

# INDIVIDUAL COMMUNICATION UNDER THE OPTIONAL PROTOCOL TO THE ICCPR

7 March 2006

Communication to:

The Human Rights Committee  
c/o Office of the High Commissioner for Human Rights  
United Nations  
Palais Wilson  
CH-1211 Geneva, SWITZERLAND

Communication Registration No. \_\_\_\_\_/2006

## I. Information on the Authors of the Communication

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Capacity: Lead Legal Counsel

Name: **Cecilia Jimenez**  
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Age and Country of Birth: 47, Philippines  
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Capacity: Collaborating Legal Counsel in Geneva (*with request for notices*)

See *Annex A*: Authorization of the Alleged Victims

## II. Information on the Alleged Victims

Name of Alleged Victim: **LENIDO LUMANOG**  
Nationality: Filipino  
Age and Country of Birth: 49, Philippines  
Present Whereabouts: **Death Row**, New Bilibid Prison, Muntinlupa City, PHILIPPINES

Name of Alleged Victim: **AUGUSTO SANTOS**  
Nationality: Filipino  
Age and Country of Birth: 30, Philippines  
Present Whereabouts: **Death Row**, New Bilibid Prison, Muntinlupa City, PHILIPPINES

Note: The two alleged victims are among the five **death convicts** whose death sentences were/are pending review in **former Philippine Supreme Court Case G.R. No. 141660-64** which is **now Philippine Court of Appeals Case No. CA-G.R. CR HC No. 00667**, both titled **“People of the Philippines vs. SPO2 Cesar Fortuna, et al.”** The three other death convicts, SPO2 Cesar Fortuna, Rameses de Jesus, and Joel de Jesus are represented by other legal counsel therein. But this communication is also for their benefit as well as other death convicts similarly situated in the Philippines. The five death convicts have been known in the Philippine media as the **“Abadilla 5”** because they are the five death convicts in the **“Abadilla murder case,”** arising from the 13 June 1996 urban ambush-killing of former Colonel Rolando Abadilla.

## III. State Concerned/Articles Violated/Domestic Remedies Availed Of

Name of State Party: **PHILIPPINES**, particularly its Supreme Court

Articles of ICCPR Violated: (seven taken together)

**Art. 14(5)** on the right to a review by a higher tribunal

**Art. 14(3)** on the right against undue delay in the trial

**Arts. 14(1) and 26** on equal protection of the law

**Art. 14(1)** on the rights to a fair and impartial hearing and tribunal

**Art. 6(1)** on the right to life

**Art. 9(1)** on the right to liberty and security of person

#### **Steps Taken to Exhaust Domestic Remedies:**

Domestic remedies have been exhausted as regards the situation complained about which is the transfer in January 2005 by the Philippine Supreme Court to the Court of Appeals of a death penalty review case pending in the Supreme Court for nearly five years when it could have already been decided by the Supreme Court instead of transferring it to the Court of Appeals. Motions for reconsideration and for explanation were filed with the Supreme Court in February and June 2005, both to no avail. The Court of Appeals cannot be expected to return the case to the Supreme Court even if a motion were filed in the Court of Appeals. The latter is subordinate to the Supreme Court which has denied twice the alleged victims' motions for reconsideration of the transfer. This means, among others, undue further delay in the death penalty case review because the Court of Appeals would have to start from scratch in familiarizing itself with the case. This action of the Supreme Court can no longer be elevated to any higher authority in the Philippines, as there is none in the Judicial Department of government.

To repeat and to be clear, this communication complains about the Philippine Supreme Court's transfer of a death penalty review case it ought to have already decided. This is *not* a complaint about the death penalty decision of the trial court, nor about any affirmation decision on this by an appellate court, whether the Supreme Court or the Court of Appeals, because there is none yet. The pendency of the death penalty case review now with the Court of Appeals does not signify non-exhaustion of domestic remedies. There is no more domestic remedy for the case review *transfer* from the Supreme Court to the Court of Appeals. In fine, this complaint is about the undue transfer of a death penalty review case and *not* about any death penalty affirmation decision of which there is yet none.

#### **IV. Other International Procedures**

None whatsoever.

