



International Covenant on Civil and Political Rights

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Views

Communication No. 1619/2007

<u>Submitted by:</u>	Felipe and Evelyn Pestaño (represented by counsel, Mr. Enrique Angeles)
<u>Alleged victims:</u>	The authors' son, Phillip Andrew Pestaño (deceased)
<u>State party:</u>	The Philippines
<u>Date of communication:</u>	24 April 2007 (initial submission)
<u>Document references:</u>	Special Rapporteur's rule 97 decision, transmitted to the State party on 28 January 2008 (not issued in document form)
<u>Date of adoption of Views:</u>	23 March 2010

* Made public by decision of the Human Rights Committee.

Subject matter: Arbitrary deprivation of life of a member of the Philippines Navy on board a ship carrying illegal cargoes; failure to conduct an adequate investigation and to initiate proceedings against the perpetrators.

Substantive issues: Right to life; arbitrary deprivation of life; right to an effective remedy.

Procedural issues: Non-substantiation of claim; exhaustion of domestic remedies.

Articles of the Covenant: 6; 2, paragraph 3; 9, paragraph 1; 17 paragraph 1

Articles of the Optional Protocol: 2; 5, paragraph 2(b)

On 23 March 2010, the Human Rights Committee adopted the annexed text as the Committee's Views, under article 5, paragraph 4, of the Optional Protocol in respect of communication No. 1619/2007.

[Annex]

ANNEX

Views of the Human Rights Committee under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political rights (ninety-eighth session)

concerning

Communication No. 1619/2007**

Submitted by: Felipe and Evelyn Pestaño (represented by counsel, Mr. Enrique Angeles)

Alleged victims: The authors' son, Phillip Andrew Pestaño (deceased)

State party: The Philippines

Date of communication: 24 April 2007 (initial submission)

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 23 March 2010,

Having concluded its consideration of communication No. 1619/2007, submitted to the Human Rights Committee by Mr. and Ms. Felipe and Evelyn Pestaño on behalf of their son, Phillip Andrew Pestaño, under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the authors of the communication, and the State party,

Adopts the following:

Views under article 5, paragraph 4, of the Optional Protocol

1.1 The authors of the communication, Mr. and Ms. Felipe and Evelyn Pestaño, Filipino nationals born respectively in 1940 and 1943, are the parents of Ensign Phillip Andrew Pestaño, the victim, who died on 27 September 1995, on behalf of whom they submit the complaint. The authors claim a violation by the Philippines of their son's rights under article 6, article 2, paragraph 3, article 9, paragraph 1, and article 17, paragraph 1 of the International Covenant on Civil and Political Rights. The authors also refer to an attack against their son's honour, which would appear to raise issues under article 17 paragraph 1 of the Covenant. The authors are represented by Counsel, Mr. Enrique Angeles.

** The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Lazhari Bouzid, Ms. Christine Chanet, Mr. Mahjoub El Haiba, Mr. Ahmad Amin Fathalla, Mr. Yuji Iwasawa, Mrs. Hellen Keller, Mr. Rajsoomer Lallah, Ms. Zonke Zanele Majodina, Ms. Iulia Antoanella Motoc, Mr. Michael O'Flaherty, Mr. José Luis Pérez Sanchez-Cerro, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Fabián Salvioli and Mr. Krister Thelin.

1.2 The Covenant entered into force for the State party on 23 January 1986 and the Optional Protocol on 22 November 1989.

The facts as presented by the authors

2.1 The authors' son, Phillip Pestaño, was at the time of the alleged violation an Officer of the Philippine Navy, serving as cargo officer of the BRP Bacolod City ship during its Mindanao voyage in September 1995. On or about 25 September 1995, the ship's Commander permitted the loading of more than 14, 000 board feet of logs onto the BRP Bacolod City, without proper papers or authorization. The authors' son vehemently objected to the loading of such unauthorized cargoes.

