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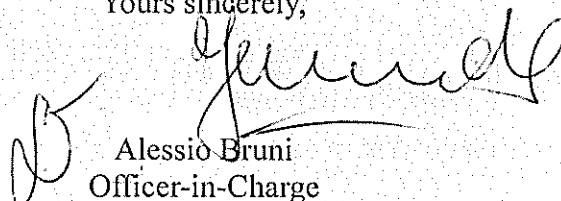
20 November 2006

Dear Mr. Santos,

I have the honour to transmit to you herewith copy of the State party's submission on merits dated 2 November 2006, concerning communication No. 1466/2006, which you submitted to the Human Rights Committee for examination under the Optional Protocol to the International Covenant on Civil and Political Rights, on behalf of Mr. Lenindo Lumanog and Mr. Augusto Santos.

Any comments which you may wish to make on the State party's submission should reach the Committee in care of the Office of the High Commissioner for Human Rights, United Nations at Geneva, not later than 19 January 2007.

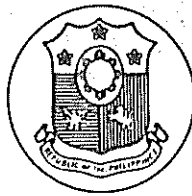
Yours sincerely,


Alessio Bruni
Officer-in-Charge
Treaties and Council Branch

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MISYON NG PILIPINAS SA MGA NAGKAKAISANG
BANSA AT IBA PANG SAMAHANG PANDAIGDIG

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No. **0489/EAM-06**

The Permanent Mission of the Philippines to the United Nations Office and other International Organizations in Geneva presents its compliments to the Office of the High Commissioner for Human Rights (OHCHR), and with reference to the latter's Note dated 21 August 2006 concerning communication no. 1466/2006, under the Optional Protocol to the International Covenant on Civil and Political Rights (OP-ICCPR) on behalf of Messrs. Lenido Lumanog and Augusto Santos, has the honor to transmit the State Party's submission on the merits of said communication.

The Permanent Mission of the Philippines avails itself of this opportunity to renew to the Office of the High Commissioner for Human Rights the assurances of its highest consideration.

Geneva, 02 November 2006



OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS
Palais des Nations CH-1211 Geneva 10

OHCHR REGISTRY

06 NOV. 2006

Recipients :...*MS*.....
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ANSWER TO COMMUNICATION NO. 1466/2006

1. In the present communication, the authors claim that they are filing the communication in behalf of Lenido Lumanog and Augusto Santos, two (2) of the accused-appellants in a case entitled, *People of the Philippines v. SPO2 Cesar Fortuna, Joel De Jesus, Augusto Santos, Lenido Lumanog, and Rameses De Jesus* (G.R. No. 141660-64), which is pending review before the Court of Appeals. It appears that Messrs. Fortuna, Joel De Jesus, Santos, Lumanog and Rameses De Jesus were sentenced to death by the trial court for the killing of Rolando Abadilla. After convicting the accused of the offense charged, the trial court elevated the case to the Supreme Court of the Philippines for automatic review.
2. However, according to the authors, instead of deciding on the merits of the case, the Supreme Court arbitrarily ordered its transfer to the Court of Appeals. The order for transfer supposedly violated the following rights of the victims under the ICCPR:
 - (a) right to a review by a higher tribunal (Art. 14.5);
 - (b) right against undue delay in the trial (Art. 14.3);
 - (c) right to equal protection of the law (Arts. 14.1 and 26);
 - (d) right to a fair and impartial hearing and tribunal (Art. 14.1);
 - (e) right to life (Art. 6.1); and
 - (f) right to liberty and security of persons (Art. 9.1).

These arguments will be answered *in seriatim*.

A. Right to a review by a higher tribunal and right against undue delay in the trial

3. The authors submit that the accused's right to a review by a higher tribunal was violated when the Supreme Court ordered the transfer of the case subject of this communication to the Court of Appeals "*when it could have and should have just proceeded to decide the ripe case under certain established procedural rules.*"
4. It is not disputed that the accused have appealed the judgment of conviction rendered by the trial court to an appellate court. As such, the argument of the authors that the accused were denied the right to appeal to a higher tribunal deserves no merit.
5. Also, the authors argue that the Supreme Court's decision to transfer the case to the Court of Appeals was made in violation of their right to a speedy disposition of the case.
6. Article 14.3(c) protects the rights of the accused to be tried "**without undue delay**", both in the first instance and on appeal. In fine, the right to a speedy disposition of a case is deemed violated only where the proceeding is attended by **vexatious, capricious and oppressive delays**.