#### **V. Facts of the Claim**

1. The alleged victims, Lenido Lumanog and Augusto Santos, as well as three others, SPO2 Cesar Fortuna, Rameses de Jesus and Joel de Jesus (now known in the Philippine media as the "Abadilla 5"), have been **detained and imprisoned for nearly ten years** since June 1996 as suspects, then as accused and finally as convicts for the murder of former Colonel Rolando Abadilla on 13 June 1996 for which they profess innocence and have appealed (still pending).

2. They were sentenced to death for the Abadilla murder by a Joint Decision of the Philippine **Regional Trial Court** (RTC) of Quezon City, Branch 103 in Crim. Case No. 96-66679-84 dated July 30, 1999.

3. After their motions for reconsideration and new trial were denied by the RTC in January 2000, the case was elevated to **Supreme Court** in February 2000 for automatic review (appeal) of the death penalty where it was docketed as G.R. No. 141660-64.

4. After a period with some twists and turns for the case, all defense and prosecution appeal briefs for purposes of this automatic review were filed by June 2004. Proof of these appeal briefs are the following copies of just the first or title pages of each brief (because they are too voluminous in length to photocopy and annex practicably here), as follows:

**Annex B** – For Appellant SPO2 Cesar A. Fortuna filed on Sept. 15, 2003 (90 pages without the annexes)

**Annex C** – For Appellants Lenido Lumanog and Augusto Santos filed on Oct. 6, 2003 (132 pages without the annexes)

**Annex D** – For Appellant Rameses de Jesus filed on Nov. 18, 2003 (151 pages without the annexes)

**Annex E** – For Appellee People of the Philippines (Prosecution) dated May 31, 2004 (37 pages)

Counsel for Appellant Joel de Jesus had adopted the Brief for Appellants Lumanog and Santos. **With all these appeal briefs, the case was already ripe for decision.**

5. So, soon after the last appeal brief (that of the prosecution) was filed, all defense counsels filed a “Consolidated Motion for Early Decision” **on July 6, 2004** (a copy of which is **Annex F**). This was merely noted (without action) by the Supreme Court in a Resolution dated 27 July 2004 (a copy of which is **Annex G**). Later, on the occasion of Human Rights Day (10 December) 2004, the “Abadilla 5” death convicts themselves executed a similar “Mosyon para sa Maagang Desisyon” [translation: “Motion for Early Decision”] (a copy of which is **Annex H**). This was noted by the Supreme Court in **its questioned Resolution dated 18 January 2005** (a copy of which is **Annex I**).

6. At the same time, instead of moving to decide the case, **the Supreme Court in that same questioned Resolution (Annex I)** “further Resolved to TRANSFER these cases to the Court of Appeals, for appropriate action and disposition.” For this action, the Supreme Court invoked mainly “the decision promulgated **on 7 July 2004** in G.R. Nos. 147678-87, entitled *The People of the Philippines vs. Efren Mateo y Garcia*, modifying the pertinent provisions of the Revised Rules on Criminal Procedure... insofar as they provide for direct appeals from the Regional Trial Courts to the Supreme Court in cases where the penalty imposed is death, *reclusion perpetua* or life imprisonment,... and allowing an intermediate review by the Court of Appeals before such cases are elevated to this [Supreme] Court.” A copy of the *Mateo* Decision at 433 SCRA 640 [Vol. 433, *Supreme Court Reports Annotated*, p. 64] is provided as **Annex J**.

7. All defense counsels then filed an “**Urgent Joint Motion for Reconsideration of Transfer to the Court of Appeals**” on Feb. 24, 2005 (a copy of which is **Annex K**), and **the several arguments therein are incorporated herein**. In general, they argued that the *Mateo* Decision allowing an intermediate review of death penalty cases by the Court of Appeals should not be applied in a blanket and wholesale manner to death penalty cases, regardless of the case situations, of the desire of the accused-appellants, and of their relevant constitutional and human rights as well as certain established procedural rules. Besides, the Supreme Court has all the discretion to proceed with its automatic review.