2.2 On 26 September 1995, the authors received an anonymous phone call, warning them that their son's life was in danger. On the same day, they collected their son from the Navy Station at Sangley Point, Cavite City, about 100 kilometers from Manila, and took him to their house in Loyola Heights, Quezon City. That night, the victim disclosed to his father, the author, that the BRP Bacolod City ship was "dirty", and that the illegal cargo included 20 sacks of *shabu*¹, worth approximately 1 billion pesos in the black market. The author tried to dissuade his son from pursuing the case, as he was concerned that any action taken by his son may jeopardize his own business, as the Philippine Navy's biggest ship repair contractor. Despite the author's warning, however, Phillip was determined to take the matter forward.

2.3 On 27 September 1995, at about 4:00 am, the authors' son left the family home and proceeded to board his ship, the BRP Bacolod City. At about 11:00 am on the same day, the authors received a call from the Philippine Navy, asking them to proceed to the Navy Headquarters in Manila, because their son Phillip had "had an accident".

2.4 When the authors reached the Navy Headquarters, they were prevented from entering their son's suite, where he lay dead. Instead, they were immediately asked to sign an authorization for an autopsy to be conducted on their son's body, to which the authors consented after having viewed their son's body. The Navy thereafter exhibited an alleged suicide weapon and an alleged suicide note, in support of their position that the authors' son had committed suicide.

2.5 On 30 September 1995, the authors' son was buried in the National Cemetery for military personnel and given full military honours, despite a Navy policy stating that suicide victims should not benefit from such treatment.

2.6 In October 2005, after conducting their own investigations, the Criminal Investigation Division of the Philippine National Police and the National Bureau of Investigation of the Department of Justice corroborated the Navy's position, concluding that the authors' son had committed suicide.

2.7 In the course of the same month, after conducting its own inquiry, and despite the official Navy and police conclusions, the victim's insurance company paid the full amount of his coverage to his beneficiaries for his death².

2.8 In October 1995, the radio operator of the BRP Bacolod City during its Mindanao voyage, and close friend of the authors' son, drowned in high seas under highly suspicious circumstances during an alleged mission where all his companions survived. The victim's body was never found.

¹ Drug from Methamphetamine substance, otherwise known as "shabu" in the Philippines.

² The authors appear to suggest that the insurance company did not believe that the cause of death of the authors' son was suicide, and hence paid the amount of his insurance coverage to his parents.

2.9 In November 1995, another member of the Navy, who was perceived as an ally of the authors' son, and who was also aboard the BRP Bacolod City in September 1995, mysteriously disappeared after being ordered to report to the Navy Headquarters in Manila. This person is still missing and is believed to be dead.

2.10 On 15 November 1995, two Senators filed a Senate Resolution, directing the appropriate Senate Committees to conduct an inquiry into the circumstances surrounding the death of the authors' son.

2.11 In December 1995, the State party's Navy Flag Officer in Command, a Vice-Admiral, invited the authors to dinner, and requested that they refrain from pursuing their son's case against the Navy. Two weeks later, the Navy Flag Officer in Command sought to see the authors again, and presented the author, Mr. Pestaño, with his company's contract with the Navy, worth a hundred-million pesos, together with an affidavit of waiver and desistance to pursue his suit against the Navy³. The authors decided that they would not abandon their son's claim. One week after this information was relayed to the Navy Flag Officer in Command, the four Navy ships being repaired by the author's company all mysteriously sank, and his company's offices in the Navy Station in Sangley Point were ransacked and looted. It is also reported that the authors' nephew, the company's property custodian, was shot dead during the same period.

2.12 On 2 January 1996, the authors received a leaked copy of an intelligence report of the State party's Armed Forces, which stated that the BRP Bacolod City carried 1 billion pesos worth of *shabu* in 20 sacks of rice during its September 1995 trip. The report also indicated that this shipment had been escorted by a Security Officer of the State party's Navy Flag Officer in Command, and that upon discovering the illegal cargo, the authors' son had confronted his superior, and was killed afterwards, to prevent him from revealing the criminal activities taking place on board the ship. This confidential report also identified the chief security officer of the Navy Flag Officer in Command as the most likely perpetrator of the crime.

