

**RESPONSE  
OF THE GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES  
TO THE VIEWS  
OF THE UNITED NATIONS COMMITTEE ON THE ELIMINATION  
OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN  
IN COMMUNICATION NO. 18/2008**

**APRIL 2011**

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**Introduction**

- 1) The State Party presents its compliments to the members of the Committee on the Elimination of Discrimination Against Women.
- 2) The views of the Committee on Communication No. 18/2008 submitted by Miss Karen Tayag Vertido (hereafter "the author"), transmitted pursuant to Article 7, Paragraph 3 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women, request that the Government of the Republic of the Philippines (hereafter "the State Party") give due consideration to the views of the Committee, together with its recommendations, and submit to the Committee, within six months, a written response, including information on action taken in light of the views and recommendations of the Committee.
- 3) The State Party welcomes the views of the Committee and has given the recommendations expressed therein careful consideration, mindful of the Committee's intention to concretely support, promote and protect the rights of Filipino women under the Convention on the Elimination of All Forms of Discrimination Against Women.
- 4) The State Party wishes to reaffirm its commitment under the Convention and its Optional Protocol and has taken due note of the recommendations of the Committee. As such, the State Party has the honor to provide the following information:

**Paragraph 8.9(a) in full**

- 5) *Concerning the author of the communication: Provide appropriate compensation commensurate with the gravity of the violations of her rights.*

**Response of the State Party to the recommendation in B**

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- 6) The State Party wishes to draw the kind attention of the Committee to the author's failure to exhaust domestic remedies, which remains to be a pillar upon which the Convention is founded. Assuming that the *right to a remedy* could be inferred from the text of the Convention, its implementation must be in accordance with the State Party's legal system.

Laws of the State Party provide multiple avenues through which the author may claim compensation, without prejudice to the statute of limitations. In the Philippine setting, it is presumed that a civil case is jointly instituted with the filing of a criminal case unless the plaintiff / complainant chooses to file an independent civil action against the accused.

A remedy that was available to the author was to pursue the civil aspect of the case independent of the criminal prosecution of the offense. Settled is the rule that an acquittal does not automatically preclude a judgment against the accused on the civil aspect of the case where acquittal is based on reasonable doubt. Considering that the acquittal of the accused was based on insufficiency of evidence, the author could have pursued the civil aspect and prayed for payment of compensation.

Moreover, Philippine law permits a victim of unjust imprisonment or detention, or a victim of a violent crime (including rape) to seek compensation before the Board of Claims pursuant to Republic Act No. 7309. Compensation, however, is not automatic. A claim must be filed with the Board within six months from the date the victim suffered damage or injury, otherwise the claim is deemed to have been waived. There was no showing that the author had filed a claim within the required period.

- 7) It is a settled principle of statutory construction that the obligations of a State Party under any treaty, international agreement, or convention must be clear and unambiguous to avoid ascribing by implication further obligations not otherwise intended by the parties to the treaty, international agreement or convention. As the Committee had acknowledged in its Views, the Convention does not expressly provide for the *right to a remedy*. Hence, the Committee's recommendation for the *provision of adequate compensation* is not based on an explicit obligation of the State Party. Obtaining compensation must be premised on the existence of a right on the part of the claimant and the concomitant obligation of the State Party, which cannot be drawn by mere inference.

- 8) The State Party upholds the independence of its judiciary which has the exclusive jurisdiction to determine the guilt or innocence of an accused.

**Paragraph 8.9(b) in full**

9) *General*

- *Take effective measures to ensure that court proceedings involving rape allegations are pursued without undue delay*
- *Ensure that all legal procedures in cases involving crimes of rape and other sexual offenses are impartial and fair, and not affected by prejudices or stereotypical gender notions. To achieve this, a wide range of measures are needed, targeted at the legal system, to improve the judicial handling of rape cases, as well as training and education to change discriminatory attitudes towards women. Concrete measures include:*
  - (i) *Review of the definition of rape in the legislation so as to place the lack of consent at its centre;*
  - (ii) *Remove any requirement in the legislation that sexual assault be committed by force or violence, and any requirement of proof of penetration, and minimize secondary victimization of the complainant / survivor in proceedings by enacting a definition of sexual assault that either:*
    - *requires the existence of “unequivocal and voluntary agreement” and requiring proof by the accused of steps taken to ascertain whether the complainant / survivor was consenting; or*
    - *requires that the act take place in “coercive circumstances” and includes a broad range of coercive circumstances.*
  - (iii) *Appropriate and regular training on the Convention on the Elimination of All Forms of Discrimination against Women, its Optional Protocol and its general recommendation, in particular general recommendation No. 19, for judges, lawyers and law enforcement personnel;*