But this first “Urgent Joint Motion...” was summarily DENIED “for lack of merit” (no elaboration) by the Supreme Court in a Resolution dated 29 March 2005 (a copy of which is **Annex L**). Three defense counsels then filed an “**Urgent Joint Motion for Explanation and Reconsideration of the Resolution of 29 March 2005 Denying Recall from the Court of Appeals**” on June 2, 2005 (a copy of which is **Annex M**), and **this recapitulated the grounds for reconsideration of the transfer of the case to the Court of Appeals**, as follows:

- a. The factual situation of this case is very different from that contemplated in the ruling of *People vs. Efren Mateo* (G.R. Nos. 147678-87, 7 July 2004), which in any case should be given only prospective effect. This case was already ripe for decision on automatic review by the Supreme Court (all appeal briefs were in) when the *Mateo*

- ruling was issued. The Supreme Court should have deemed the instant case submitted for decision.
- b. The *Mateo* ruling for “adding an intermediate appeal or review” by the Court of Appeals is itself qualified (in p. 22 [p. 655 in SCRA]) as being “in favor of the accused.” The transfer of this case to the Court of Appeals, which has to start from scratch studying it with its voluminous records, will prejudice the accused in terms of undue delay and expense which they understandably wish to avoid at this point in their sorry lives, innocent of the crime but languishing in jail for about nine years (well into *prision mayor!*) already since June 1996.
  - c. The desire or “last wish,” as it were, of the condemned death convicts for an early decision by the Supreme Court is unmistakable, and surely this should count for something. Both their counsels as well as they themselves filed motions for early decision on 6 July and 13 December 2004, respectively.
  - d. The *Mateo* ruling which is admittedly (in p. 25 [p. 657 in SCRA]) “a procedural matter, first and foremost” cannot defeat the substantive rights of the accused provided for by the Constitution and **international human rights instruments** on the rights of the accused to a speedy disposition of their cases (*1987 Constitution*, Art. III, Sec. 16) and to speedy trial (*1987 Const.*, Art. III, Sec. 14[2]; ***International Covenant on Civil and Political Rights, Arts. 9.3 and 14.3[c]***).
  - e. Under the Constitution no less, the rule-making prerogative of the Supreme Court, which it exercised in the *Mateo* ruling, “shall not diminish, increase, or modify substantive rights.” (*1987 Const.*, Art. VIII, Sec. 5[5])
  - f. Even established procedural rules in the higher courts provide for prompt disposition of cases (*Rules of Court*, Rule 124, Sec. 9 in relation to Rule 125, Sec. 1).
  - g. In *People vs. Francisco Larranaga, et al.* (G.R. Nos. 138874-75, Resolutions of 21 September 2004 and 11 January 2005), the Supreme Court denied the motion of appellant Larranaga to refer case to the Court of Appeals notwithstanding the *Mateo* ruling, showing that it is still within the Supreme Court’s discretion to decide if it wanted to review a particular case. The substantive constitutional question of the accused-appellants now is: why can’t they too be given the *equal protection of the laws* (*1987 Const.*, Art. III, Sec. 1) by the Supreme Court, the very bulwark of the Constitution?

Note the citation of the ICCPR (in para. d), among others. But these were all to no avail. The Supreme Court in a Resolution dated 12 July 2005 (a copy of which is *Annex N*) merely NOTED WITHOUT ACTION the second “Urgent Joint Motion...” and reiterated that the transfer of the case to the Court of Appeals was done “conformably with” the *Mateo* Decision.

For purposes of reference, copies of the above-cited provisions from the 1987 Philippine Constitution and from the Philippine Rules of Court are provided in *Annexes O and P*, respectively. Several papers relating to the above-cited *Larranaga* case, the Supreme Court Resolution therein dated 21 September 2004 denying the appellant’s motion to refer his case to the Court of Appeals, and a relevant news report “SC denies motions of Chiong sisters’ convicted killer” (*Philippine Daily Inquirer*, Feb. 17, 2005, pp. A1 & A8) are also provided in *Annexes Q and R*, respectively.

8. Previously, on at least two occasions, alleged victim Lenido Lumanog was denied important interlocutory relief during the pendency of this death review case. One was the Supreme Court’s denial of his “Motion for New Trial and Related Relief” in a Resolution dated 17 September 2002 (a copy of which is *Annex S*) even though the Rules of Court and Supreme Court jurisprudence in death penalty cases allowed such new trial in other cases like *People vs.*

*Del Mundo*, 262 SCRA 266 (a copy of which is *Annex T*), where it was ruled 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 prove his innocence of a crime of which he is charged.”

9. More recently, the Supreme Court in a Resolution dated 9 November 2004 (a copy of which is *Annex U*) denied a motion of alleged victim Lenido Lumanog, who became a kidney transplant patient in 2003 in the course of his imprisonment, to be returned to the specialist kidney hospital where he was brought and treated as a kidney patient in 2002 instead of being placed in the prison’s general hospital. He is now back in Death Row on his request because his cell conditions here seem even better than that of his room at the infection-prone prison hospital.