2.13 In January 1996, another member of the Philippine Navy mysteriously died in a military hospital, after a strange and quick deterioration of his condition. This person was suspected of involvement in the "*shabu* operation" in the BRP Bacolod City, as well as in the death of the authors' son, and had engaged in discreet talks with the authors before his death. He was believed to be ready to reveal important information before he died. The death of this member of the Navy brings to four the number of persons killed in connection with the September 1995 voyage of the BRP Bacolod City. The four killings remain uninvestigated, and unaccounted for.

2.14 The authors state that they filed the following complaints against the Commanding Officer and certain crew members of the BRP Bacolod City: (1) in September 1995 with the Philippine Navy; (2) in September 1995 with the Philippine National Police and the National Bureau of Investigation of the Department of Justice. Both proceedings led to the conclusion that the authors' son had committed suicide; (3) in January 1998 with the Philippine Senate (Committees on Justice-Human Rights and Defense-National Security); (4) in March 2000 with the Ombudsman; (5) and in October 2005 with a new Ombudsman,

³ Thereby threatening him to breach the agreement should the authors decide not to abandon their claim against the Navy.

who was replaced thereafter⁴. No action has been taken on the case by the incumbent Ombudsman since she took office in December 2005.

2.15 On 25 January 1998, after eight Committee hearings, a visual inspection of the stateroom of the authors' son in the ship, and relying, *inter alia*, on expert evidence⁵ and witness testimonies, two Senate Committees⁶ issued a Joint report on the Pestaño case, which contained the following findings: (i) The authors' son did not kill himself on the BRP Bacolod City on 27 September 1995; (ii) he was shot in one place in the vessel different from the one where his body was found; (iii) after his death, his body was moved and laid on the bed where it was found; (iv) he must have been shot on board the BRP Bacolod City before the vessel reached the Navy Headquarters on 27 September 1995; (v) there was a deliberate attempt to make it appear that the authors' son killed himself inside his stateroom; and (vi) such an attempt was so deliberate and elaborate that one person could not have accomplished it by himself. The Senate Committees also recommended, *inter alia*, that an independent investigation be conducted on the circumstances surrounding the murder of the authors' son, so as to bring the perpetrators to justice, and identify the other individuals who participated in the deliberate attempt to portray a suicide⁷.

2.16 On 28 March 2000, the Ombudsman (Fact-finding and Intelligence Bureau)⁸ in charge of the file dismissed the case without prejudice, concluding in its evaluation report that "the conduct of further investigation in order to find out the identity of the perpetrator and his accomplices, if any, will only be a waste of time, considering that the physical evidence has already been tampered with, not to mention the lapse of time".

2.17 Upon the retirement of the Ombudsman, and the appointment of his successor, whose reputation for integrity was unassailable, the authors filed a new complaint with the Office of the Ombudsman on 27 October 2005⁹. In December 2005, the Ombudsman¹⁰ found merit in the authors' petition, reopened the case, and requested from the Commanding Officer of the BRP Bacolod City in September 1995, and from eight senior and junior officers and enlisted personnel to submit counter-affidavits as respondents,

⁴ An administrative and criminal case was filed on 27 October 2005, for murder and grave misconduct (OMB-P-C-05-1298-J and OMB-P-A-05-1223-J) with the Office of the Ombudsman (Office of the Deputy Ombudsman for the Military and Other Law Enforcement Offices).

⁵ *Inter alia* the report (of 13 August 1997) of an independent certified forensic examiner specializing in homicide events reconstruction. The report reached the conclusion that based on [his] "observations, findings, and the discrepancies demonstrated within the documentation of this case, it is this Examiner's professional expert opinion that this death would be most appropriately classified as a suspicious death, most probably being a homicide with a staged scene."

⁶ Committee on Justice and Human Rights and Committee on National Defense and Security. The report was considered during the Third regular session of the Tenth Congress of the Republic of the State party.