7. It bears recalling that the case subject of this communication was considered submitted for decision on June 2004, with the filing of all briefs necessary for the disposition of the case. On 18 January 2005 the Supreme Court issued a resolution ordering the transfer of the case to the Court of Appeals following the amendment of the rules of procedure as announced by the Supreme Court in *People of the Philippines v. Mateo* (G.R. Nos. 147678-87, 7 July 2004).
8. The transfer of *People v. Fortuna, et. al.*, (G.R. Nos. 141660-64) was done pursuant to an amendment of the Revised Rules of Court on Criminal Procedure, more particularly Secs. 3 and 10 of Rule 122.¹ The old rules provide that when the death penalty is imposed, the case is automatically elevated to the Supreme Court for review. The new rules, on the other hand, provide that where the death penalty is imposed, the case must be elevated to the Court of Appeals for review. If the Court of Appeals should affirm the penalty of death, it could then render judgment imposing the corresponding penalty as the circumstances so warrant and elevate the case to the Supreme Court for its final disposition.
9. For a better understanding of the issues, it bears recalling the hierarchy of courts in the State Party's judicial system. There exist in the State Party's judicial system, courts of original jurisdiction and courts of appellate jurisdiction. Courts of original jurisdiction are those which, under the law, actions or proceedings may originally be commenced. Courts of appellate jurisdiction are those which have the power of review or supervision over another and lower court.
10. To illustrate, a criminal case for the killing of a person is filed in the trial court which has jurisdiction over the place where the offense was committed (court of original jurisdiction). It is the trial court which conducts trial on the merits of the case and renders judgment thereon. The decision of the trial court may be appealed to a court of appellate jurisdiction. Under the old rules, if the trial court finds that the killing amounts to murder and imposes a penalty of death, the case will be automatically appealed to the Supreme Court for automatic review. However, if the trial court finds that the killing is simple homicide and thus imposes a penalty lower than death, the case may be appealed to the Court of Appeals. The appeal is not automatic and proceeds only if the person sentenced decides to question the judgment of conviction. In the event that the Court of Appeals affirms the judgment of conviction, the aforesaid decision can further be appealed to the Supreme Court.

¹ Sec.2, Rule 122 x x x (e) In cases where the death penalty is imposed, the same shall be automatically reviewed by the Supreme Court x x x

Sec. 10, Rule 122 Transmission of records in case of death penalty. – In all cases where the death penalty is imposed by the trial court, the records shall be forwarded to the Supreme Court for automatic review and judgment, within twenty (20) days but not earlier than fifteen (15) days after promulgation of the judgment or notice of denial of any motion for new trial or reconsideration. The transcript shall also be forwarded within ten (10) days after the filing thereof by the stenographic reporter.

11. In *People of the Philippines v. Mateo* (G.R. Nos. 147678-87, 7 July 2004), the Supreme Court had the occasion to revisit and amend its previous rules on automatic review.

12. In *People v. Mateo*, the Supreme Court said,

"If only to ensure utmost circumspection before the penalty of death, *reclusion perpetua* or life imprisonment is imposed, the Court now deems it wise and compelling to provide in these cases a review by the Court of Appeals before the case is elevated to the Supreme Court. Where life and liberty are at stake, all possible avenues to determine his guilt or innocence must be accorded an accused, and no care in the evaluation of facts can ever be overdone. A prior determination by the Court of Appeals on, particularly, the factual issues would minimize the possibility of an error of judgment. If the Court of Appeals should affirm the penalty of death, *reclusion perpetua* or life imprisonment, it could then render judgment imposing the corresponding penalty as the circumstances so warrant, refrain from entering judgment and elevate the entire records of the case to the Supreme Court for its final disposition.

"x x x x Pertinent provisions of the Revised Rules on Criminal Procedure, more particularly Section 3 and Section 10 of Rule 122, Section 13 of Rule 124, Section 3 of Rule 125, and any other rule insofar as they provide for direct appeals from the Regional Trial Courts to the Supreme Court where the penalty imposed is death, *reclusion perpetua* or life imprisonment, as well as the resolution of the Supreme Court *en banc*, dated 19 September 1995, in 'Internal Rules of the Supreme Court' in cases similarly involving the death penalty, are to be deemed modified accordingly."

13. Conformably, all death penalty cases which have not yet been decided by the Supreme Court when the *Mateo* ruling was handed down, including G.R. Nos. 141660-64, were transferred to the Court of Appeals for the latter's consideration.

