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Ms Zonke Zanele Majodina
Chairperson, Human Rights Committee
Office of the High Commissioner for Human Rights
UNOG-OHCHR
CH1211 Geneva 10
Switzerland

17 January 2012

Dear Ms. Majodina

104th session of the Human Rights Committee – Country Report Task Force on the Philippines

Further to our letter dated 23 December 2011, I am writing to update you with a recent development in the case of Philip Pestaño – one of the twelve cases we refer to in our submission.

In 2009 the Philippines Ombudsman had taken a decision to dismiss the criminal and administrative charges filed by Mr Pestaño's parents for his murder. However on 10 January 2012, the Philippines Ombudsman reversed that decision and found probable cause to indict Naval Captain Ricardo Ordoñez and nine other naval officials for murder. She also found the officials administratively liable for grave misconduct and ordered them dismissed from service. The Office of the Ombudsman reported that an Information for murder was filed with the Sandiganbayan (People's Advocate Court) on 11 January 2012 (<http://www.ombudsman.gov.ph/index.php?navId=MTQ=&pressId=MjM3>).

While this is of course welcome, it is a development in only one of many outstanding cases, and came only after sustained legal action by the victim's parents in the face of many obstacles. Even in this case, there is still a long way to go before the Views of the Committee have been fully implemented.

We have included this information in a revised Appendix, which we attach. We have also received confirmation from the organisation representing victims in two other cases ((i) Hernandez and (ii) Marcellana and Gumanoy) that no action has been taken to implement the Committee's views in those cases, and have included this confirmation on the revised table. Changes are shown underlined.

Please do not hesitate to contact us should you require any further details.

Yours sincerely


Carla Ferstman, Director

Enc.

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Human Rights Committee – Implementation of Views in relation to the Philippines

UPDATE: JANUARY 2012 (Updates shown underlined)

| Author | Date of Views | Violation | Remedy ordered - Effective remedy, including: | Remedy provided | Contact with lawyer/rep. |
|----------------------|---------------|------------------|--|--|--------------------------|
| Hernandez | 2010 | 2(3), 6(1) | <ul style="list-style-type: none"> take effective measures to ensure that criminal proceedings are expeditiously completed and that all perpetrators are prosecuted, full reparation, including adequate compensation measures to ensure that such violations do not recur in the future. | <u>No. One suspect who had been held for the killing was tried and acquitted.</u> | <u>Yes</u> |
| Pestaño & Pestaño | 2010 | 2(3), 6(1), 9(1) | <ul style="list-style-type: none"> impartial, effective and timely investigation into the circumstances of their son's death prosecution of perpetrators adequate compensation measures to prevent similar violations in the future | <u>First step taken in January 2012, when the Ombudsman overturned the previous Ombudsman's decision to dismiss the case; instead found probable cause to indict ten Naval officers for murder and ordered their dismissal from the Navy for grave misconduct (with the alternative if dismissal is no longer possible a fine of the equivalent of one year's salary).</u> | Yes |
| Marcellana & Gumanoy | 2008 | 2(3), 6(1), 9(1) | <ul style="list-style-type: none"> initiation and pursuit of criminal proceedings to establish responsibility for the kidnapping and death of the victims payment of appropriate compensation measures of non-repetition | <u>No.</u> | <u>Yes</u> |
| Lumanog & Santos | 2008 | 14(3)(c) | <ul style="list-style-type: none"> prompt review of their appeal before the Court of Appeal compensation for the undue delay | No - Appeal finally denied September 2010. No compensation provided. | Yes |
| Pimentel et al | 2007 | 2007 | <ul style="list-style-type: none"> compensation and a prompt resolution of their case on the enforcement of the US judgment in the State party ensure that similar violations do not occur in the future. | No - Philippines courts refused to recognise US court judgment. Authors continue to seek compensation for delay in enforcement proceedings. | Yes |

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|-----------|------|-------------------------------------|---|--|-----|
| Larrañaga | 2006 | 6(1), 7, 14(1),(2),(3)(b)-(e), (5) | <ul style="list-style-type: none"> • commutation of death sentence • early consideration for release on parole • measures to prevent similar violations in the future | Inadequate - Death penalty commuted to life imprisonment along with many others prior to issuance of Committee's views. Court order in 2007 recognised possibility of parole. Author remains in prison in Spain under a prisoner transfer agreement after petition for pardon by Philippines refused. Anticipated release date 28 September 2034. | Yes |
| Rouse | 2005 | 14(1),(3)(c), (3)(e), 9(1) and 9(7) | <ul style="list-style-type: none"> • adequate compensation, inter alia for the time of detention and imprisonment | None known. | No |
| Rolando | 2004 | 6(1), 9(1)-(3), 14(3)(d) | <ul style="list-style-type: none"> • commutation of death sentence • avoid similar violations in the future | Yes – death sentence commuted to reclusion in perpetua at time of abolition of the death penalty in the Philippines (2006). | Yes |
| Rayos | 2004 | 6(1), 14(3)(b) | <ul style="list-style-type: none"> • commutation of death sentence • avoid similar violations in the future | Yes – death sentence commuted to reclusion in perpetua at time of abolition of the death penalty in the Philippines (2006). | No |
| Wilson | 2003 | 7, 9(1)-(3), 10(1)-(2) | <ul style="list-style-type: none"> • violations of article 9 - the State party should compensate the author • violations of articles 7 and 10 - compensation due to the author should take due account both of the seriousness of the violations and the damage to the author caused • undertake a comprehensive and impartial investigation and draw the appropriate penal and disciplinary consequences for the individuals found responsible • refund to the author the moneys claimed from him for immigration fees and visa exclusion • all monetary compensation to be made available for payment to the author at the venue of his choice • avoid similar violations in the future | None. State party asserts that investigations have been undertaken, but no prosecutions or disciplinary proceedings have taken place and no compensation has been provided. Proceedings seeking a remedy continue in Supreme Court, but these are being vigorously defended by the Government, including on the bases that the Covenant and Optional Protocol do not form part of Philippines law and the Philippines government is under no obligation to enforce or implement the Committee's decisions or | Yes |

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|--------------------------|------|-----------------------|---|---|-----|
| | | | | determinations. | |
| Ibao, Ibao & Ibao | 2003 | 6(1) | <ul style="list-style-type: none"> • commutation of death sentence • avoid similar violations in the future | Yes - death sentence commuted to reclusion in perpetua at time of abolition of the death penalty in the Philippines (2006). | Yes |
| Cagas, Butin & Astillero | 2002 | 9(3), 14(2), 14(3)(c) | <ul style="list-style-type: none"> • adequate compensation for time spent unlawfully in detention • ensure that the authors be tried promptly with all the guarantees set forth in article 14 or, if this is not possible, released | None known. | No |