⁷ The Senate report also recommended that an Ombudsman investigation looks into the legality of the loading of the illegal cargo on board the BRP Bacolod City, and that related liabilities be established; Other ancillary recommendations concerned, *inter alia*, the enactment of legislation penalizing persons concealing or destroying the body of the victim of a criminal act or related evidence, and imposing severe penalties thereof, as well as recommendations on the need to ensure that post modern medico-legal examinations conform to international standards of forensic pathology.

⁸ According to the Ombudsman Act No. 6770, the Ombudsman and his Deputies act on complaints filed against officers or employees of the Government, or of any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations, and enforce their administrative, civil and criminal liability.

⁹ The authors' 18 pages-long affidavit against 9 respondents is annexed to the complaint.

¹⁰ Order of the Office of the Deputy Ombudsman for the Military and other Law Enforcement Offices, 6 December 2005, annexed to the authors' submission.

within ten days. Only one week after reopening the authors' case, the Ombudsman stepped down, and was replaced. Since then, the case was left uninvestigated in the Office of the Ombudsman for military affairs.

The complaint

3.1 The authors submit that the State party violated their son's rights under article 2, paragraph 3; article 6; article 9, paragraph 1, and article 17, paragraph 1, of the Covenant.

3.2 They recall the Senate Committee's findings of 1998, which they believe conclusively established that their son did not commit suicide, but was murdered. They add that there was a deliberate and elaborate conspiracy to cover-up his death, including through fabrication destruction or tampering of evidence, as well as misrepresentation and distortion of facts, all of which constituted an obstruction of justice, and an unlawful attack against the authors' son honour.

3.3 The authors add that the entire State party's apparatus, including its criminal investigation law enforcement and judicial organs, jointly and severally participated in such conspiracy, with the exception of the Senate. By so doing, the State party deprived the authors' son of his right to redress for the violation of his human rights, and thereby denied him justice for twelve years¹¹.

State party's observations on admissibility and the merits

4.1 On 18 January 2008, the State party challenged the admissibility of the communication, arguing that the author did not exhaust domestic remedies, as the authors' claim is still pending before the Office of the Deputy Ombudsman for the Military and other Law Enforcement Offices against a number of respondents, for murder and grave misconduct. In an order of 10 August 2007, the Office of the Ombudsman deemed it necessary to conduct further proceedings in the case, and directed the parties to file their respective position papers. However, the authors have not filed their paper yet, and requested two extensions of the deadline imposed to submit their position paper¹².

4.2 The State party further notes that the death of the authors' son is an "ordinary criminal case", with no evidence of State participation or acquiescence. This is confirmed by the fact that the Office of the Ombudsman reopened the action. Since the case is being actively heard by the latter instance, the authors have not exhausted domestic remedies within the meaning of article 2 of the Optional Protocol. As such, the State party further contends that the premature submission of their communication to the Committee should be considered as an abuse of their right of submission, within the meaning of article 3 of the Optional Protocol.

4.3 On 8 May 2008, the State party transmitted further observations on the admissibility and merits of the communication. It reiterated that the authors did not exhaust domestic remedies, and that because they have not yet submitted their position paper to the Office of the Ombudsman, this instance could not proceed with the consideration of the case. On the procedure, the State party notes that while the Senate report on this case should be given due weight and respect, its findings cannot be deemed as conclusive, as this legislative branch of the Government is not an appropriate organ to investigate and try such a case. The State party adds that the proper venue for the investigation and prosecution of the case

¹¹ Up to the time of the authors' complaint, i.e. in 2007.

¹² The authors' request for extension is annexed to the State party submission.

is the Office of the Ombudsman¹³, while the *Sandiganbayan*¹⁴ would be the appropriate instance in charge of the trial.

4.4 On the merits, and regarding the authors' allegation of a violation of their son's right to life, the State party contends that this claim is ill-founded, as nothing in the authors' allegations or in the evidence available is capable of establishing the participation of the State party in the alleged violation. The fact that two Senators filed a resolution on the case, which paved the way for the investigation and the very same report, of which the authors avail themselves for the present complaint, is in itself an indication that the State party cannot be accused of conspiracy to deprive the authors' son of his right to life and his right to an effective remedy.

