

**INTERNATIONAL
CONVENTION
ON THE ELIMINATION
OF ALL FORMS OF
RACIAL DISCRIMINATION**



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COMMITTEE ON THE ELIMINATION
OF RACIAL DISCRIMINATION
Twenty-first session

UN/SA COLLECTION

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 9 OF THE CONVENTION

Sixth periodic reports of States Parties due in 1980

Addendum

PHILIPPINES 1/

[21 March 1980]

I have the honour to request that the following report on the implementation by the Philippine Government of the provisions of Articles 6 and 7 of the International Convention on the Elimination of All Forms of Racial Discrimination, be transmitted to the Chairman, Committee on the Elimination of Racial Discrimination, who requested this report during the 19th session of the Committee in Paris, 26 March to 13 April 1979:

Article 6

At the time the Convention on the Elimination of All Forms of Racial Discrimination was opened for signature on 7 March 1966, there already existed in the Philippines "effective protection and remedies through the competent national tribunals and other State institutions against acts of racial discrimination which violate human rights and fundamental freedoms contrary to this Convention, as well as the right to seek from such tribunals just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination," as provided in Article 6 of the Convention.

1/ At the request of the Government of the Philippines, the present submission constitutes a part of the sixth periodic report of the Philippines which was due on 5 January 1980.

For previous reports submitted by the Government of the Philippines and the summary records of meetings of the Committee at which such reports were considered, see:

- (1) Initial report - CERD/C/R.3/Add.13 (CERD/C/SR.42 and 56);
- (2) Second periodic report - CERD/C/R.30/Add.11 and Add.37
(CERD/C/SR.140);
- (3) Third periodic report - CERD/C/R.70/Add.7 and Add.11
(CERD/C/SR.191);
- (4) Fourth periodic report - CERD/C/R.90/Add.20 (CERD/C/SR.321);
- (5) Fifth periodic report - CERD/C/20/Add.9 and Add.30
(CERD/C/SR.409).

After the Philippines signed the Convention, the Supreme Court of the Philippines promulgated a judgement on 28 September 1966 [Air France, petitioner, vs. Rafael Carrascoso and the Honorable Court of Appeals, defendants, G.R. L-21438] affirming the decision of the lower courts sentencing the petitioner, Air France, to pay the defendant Rafael Carrascoso, inter alia, ₱25,000.00 by way of moral damages and ₱10,000.00 as exemplary damages.

In this case, Air France issued to Carrascoso, a civil engineer, a first class round trip ticket from Manila to Rome. From Manila to Bangkok, Carrascoso travelled in first class, but at Bangkok, the manager of the airline forced him to vacate the first class seat that he was occupying because there was a "white man", who, the manager alleged, had a "better right" to the seat. When asked to vacate his first class seat, Carrascoso, as was to be expected, refused, and a commotion ensued. Many of the Filipino passengers got nervous in the tourist class, when they found out that Mr. Carrascoso was having a hot discussion with the manager and they came all across to Carrascoso and pacified him to give his seat to the white man. Carrascoso reluctantly gave his first class seat in the plane.

On the basis of the foregoing facts, the Supreme Court ruled that the manager not only prevented Carrascoso from enjoying his right to a first class seat but also imposed his arbitrary will, forcibly ejecting Carrascoso from his seat, making him suffer the humiliation of having to go to the tourist class compartment - just to give way to another passenger whose right thereto has not been established. Such an action, according to the Supreme Court, constituted bad faith, unless bad faith assumed a meaning different from what is understood in law.

Hence, the defendant Carrascoso was allowed to recover moral damages for the wilful act of the petitioner's manager for which petitioner as employer must answer under Article 21 of the Civil Code, which provides that "any person who wilfully causes loss or injury to another in a manner that is contrary to morals, good customs or public policy shall compensate the latter for the damage", in conjunction with Article 2219 (10) of the Civil Code. Carrascoso was allowed to recover exemplary damages under Article 2232 of the Civil Code which provides that "In contracts and quasi-contracts, the court may award exemplary damages if the defendant acted in a wanton, fraudulent, reckless, oppressive or malevolent manner."

