Will the judicial branch be empowered to disregard the norm?

9. The judicial branch is required to ascertain compatibility with treaties and not to apply any domestic norms that are incompatible with the Covenant in order to avoid engaging the State's international responsibility; however, all the branches of government bear the same obligation in respect of human rights, including, naturally, the legislative branch. In the case at hand, *Adonis v. the Philippines*, the Committee has missed a clear opportunity expressly and unambiguously to indicate to the State party that it must change its criminal law on the crime of defamation to make it compatible with the Covenant and with the criteria of general comment No. 34.

10. The more specific the reparatory measures decided by the Committee, the easier it will be for a State to comply with its views and to honour the international commitments it has accepted to guarantee the human rights of all persons subject to its jurisdiction.

[*Signed*] Fabián Omar Salvioli

[Done in English, French and Spanish, the Spanish 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.]

Individual opinion by Committee member, Mr. Rajsoomer Lallah

I had indicated, at the conclusion of the deliberations on this communication, that I might join my colleague Salvioli in the separate opinion which he proposed to write and which he has now given. I would wish, however, to make some observations and suggest an alternative which would be usefully consistent with the Committee's approach in relation generally to article 2 of the Covenant as such.

As I have understood from my colleague Salvioli's approach in the particular case before us, since it was the legislation itself of the State Party that purported to restrict the article 19 rights guaranteed to the author of the communication, it would have been legitimate for the Committee to draw the conclusion, as a logical legal consequence, that the violation of the author's rights under article 19 also necessarily constituted a failure by the State party to give effect to its obligations under article 2 paragraph 2.

In my view, the different obligations assumed by a State party under part II of the Covenant (arts. 2–5) are basic and general in character. They apply to all the rights guaranteed under part III of the Covenant (arts. 6–27) and apply to all individuals in the territory of the State party or subject to its jurisdiction. A violation of any of those rights in relation to a victim would necessarily imply a failure by the State party to discharge its obligations under part II of the Covenant, depending on the particular nature of a victim's right which has been breached and the consequent corresponding obligation breached by the State party under any of the articles 2–5, for example article 5, paragraph 1, where a State party engages in an activity – which might conceivably include a legislative act – limiting or restricting a right to a greater extent than is warranted under the Covenant.

There is of course a direct link between a particular *right* of the individual under Part III of the Covenant and the *general obligations* of a State party under part II of the Covenant to ensure and respect it. In my view, it is not incorrect to deal with the State party's obligations in a separate paragraph as the Committee does in paragraph 9 of its Views.

I wonder, therefore, whether an express and specific declaration of a violation of that provision of article 2 is necessary as the only solution and whether an alternative approach consistent with the one adopted by the Committee in relation to the State party's general obligation to provide an effective remedy as prescribed in article 2, paragraph 3 (a), might not be the most appropriate solution. Clearly, paragraph article 4, paragraph 2, of the Optional Protocol assumes that the Committee has competence to determine whether such a remedy has been provided by the State party to the victim.

Of course, the solution I had ventured to propose in the Committee may turn out to be a routine drafting formulation in all relevant cases where the Committee finds a violation of a right guaranteed under part III of the Covenant, just as the reference to article 2, paragraph 3 (a), has turned out to be, where the Committee recalls the State party's obligation to provide an effective remedy to the author (vide the initial part of paragraph 9 of the Views). Indeed, in my view, it would perhaps have served the purpose designed to be achieved, when recommending a review of doubtful or inappropriate legislation, simply to make a formal reference to article 2, paragraph 2. At least, this approach would be consistent with the way in which the Committee in paragraph 9 of the Views deals with article 2, paragraph 3 (a), in relation to remedies. The last part of paragraph 9 of the Views could then only have included an appropriate reference as indicated in italics and as was done in the first part of the paragraph in relation to remedies, as follows: "The State Party is also under an obligation, to take steps to prevent similar violations occurring in the future including reviewing, *in pursuance of article 2 paragraph 2,* the relevant legislation".

[*signed*] Rajsoomer Lallah

[Done 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.]