10. And so, the death penalty review case is now with the **Court of Appeals** where it was docketed as CA-G.R. CR HC No. 00667 and has been pending there since January 2005. Here, three defense counsels filed a “Joint Motion for Early Decision” on Sept. 12, 2005 (a copy of which is *Annex V*). Be that as it may, the opportunity for an earlier decision in the Supreme Court where it was ripe has been lost. Thus, this individual communication on behalf of two alleged victims of state violations of the ICCPR.

## VI. Arguments of the Claim

1. The Philippine Supreme Court’s insistence on transferring the death penalty review case to the Court of Appeals which would have to start from scratch in familiarizing itself with the case, notwithstanding its being ripe for decision in the Supreme Court where it was pending for nearly five years, is first of all a violation of the human rights of the alleged victims under the **ICCPR, Art. 14(5) on the right to a review by a higher tribunal**. This right is negated by the Supreme Court’s late-in-the-day “passing the buck” to the Court of Appeals when it could have and should have just proceeded to decide the ripe case under certain established procedural rules. Of what use is the right to review when the higher tribunal to which the death penalty case was directly and automatically elevated under existing rules refuses to perform its duty of review?

2. Closely related to this human rights violation by the Supreme Court is its violation of the alleged victim’s rights under the **ICCPR, Art. 14(3) on the right against undue delay in the trial**. Although “trial” technically refers to the criminal procedure stage of presentation and hearing of evidence at the first instance or trial court stage, the right against undue delay, in spirit if not in letter, can rightfully be applied to the process of disposition of cases, including the appellate stage. More so, in the case of the Philippines, where there is not only the constitutional right to speedy trial in all criminal prosecutions (1987 Philippine Constitution, Art. III, Sec. 14[2]), but also all persons’ constitutional “right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies” (1987 Phil. Const., Art. III, Sec. 16). The death penalty review case of the alleged victims, in detention/prison already for nearly ten years, was pending without decision in the Supreme Court for five years. How many more years will it take in the Court of Appeals which is starting from scratch?

3. The Supreme Court’s violation of the human rights of the alleged victims to a review and against undue delay are compounded by concomitant violations of the **ICCPR, Arts. 14(1) and 26 on equal protection of the law**. This shown, for one, by the *Larranaga* case where the Supreme Court denied the motion of appellant Larranaga to refer case to the Court of Appeals notwithstanding the *Mateo* ruling, showing that it is still within the Supreme Court’s discretion to decide if it wanted to review a particular case (see V.7.g above). Also, in the particular case of alleged victim Lenido Lumanog there appears to be **some discrimination or singling out of him for adverse rulings**, to name just two important ones, the Supreme Court’s denial of his motion for new trial (see V.8 above) and his most urgent motion as a kidney transplant patient for return to the specialist kidney hospital (see V.9 above). Incidentally, in the Philippine legal system, there is no less than a constitutional equal protection clause (1987 Phil. Const., Art. III, Sec. 1).

4. Taken all together, the foregoing constitute a violation by the Supreme Court of the human rights of the alleged victims under the **ICCPR, Art. 14(1) on the right to a fair and impartial hearing and tribunal**. Fair trial has been understood, among others, to include the **right to a prompt trial** aside from the basic fairness of equal protection.

5. Finally, because what is involved here is a death penalty review case (of not just two but five death convicts) and prolonged detention/imprisonment while the review is pending, it may also concern the **ICCPR, Art. 6(1) on the right to life** and **Art. 9(1) on the right to liberty and security of person**, especially for alleged victim Lenido Lumanog who is a kidney transplant patient, subject in more than the “normal” ways to the stresses of a pending death penalty and prolonged imprisonment. Again, in the Philippine legal system, there is no less than a constitutional due process clause (1987 Phil. Const., Art. III, Sec. 1) which speaks of the right to life, liberty and property.

**N.B.** These arguments are without prejudice to the later citation of whatever relevant Human Rights Committee and other jurisprudence, whether in supplement to this Individual Communication or as part of a comment on the written reply of the State party, in case of which, we reserve the right to comment on or to submit additional written information or observations on the question of admissibility of the communication or on its merits.