In another judgement promulgated on 30 March 1966 [Fernando Lopez, et al., Plaintiffs-appellants, vs. Pan American World Airways, defendant-appellant, G.R. No. L-22415] the Supreme Court, inter alia, awarded moral damages to plaintiffs in the sum of ₱200,000.00 divided as follows: ₱100,000.00 for Senate President Pro Tempore Fernando Lopez; ₱50,000.00 for his wife Maria J. Lopez; ₱25,000.00 for his son-in-law Alfredo Montelibano, Jr.; and ₱25,000.00 for his daughter Mrs. Alfredo Montelibano, Jr.; as well as exemplary or corrective damages of ₱75,000.00 to the plaintiffs.

Plaintiffs had made reservations with the defendant in Manila on 29 March 1960 for their first class accommodation on PAN AM flight No. 2 from Tokyo to San Francisco on 24 May 1960. PAN AM's San Francisco head office confirmed the reservations on 31 March 1960. First class tickets fully paid for were subsequently issued by PAN AM to plaintiffs on 21 and 23 May 1960. The plaintiffs left Manila by Northwest Airlines on 24 May 1960 arriving in Tokyo at 5.30 p.m. the same day. PAN AM did not honour their tickets on Flight No. 2 for the given reason that all the first class seats therein were all booked up. Plaintiffs, therefore, took the tourist class seats which were offered by PAN AM. The Plaintiffs filed suit with

the Court of First Instance of Rizal on 2 June 1960 alleging breach of contract in bad faith by the defendant and asking, among others, for ₱500,000.00 actual and moral damages and ₱100,000.00 exemplary damages. Plaintiffs alleged that defendant acted in bad faith because it deliberately refused to comply with its contract to provide first class accommodation to plaintiffs out of racial prejudice against Orientals. In support of its contention that what was done to the plaintiffs is an oft-repeated practice of defendant, evidence was presented relating to two previous instances of alleged racial discrimination by defendant against Filipinos in favour of "white" passengers.

Against the foregoing, the defendant's evidence sought to establish its theory of honest mistake.

On the question of damages, the Supreme Court ruled:

"First, moral damages are recoverable in breach of contracts where the defendant acted fraudulently or in bad faith (Art. 2220, New Civil Code). Second, in addition to moral damages; exemplary or corrective damages may be imposed by way of example or correction for the public good, in breach of contract where the defendant acted in a wanton, fraudulent, reckless, oppressive or malevolent manner (Articles 2229, 2232, New Civil Code) ..."

"The rationale behind exemplary or corrective damages is, as the name implies, to provide an example or correction for public good. Defendant having breached its contracts in bad faith, the Court, as stated earlier, may award exemplary damages in addition to moral damages (Articles 2229, 2232, New Civil Code)."

"In view of its nature, it should be imposed in such an amount as to sufficiently and effectively deter similar breach of contracts in the future by defendant or other airlines. In this light, we find it just to award ₱75,000.00 as exemplary or corrective damages."

More recently, the Supreme Court promulgated another judgement on 29 February 1972 [Rafael Zulueta, et al., plaintiffs-appellees, vs. Pan American World Airways, Inc., defendant appellant, G.R. No. L-28589; Supreme Court Reports Annotated, Vol. 43, pp. 397-422], sentencing defendant, among others, to pay plaintiffs "the sum of ₱500,000.00 as moral damages, ₱200,000.00 as exemplary damages ..."

Plaintiffs Rafael Zulueta, his wife Mrs. Zulueta, and daughter Miss Zulueta, were passengers aboard PAN AM Flight No. 841-23 from Honolulu to Manila, the first leg of which was Wake Island. As the plane landed on said Island, the passengers were advised that they could disembark for a stop-over of about 30 minutes. The flight was rough and Mr. Zulueta having found the need to relieve himself and finding the men's comfort room at the terminal building full of soldiers, walked down the beach 100 yards away. Meanwhile, the flight was called and plaintiff's absence was noted when all the other passengers had boarded the plane.