4.5 Regarding the Senate Report's recommendation that an independent investigation be initiated by the Ombudsman on the alleged illegal loading of more than 14, 000 board feet on the BRP Bacolod City in September 1995, and liabilities established, charges have been filed in that respect by a number of high ranking members of the Navy against Navy personnel.

Author's comments on the State party's observations

5.1 On 31 August 2008, the authors refute the State party's arguments. On the question of exhaustion of domestic remedies, they draw the Committee's attention to the Ombudsman's Order of 6 December 2005, which enjoined respondents in the case to file counter-affidavits, after he found merit in the authors' complaint. This Order was issued for the counts of murder and grave misconduct, and thus covered both the criminal and administrative parts of the action. The request for an extension, which they sought, only concerned the administrative part of the proceedings.

5.2 The authors add that as per the Ombudsman's Order, the deadline for the submission of affidavits by respondents was ten days from receipt of the Order, and has therefore long elapsed. The Order expressly stated that the absence of submission of a defense by the respondents should be considered as a waiver of their right to produce rebuttal evidence. Accordingly, the case should have been considered on the basis of available evidence, without further notice. The authors had submitted all required documents for the criminal and administrative proceedings, and the case should have already have been considered a long time ago. This delay demonstrates that the Ombudsman, as an instrument of the State party, is responsible for delaying the judicial process, which in turn demonstrates that the authors do not have effective remedies at their disposal within the State party's instances. According to them, the deliberate delay of thirteen years in the proceedings is tantamount to a denial of justice.

5.3 The authors also dispute the State party's contention on the merits. They argue that its direct and continuous participation in the violation of the right to life of their son is manifest. In their action filed with the Ombudsman, all respondents were members of the State party's Navy, an institution of the State party. As of 3 August 2007, respondents were represented by the Office of the Naval Judge Advocate, i.e. an agent of the State party. The authors filed complaints with the State party's Navy, National Police and National Bureau of Investigation under the Department of Justice, all instrumentalities of the State party,

¹³ "Ombudsman Act of the Philippines", R.A. 6770.

¹⁴ Republic Acts N° 7975 and N°8249. According to the Constitution, this court has jurisdiction over criminal and civil cases involving graft and corrupt practices and such other offences committed by public officers and employees, including those in government-owned or controlled corporations, in relation to their office.

whose official conclusions were rejected by the Senate, an independent branch of the State party.

5.4 With regard to the State party's contention that an independent investigation was initiated on the alleged illicit loading of logs on the BRP Bacolod City, the authors affirm that the investigation in question is not independent, as charges were filed by the State party's Navy. Therefore, this procedure does not meet the express requirements of independence and transparency as understood in the Senate report recommendation.

5.5 The authors reiterate that they identified the Navy Flag Officer in Command, a Vice-Admiral, as an alleged perpetrator who showed intense interest in the case; they recall that this person asked them to sign an affidavit of desistance to pursue the case, and upon their refusal to do so, cancelled the authors' lucrative contract with the Navy. It is obvious that the Navy, as an instrumentality of the State party, committed the murder of their son. Furthermore, after the murder in September 1995, the State party's executive apparatus worked in unison to cover-up the crime and protect perpetrators. The authors recall that the only Ombudsman who genuinely attempted to conduct an effective investigation into the case strangely stepped down from office only one week after reopening the case in 2005. They reiterate that after thirteen years of fruitless struggle, and three distinct Presidential administrations, their struggle for justice for their son has no prospect of success within the State party's justice system.

Issues and proceedings before the Committee:

Consideration of admissibility

6.1 Before considering any claim contained in the communication, the Human Rights Committee must, in accordance with rule 93 of its rules of procedure, decide whether or not the communication is admissible under the Optional Protocol to the Covenant.