14. As such, the denial by the Supreme Court of the two (2) motions filed by the author Santos requesting for an exemption of G.R. Nos. 141660-64 from the application of the new rules was not made arbitrarily.

15. Under the Constitution, the power to amend rules of procedure is constitutionally vested in the Supreme Court, viz.,

Sec. 5, Art. VIII. The Supreme Court shall have the following powers x x x x Promulgate rules concerning the protection and enforcement of constitutional rights, pleadings, practice and procedure in all courts."

16. The State Party respectfully submits that the transfer of the case subject of the communication was done by the Supreme Court pursuant to the power given to it by the Constitution. The transfer was not violative of Art. 14.3 (c) as it was neither vexatious nor capricious.

17. It must be pointed out, however, that last 25 July 2006, the Philippine Congress passed Republic Act 9346 prohibiting the imposition of the death penalty. Under the law, in lieu of the death penalty, the penalty of either *reclusion perpetua*, a lengthy form of imprisonment, or life imprisonment shall be imposed. For

persons convicted of offenses punished with the death penalty, their sentences were reduced to *reclusion perpetua*.

B. Right to equal protection of the law

18. The authors also assert that the right of the accused to the equal protection of the law was violated. In support of this contention, the authors argue that despite the *Mateo* ruling, the Supreme Court in the case of *People of the Philippines v. Francisco Larrañaga* (G.R. Nos. 138874-75) denied the motion of Larrañaga to refer his case to the Court of Appeals. The authors insist that the denial by the Supreme Court of Larrañaga's motion to refer case to the Court of Appeals notwithstanding the *Mateo* ruling, shows that it is still within the Supreme Court's discretion to decide if it wanted to review a particular case.
19. At this instance, it is submitted that the authors are laboring under the mistaken assumption that the case subject of this communication (G.R. Nos. 141660-64) and *People v. Larrañaga* are similarly situated. A review of *People v. Larrañaga* is therefore in order.
20. *People vs. Larrañaga* was decided by the Supreme Court on 3 February 2004 (five months before the *Mateo* ruling was handed down on 7 July 2004) with the Supreme Court imposing the death penalty upon all of the accused, except one of the accused who was a minor at the time of the commission of the offense. The accused in the aforesaid case were all found guilty of the special complex crime of serious illegal detention with rape and homicide. Immediately thereafter, all of the accused separately moved for a reconsideration of the Supreme Court's 3 February 2004 decision. The accused Larrañaga also moved that the case be referred to the Court of Appeals following the *Mateo* ruling.
21. In a resolution dated 21 September 2004, the Supreme Court issued an order which among others, denied the motion filed by Larrañaga for a referral of the case to the Court of Appeals. The wisdom behind the denial is evident. Inasmuch as the **Supreme Court has already decided on the guilt of Larrañaga**, there is **no need** for a referral of the case to the **Court of Appeals** for a **"prior determination"** and **appreciation of factual matters**.
22. It bears recalling the rationale behind the new rules of procedure as announced in *Mateo*, viz., **"a prior determination by the Court of Appeals on, particularly, the factual issues"**, would minimize the possibility of an error of judgment." In fine, referral of pending death cases to the Court of Appeals entails a "prior determination" by the Court of Appeals of the factual issues involved in the case.
23. **As compared with *People v. Larrañaga*, the Supreme Court has not yet ruled on any factual matter involved in the case subject of this communication (G.R. Nos. 141660-64) when the *Mateo* ruling was handed**

down. As such, its transfer, together with all other death penalty cases which have not yet been decided upon by the Supreme Court, to the Court of Appeals for the latter to make "a prior determination x x x x on factual issues," is proper.