The take-off was delayed and a search was conducted for Mr. Zulueta by Mrs. Zulueta and other persons. Minutes later, Mr. Zulueta was seen walking back to the plane and saying "You people almost made me miss your flight. You have a defective announcing system and I was not paged."

What happened afterwards may be deduced from the following excerpt from the dispositive part of the Supreme Court's decision:

"Indeed, the rude and rough reception plaintiff received at the hands of Sitton or Captain Zentner when the latter met him at the ramp; the menacing attitude of Zentner or Sitton and the supercilious manner in which he had asked plaintiff to open his bags and when told that a fourth bag was missing; the abusive language and highly scornful reference to plaintiffs as monkeys by one of the airline's employees; the unfriendly attitude, the ugly stares and the unkind remarks to which plaintiffs were subjected, and their being cordoned by men in uniform as if they were criminals, while plaintiff was arguing with Sitton; the airline official's refusal to allow plaintiff to board the plane on the pretext that he was hiding a bomb in his luggage and their arbitrary and high-handed decision to leave him in Wake; Mrs. Zulueta's having suffered a nervous breakdown for which she was hospitalized as a result of the embarrassment, insults and humiliations to which plaintiffs were exposed by the conduct of the airline's employees; Miss Zulueta having suffered shame, humiliation, embarrassment for the treatment received by her parents at the airport - all these justify an award for moral damages."

It should be noted that all the foregoing cases were civil actions filed before the courts on account of breach of contract through wrongful act probably based on racial discrimination. The decisions of the Supreme Court in the above mentioned cases were promulgated before the enactment of Presidential Decree No. 1350-A, dated 17 April 1978, entitled "Declaring Violations of the International Convention on the Elimination of All Forms of Racial Discrimination to be unlawful and Providing Penalties therefore". Under this decree, persons guilty of racial discrimination may be punished by fine or imprisonment. This would be in addition to the penalties they may be liable under the Penal Code. This would also be in addition to the civil liability they may incur under the Civil Code in the form of actual, moral and exemplary damages.

A question was asked at the last session of the Committee on the Elimination of Racial Discrimination on how the Presidential Decree is compatible with the Philippine Constitution and what will happen to its effectivity once Martial Law is lifted. In reply to the foregoing question, suffice it to quote Sec. 3 (2) of Article XVII (Transitory Provisions) of the Philippine Constitution which took effect on 17 January 1973:

"All proclamations, orders, decrees, instructions, and acts promulgated, issued or done by the incumbent President shall be part of the law of the land, and shall remain valid, legal, binding, and effective even after lifting of martial law or the ratification of this Constitution, unless modified, revoked, or superseded by subsequent proclamations, orders, decrees, instructions, or other acts of the incumbent President, or unless expressly and explicitly modified or repealed by the regular National Assembly."

The Philippines has also ratified the International Convention on the Punishment of the Crime of Genocide, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Suppression and Punishment of the Crime of Apartheid, the ILO Convention against Discrimination in Employment and Occupation and the UNESCO Convention against Discrimination in Education, which have become part of the law of the land and accordingly protects the individual against racial discrimination.

Article 7

Previous reports referred to measures taken by the Philippine Government in the fields of teaching, education, culture and information with a view to combatting prejudices which lead to racial discrimination, and to promoting understanding, tolerance and friendship among nations and social or ethnic groups, as well as to propagate the purposes and principles of the Charter of the United Nations, the Universal Declaration of Human Rights, the United Nations Declaration on the Elimination of All Forms of Racial Discrimination and the Convention on the Elimination of all Forms of Racial Discrimination as provided in Article 7 of the Convention.

Briefly, mention was made of the fact that the United Nations is studied in the elementary and high schools as a subject under "social studies", formerly "civics". It is also a separate subject in liberal arts colleges and universities. More intensive studies of the United Nations are required in courses leading to degrees in foreign service or in international law and relations.

There is a yearly celebration in the schools, colleges and universities of Human Rights Day, the anniversary of the adoption of the Universal Declaration of Human Rights. Messages of the President of the Philippines, the Minister of Foreign Affairs, the President of the United Nations General Assembly and the Secretary-General of the United Nations are widely disseminated by media. The United Nations Association of the Philippines is very active in arranging and conducting literary and cultural programmes on this occasion.