## VII. Request for Reliefs

Considering that the death penalty case review is now in the Philippine Court of Appeals where it has been pending for over a year and also the time which it may take for the Human Rights Committee to process this Individual Communication, **the alleged victims will NOT seek in the interim that the case be recalled by the Philippine Supreme Court**. As explained above, domestic remedies have already been exhausted, there is no indication that the Supreme Court will accede to such a recall, and this may only result in further delay to the prejudice of the alleged victims. **The alleged victims instead seek that the Human Rights Committee advise the State party Philippine government:**

1. For its Court of Appeals to make an early decision on the death penalty review case (CA-G.R. CR HC No. 00067) as a measure of redress for the Supreme Court’s violation of certain human rights of the alleged victims under the ICCPR, as indicated above.

2. For its Supreme Court to review its policy “conformably with” the *Mateo* Decision on allowing an intermediate review of death penalty cases by the Court of Appeals, particularly for those old cases which can already be decided by the Supreme Court as may be desired by the concerned death convict-appellants.

3. For such further and other relief to the alleged victims as may be just and equitable in the premises.

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***Annex A*****AUTHORIZATION OF THE ALLEGED VICTIMS**

7 March 2006

The Human Rights Committee  
c/o Office of the High Commissioner for Human Rights  
United Nations  
Palais Wilson  
CH-1211 Geneva, SWITZERLAND

Dear Sirs/Madams,

WE, the alleged victims, Philippine death convicts LENIDO LUMANOG and AUGUSTO SANTOS, hereby authorize our legal counsels, ATTY. SOLIMAN M. SANTOS, JR. and ATTY. CECILIA JIMENEZ, to represent us for purposes of the "INDIVIDUAL COMMUNICATION UNDER THE OPTIONAL PROTOCOL TO THE ICCPR" dated 7 March 2006 and pertaining to certain violations of ICCPR provisions by the Philippine Supreme Court in transferring our death penalty case review to the Court of Appeals.

LENIDO LUMANOG  
Alleged Victim  
Dorm 1-A, Death Row  
New Bilibid Prison  
Muntinlupa City  
PHILIPPINES

AUGUSTO SANTOS  
Alleged Victim  
Dorm 1-B, Death Row  
New Bilibid Prison  
Muntinlupa City  
PHILIPPINES

***Annex O*****RELEVANT PROVISIONS OF THE 1987 PHILIPPINE CONSTITUTION**

***Art. III, Sec. 1.*** No person shall be deprived of life, liberty or property without due process of law, nor shall any person be denied the equal protection of the laws.

***Art. III, Sec. 14(2).*** In all criminal prosecutions, the accused... shall enjoy the right... to have a speedy, impartial and public trial...

***Art. III, Sec. 16.*** All persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies.

***Art. VIII, Sec. 5.*** The Supreme Court shall have the following powers:

x x x

(5) Promulgate rules concerning... pleading, practice, and procedure in all courts... Such rules shall provide a simplified and inexpensive procedure for the speedy disposition of cases... and shall not diminish, increase or modify substantive rights...

**Annex P****RELEVANT PROVISIONS OF THE PHILIPPINE “RULES OF COURT”**

**Rule 124, Sec. 9. Prompt disposition of cases.** – All appeals where the accused is under detention shall have precedence over other appeals.

**Rule 125, Sec. 1. Uniform procedure.** – Unless otherwise provided by the Constitution or the law, the procedure in the Supreme Court in original as well as in appealed cases shall be the same as in the Court of Appeals.

**Rule 122, Sec. 3. How appeal taken.** -

x x x

(e) In cases where the death penalty is imposed, the same shall be automatically reviewed by the Supreme Court as provided for in Section 10 of this Rule.

**Rule 122, Sec. 10. Transmission of records in case of death penalty.** – In all cases where the death penalty is imposed, the records shall be forwarded to the Supreme Court for automatic review and judgment,...

**Rule 124, Sec. 13. Quorum of the Court.** – x x x

Whenever the Court of Appeals should be of the opinion that the penalty of *reclusion perpetua* or higher should be imposed in a case, the Court after discussion of the evidence and the law involved, shall render judgment imposing the penalty of *reclusion perpetua* or higher as the circumstances warrant, refrain from entering judgment and forthwith certify the case and elevate the entire record thereof to the Supreme Court for review.