24. The authors further insist that the *Mateo* ruling is qualified. As such, the desire of the accused-appellant should be taken into consideration by the Supreme Court in deciding whether a particular death penalty case should be remanded to the Court of Appeals for review.
25. It bears emphasizing that in the domestic judicial system, **rules of procedure are applied uniformly** and their application **does not depend** on the discretion of the court hearing the case nor on the **desire or "wish" of the parties to the case**, as the authors would lead this Committee to believe.
26. The authors also argue that the Supreme Court discriminated against Lumanog when it denied Lumanog's motion for a new trial even though jurisprudence allows new trial in death penalty cases. In support of their claim, the authors cite *People v. Del Mundo* where it was held that a death penalty case "*is a situation where a rigid application of the rules must bow to the overriding goal of courts of justice to render justice to secure to every individual all possible legal means to provide his innocence of a crime of which he is charged.*"
27. The domestic rules on new trial are well-established. The rules allow a new trial in any criminal case, and not just in death penalty cases, upon a showing that it is warranted under the circumstances.
28. Under the domestic criminal justice system, the court may on motion of the accused, or on its own instance with the consent of the accused, grant a new trial on the following grounds – (a) that errors of law or irregularities have been committed during the trial prejudicial to the substantial rights of the accused; and (b) that new and material evidence has been discovered which the accused could not with reasonable diligence have discovered and produced at the trial, and which if introduced and admitted, would probably change the judgment.
29. The first ground requires that the errors or irregularities prejudicial to the substantial rights of the accused must have been committed during the trial. In the case of newly discovered evidence as a ground of new trial, it should be established that such evidence (a) was discovered after the trial, (b) could not have been discovered and produced at the trial despite reasonable diligence, and (c) is of such weight that, if admitted, would probably change the judgement.
30. Again, a discussion of the case cited by the authors to bolster their contention is necessary. In *People v. Del Mundo* (a rape case), the Supreme Court granted new trial upon the presentation by the accused of new evidence consisting of a medico report indicating that the victim's "physical virginity (is still) preserved."

31. The granting of new trial is taken on a case-to-case basis and only upon a showing that either of the two grounds *viz.*, errors prejudicial to the rights of the accused have been committed during the trial or newly discovered evidence, exist.
32. In the present case, the authors failed to show proof that the Supreme Court's decision denying new trial was without basis. As a matter of fact, the authors even failed to discuss the ground upon which the accused Lumanog anchored his plea for a new trial. In fine, the authors failed to substantiate their contention that the Supreme Court's decision denying new trial was done capriciously.
33. Lastly, the authors harp on the Supreme Court's alleged discriminatory act of denying Lumanog's *"most urgent motion as a kidney transplant patient for return to the specialist kidney hospital."*
34. It must be stated at the outset that Lumanog underwent a kidney transplant in a State hospital – the National Kidney and Transplant Institute (NKTi) – on 22 April 2003. The cost of his operation was financed, in part, by the State through the Philippine Charity Sweepstakes Office.
35. To hasten his recovery, Lumanog was allowed by the State to stay at the NKTi until 11 February 2004 when he was returned to the National Bilibid Prison (NBP) Hospital. His transfer to the NBP Hospital was made after the Executive Director of the NKTi has certified that he is stable and fit for discharge from said hospital.
36. Lumanog's transfer was questioned by the author Santos before the Supreme Court. After a careful analysis of the issues surrounding the transfer, the Supreme Court ruled,
- "We are not unmindful of Lumanog's post-transplant medical condition. However, no less than the Director of the NKTi has certified that Lumanog is stable and fit for discharge from said hospital and only needs a regular out-patient medical check-up which he is actually not being deprived of. **The fear of Atty. Soliman Santos that Lumanog is under a life-threatening condition at the National Bilibid Prison (NBP) Hospital is more speculative than real.** We cannot undermine the efficiency/capacity of the NBP medical officials in attending to Lumanog's special needs in this case unless sufficient proof that his condition at the NBP Hospital is indeed life-threatening, or that the medical officials of the NBP Hospital deems it necessary again to refer him for special medical treatment, the Court cannot submit to the request of the appellant that he be transferred to another hospital x x x x (*underscoring supplied*)"
37. The order of the Supreme Court was based on a careful review of the circumstances of the case. The authors' contention that the order amounted to a grave abuse of discretion bears no merit.

C. Right to a fair and impartial hearing and tribunal

38. The authors argue that the orders of the Supreme Court transferring the case to the Court of Appeals, denying Lumanog's motion for an exemption of his case from the application of the rules of procedure and rejecting Lumanog's plea for transfer to another hospital, were done in violation of the right to a fair and impartial hearing. It is respectfully submitted that these contentions have already been answered in the preceding paragraphs.

D. Right to life and right to liberty and security of persons

39. The authors insist that the accused's detention is in violation of the rights to life and to liberty. More so in the case of the accused Lumanog *"who is a kidney transplant patient, subject in more than the normal ways to the stresses of a pending death penalty x x x x"*
40. It is respectfully submitted that the detention of the accused is pursuant to a lawful judgment rendered by the trial court finding the accused guilty of murder.
41. As regards the claim that Lumanog is subjected to extraordinary stress in view of the pending death penalty, it bears reiterating that the State party has already abolished the penalty of death.