The Philippines has also appropriately observed the International Year of the Child, the International Anti-Apartheid Year and the International Day on the Elimination of Racial Discrimination. Co-operation in the Decade for Action to Combat Racism and Racial Discrimination has been manifested, inter alia, by active participation of the Philippines in the World Conference for Action Against Apartheid, Lagos, August 1977, and in the World Conference to Combat Racism and Racial Discrimination, Geneva, August 1978.

With respect to the promotion of understanding, tolerance and friendship among racial or ethnic groups, Article XV, Sec. 9 (2) of the Constitution provides that "Filipino culture shall be preserved and developed for national unity". As a consequence, the preservation and development of the cultures of the different ethnic groups are encouraged and supported by the Government. The goal is not uniformity but unity in diversity, so that the Philippines truly represents a mosaic of cultures.

Article XV, Sec. 11 of the Constitution provides: "The State shall consider the customs, traditions, beliefs and interests of national cultural communities in the formulation and implementation of State policies." To carry out this provision, the Government has created the Office of Presidential Assistant on National Minorities, with Cabinet rank, to look after the well-being and extend all possible assistance to all cultural minorities in the Philippines.

To look after the Muslim cultural minority, the Government has created the Office of Director-General for Islamic Affairs in the Ministry of Foreign Affairs, and recently the Commission on Islamic Affairs with headquarters in the Southern Philippines.

The Mindanao State University was founded in Marawi City, to enhance the educational and cultural development of the Muslims in Southern Philippines.

Presidential Decree No. 291, dated 12 September 1973, recognized the Muslim religion holidays.

Presidential Decree No. 497, dated 28 June 1974, was issued to grant amnesty to all secessionists who have committed acts punishable under existing penal laws.

Presidential Decree No. 542, dated 20 August 1974, created the Amanah Bank intended primarily to rehabilitate, develop, expand and promote socio-economic conditions in the Southern Philippines.

Presidential Executive Order No. 474, dated 26 October 1976, created the Agency for the Development and Welfare of Muslims directly under the Office of the President and the Prime Minister. Project priorities are determined in terms of their impact on the over-all development of the Muslim community in the Southern Philippines. The Agency was entrusted, inter alia, with the expenditure of \$US 1,000,000.00 donated by the Islamic Conference for the benefit of Filipino Muslims. The bulk of the donation was spent in mosque and madrasah construction and in aid of existing mosques and madrasahs. Comparatively speaking, more funds are now invested in the Southern Philippines for infrastructure projects than in other regions of the Philippines.

Presidential Decree No. 1083, dated 4 February 1977 promulgated the Code of Filipino Muslim Personal laws and aside from providing an administrative machinery for its implementation, established more than 56 Shari'a District and Circuit Courts, and created the position of a Grand Mufti.

Presidential Decree No. 1302, dated 15 February 1978, created the Philippine Pilgrimage Authority to supervise and look after Filipino Muslims on pilgrimage to Mecca, Saudi Arabia.

Article II, Section 10 of the Constitution makes it an obligation of the State to "guarantee and promote the autonomy of local government units." This provision first found implementation on the regional level in the Southern Philippines, in accordance with the Tripoli Agreement of 23 December 1976 and the Agreement between the Philippines and Libyan Heads of State of 18-19 March 1977.

Article I of the Tripoli Agreement provided for the establishment of Autonomy in the Southern Philippines within the framework of the sovereignty and territorial integrity of the Philippines. Since Article 16 of the Tripoli Agreement provides that the entire Agreement is subject to the constitutional processes of the Republic of the Philippines and since Article XI, Section 3 of the Philippine Constitution states that whenever a new political unit is created, the people within the new unit will have to ratify in a referendum whether they agree or not to their formation and organization into a new unit, a referendum which was also agreed upon by the Philippines and Libyan Heads of State was held on 17 April 1977 in which the people in Regions 9 and 12 expressed the option for autonomy but rejected their merger into one regional unit. Effectively, elections were held for regional autonomous assemblies in Regions 9 and 12 which were inaugurated this year.