

REDRESS

Ending Torture. Seeking Justice for Survivors

87 Vauxhall Walk, London SE11 5HJ

Tel: +44 (0)20 7793 1777 Fax: +44 (0)20 7793 1719

Email: info@redress.org Web URL: www.redress.org

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.

PATRONS:

Lord Archer of Sandwell QC
Professor Michael Bazyley (USA)
Lord Crickhowell
Dato' Param Kumaraswamy (Malaysia)
Edward Datnow FRCS
François de Vargas (Switzerland)
Dowager Countess of Dundonald
Anthony Foulger
Viscount Gage
Sandy Gall CBE
Dr Inge Genefke MD, D.M.Sc.h.c. (Denmark)
Earl of Haddington
Judge Rosalyn Higgins DBE QC
Lord Judd
Lord Lester of Herne Hill QC
Ms Caroline Moorehead CBE
The Rt Rev the Lord Harries of Pentregarth
Lord Prosser
Lord Richard QC
Professor Dinah Shelton (USA)
John Simpson CBE
Professor Theo van Boven (The Netherlands)
Professor David Weissbrodt (USA)
Professor Graham Zellick

TRUSTEES

Sir Emyr Jones Parry (Chair)
Michael Birnbaum QC
Professor Bill Bowring
Sherman Carroll Ph.D, MBE
Sir Robin Christopher
Leah Levin OBE
Frances Pinter, Ph.D
Jennifer White (Hon. Treasurer)

LEGAL ADVISORY COUNCIL

Professor Michael Bazyley (USA)
Sir Geoffrey Bindman
Professor Kevin Boyle
Owen Davies QC
Joanna Glynn QC
Professor David Harris CMG
Professor Geraldine Van Bueren
Professor Colin Warbrick
Professor David Weissbrodt (USA)

FOUNDER

Keith Carmichael

THE REDRESS TRUST

Registered Charity Number 1015787 A Limited Company Registered in England Number 2274071

Incorporated as a Not-for-Profit corporation in the State of New York (No. 13-4028661)

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

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

				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