6.2 The Committee notes that the same matter is not being examined under any other international procedure, in line with the requirements of article 5, paragraph 2(a), of the Optional Protocol.

6.3 The State party has argued that the communication is inadmissible for failure to exhaust domestic remedies. In support of its argument, it noted that the authors' claim is still pending before the Office of the Deputy Ombudsman for the Military and other Law Enforcement Offices against a number of respondents, for murder and grave misconduct. The authors filed a complaint with the Ombudsman after the State party's Navy, National Police and the National Bureau of Investigation of the Department of Justice concluded in 1995 that their son had committed suicide. The authors claim that the procedure within the Office of the Ombudsman is an ineffective remedy, since this body failed to initiate a timely and effective investigation into the alleged murder of their son since it was seized of the case in 2000. The authors affirm that despite the fact that the case was reopened in October 2005, no meaningful action has been taken by the incumbent Ombudsman since she took office in December 2005.

6.4 The Committee recalls that it is precluded from considering any communication unless it has been ascertained that all available domestic remedies have been exhausted. For the purposes of article 5, paragraph 2 (b), of the Optional Protocol, however, domestic remedies must both be effective and available, and must not be unduly prolonged¹⁵. In the circumstances of this case, the Committee notes that the State party has failed to show that

¹⁵ See, for example, Communication N°1560/2007, *Marcellana and Gumanoy v. The Philippines*, Views adopted on 30 October 2008, para. 6.2.

any investigation has been initiated since the date of the alleged offence, with the final aim of ensuring the effective prosecution and punishment of the perpetrator/s of the alleged murder. Under these circumstances, and considering that almost 15 years elapsed since the date of the alleged offence, the Committee considers that domestic remedies have been unreasonably prolonged. The Committee accordingly finds that article 5, paragraph 2 (b) of the Optional Protocol does not preclude it from considering the complaint.

6.5 Concerning the alleged violation of article 9, paragraph 1 of the Covenant, the authors claim that they received an anonymous call, informing them that their son's life was in danger, the day before he was found dead. However, there is no evidence that the authors reported these threats against their son to the State authorities, and if so, that the State party failed to take appropriate action for this protection. Nor is there any conclusive evidence that the State party was itself involved in threatening the authors' son. In the absence of any further arguments put forward by the authors on this issue, the Committee considers that these claims are not sufficiently substantiated for the purposes of admissibility and concludes that they are inadmissible under article 2 of the Optional Protocol.

6.6 The Committee notes that the authors' claim under article 17 paragraph 1, to the effect that the State party's attempt to make it appear that the victim committed suicide, is to be construed as an unlawful attack against his honour. It considers that this claim has not been sufficiently substantiated for the purposes of admissibility, and is inadmissible under article 2 of the Optional Protocol.

6.7 The Committee considers that the authors' claims under article 6, read in conjunction with article 2, paragraph 3, have been sufficiently substantiated, for the purposes of admissibility, and proceeds to their examination on the merits.

Consideration of the merits

7.1 The Human Rights Committee has considered the communication in the light of all the information made available to it by the parties, as provided for under article 5, paragraph 1, of the Optional Protocol.

7.2 With regard to the authors' contention that article 6 was violated, the Committee recalls that the right to life is the supreme right, from which no derogation is permitted¹⁶. It further recalls that States parties have a positive obligation to ensure the protection of individuals against violations of Covenant rights, which may be committed not only by its agents, but also by private persons or entities¹⁷. The Committee also refers to its jurisprudence, according to which both a criminal investigation and consequential prosecution are necessary remedies for violations of human rights such as those protected by article 6¹⁸. A violation of the Covenant may therefore arise as a result of a State party's failure to take appropriate measures to punish, investigate or redress such a violation¹⁹.

7.3 Despite the initial findings of the State party's National Police and Department of Justice, which both concluded in October 1995 that the victim had committed suicide, it now appears undisputed that the death of the authors' son was a violent one, resulting from

¹⁶ Human Rights Committee, General Comment N°6, Sixteenth Session (30 April 1982), para. 1.

¹⁷ Human Rights Committee, General Comment N°31, CCPR/C/21/Rev.1/Add.13 (26 May 2004), para. 8.

¹⁸ See, for example, Communications No. 1447/2006, *Amirov v. Russian Federation*, Views adopted on 2 April 2009, para. 11.2, and N°1436/2005, *Sathasivam v. Sri Lanka*, Views adopted on 8 July 2008, paragraph 6.4.

¹⁹ *Supra*, note 16, para. 8.

a homicide. The State party's submission^{000000s} of 18 January and 8 May 2008, contending that the author's case was "an ordinary criminal case", at least concede this fact. The Committee took note of the conclusions of the substantial Senate report of 25 January 1998, which established that the victim was shot on board the BRP Bacolod City on 27 September 1995, that there had been a deliberate attempt to make it appear that the authors' son killed himself, and which recommended that an independent investigation be conducted. The Committee further noted that an administrative and criminal action filed by the authors is currently pending against members of the State party's Navy, i.e. of an organ of the State party.

7.4 The Committee takes note of the authors' assertions that two other members of the State party's Navy who were close to the victim, as well as another Navy Ensign who allegedly participated in the illicit boarding of drugs on the BRP Bacolod City, and who had engaged in communications with the authors about their son's death, all died or disappeared in mysterious circumstances between October 1995 and January 1996. The authors further reported having been threatened by a Vice-Admiral of the State party's Navy to lose their business with the Navy should they persist in their complaint. As they pursued their action, the authors reportedly lost their business, and their nephew, the company's property custodian, was killed. In the absence of rebuttal statements, or any comments from the State party on these facts, the Committee gives due weight to the authors' contentions, which raise a strong presumption of direct participation of the State party in the violation of their son's right to life.

7.5 The Committee considers that the killing of the authors' son on board a ship of the State party's Navy warranted a speedy, independent investigation on the possible involvement of the Navy in the crime. The Committee recalls that the deprivation of life by the authorities of the State is a matter of utmost gravity, and that the authorities have the duty to investigate in good faith all allegations of violations of the Covenant made against it and its authorities. To simply state that there was no direct participation of the State party in the violation of the victim's right to life falls short of fulfilling such positive obligation under the Covenant. While close to fifteen years elapsed since the death of the victim, the authors are still ignorant of the circumstances surrounding their son's death, and the State party's authorities have yet to initiate an independent investigation. In its submission of 8 May 2008, the State party referred to an Order of 10 August 2007 of the Office of the Ombudsman, which deemed it necessary to conduct *further* proceedings [emphasis ours] in the case. The Committee is not aware, however, of any preliminary proceedings undertaken by that Office since an action²⁰ was filed *de novo* by the authors in October 2005. Since that date, no suspect was prosecuted, or tried, let alone convicted, and the authors were not compensated for the tragic loss of their son.

7.6 The Committee has given due consideration to the authors' claim under article 6 that the death of their son is directly attributable to the State party. When a person dies in circumstances that might involve a violation of the right to life, the State party is bound to conduct an investigation and ensure that there is no impunity. The State party must accordingly be held to be in breach of its obligation, under article 6, read in conjunction with article 2, paragraph 3, to properly investigate the death of the authors' son, prosecute the perpetrators, and ensure redress.

8. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts before it disclose a violation by the Philippines of article 6, read in conjunction with article 2, paragraph 3, of the Covenant.

²⁰ For (i) grave misconduct (administrative) and (ii) grave misconduct and murder (criminal)

9. Under article 2, paragraph 3(a), of the Covenant, the State party is under an obligation to provide the authors with an effective remedy in the form, *inter alia*, of an impartial, effective and timely investigation into the circumstances of their son's death, prosecution of perpetrators, and adequate compensation. The State party is also under an obligation to prevent similar violations in the future.

10. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant or not and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory or subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy in case a violation has been established, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee's Views. The State party is also requested to publish the Committee's Views.

[Adopted in English, French and Spanish, the English text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]