- (iv) *Appropriate training for judges, lawyers, law enforcement officers and medical personnel in understanding crimes of rape and other sexual offences in a gender-sensitive manner so as to avoid revictimization of women having reported rape cases and to ensure that personal mores and values do not affect decision-making.*

**Response of the State Party to the recommendation in Paragraph 8.9(b)**

*On measures taken to ensure that court proceedings involving rape allegations are pursued without undue delay*

- (10) The State Party welcomes the Committee's recommendation to take effective measures so that court proceedings involving rape allegations are pursued without undue delay. The State Party advocates and supports the protection and promotion of human rights, including those in judicial proceedings, and is undertaking measures to ensure that the *Speedy Trial Act of 1998* (Republic Act No. 8493) is fully and effectively implemented.

*On measures to ensure that legal procedures in rape cases and other sexual offenses are fair and impartial, and not affected by prejudices or stereotypical gender notions*

- (11) The State Party has the honor to inform the Committee that Philippine laws and jurisprudence show that an essential element for the commission of the crime of rape is lack of consent on the part of the victim. Nonetheless, the State Party has *motu proprio* launched a campaign, through the Philippine Commission on Women as the primary policy-making and coordinating body on women and gender equality concerns, to review and fine-tune the current penal definition of the crime of rape to specify lack of consent as the essential element of the crime. The proposed bill to amend *The Anti-Rape Law of 1997* is also envisioned to include principles in the appreciation of evidence, specify the conduct and procedure of trial and preliminary investigation, and eliminate gender-based myths and stereotypes on rape and rape victims.
- (12) Since 2006, the Philippine Judicial Academy, in collaboration with the Supreme Court's *Committee on Gender Responsiveness in the Judiciary*, has been conducting training for judges, lawyers and court personnel to nurture familiarity with the Convention on the Elimination of Discrimination Against Women and to promote gender sensitization of

courts. A Summary of the Training Activities on Gender Sensitivity Conducted by the Philippine Judicial Academy is attached as *Annex A*.

- (13) In 2008, five training sessions entitled *Seminar-Workshop for Members of the Committee on Decorum and Investigation* were conducted involving over 200 judges, lawyers and other court personnel. A *Discussion on Gender Equality and CEDAW* was also attended by justices of the Court of Appeals.

*Further measure to assist and protect victims of rape*

- (14) In 1998, the *Rape Victim Assistance and Protection Act* was passed to provide necessary assistance and protection for rape victims. To uphold the policy, the State Party's various agencies and non-government organizations have collaborated to establish and operate a rape crisis center in every province and city to assist and protect rape victims in the litigation of their cases and their recovery.
- (15) Pursuant to the *Rape Victim Assistance and Protection Act* a rape crisis center shall serve the purpose of:
- (a) Providing rape victims with psychological counselling, medical and health services, including their medico-legal examination;
  - (b) Securing free legal assistance or service, when necessary, for rape victims;
  - (c) Assisting rape victims in the investigation to hasten the arrest of offenders and the filing of cases in court;
  - (d) Ensuring the privacy and safety of rape victims;
  - (e) Providing psychological counselling and medical services whenever necessary for the family of rape victims;
  - (f) Developing and undertaking a training program for law enforcement officers, public prosecutors, lawyers, medico-legal officers, social workers, and barangay officials on human rights and responsibilities; gender sensitivity and legal management of rape cases; and
  - (g) Adopting and implementing programs for the recovery of rape victims.
- (16) Notably, the *Rape Victim Assistance and Protection Act* provides in Section 6 thereof that in prosecutions for rape, evidence of a complainant's past sexual conduct, opinion thereof or of his/her reputation shall not be

admitted unless, and only to the extent that the court finds, that such evidence is material and relevant to the case.

- (17) The State Party notes the Committee's request to publish the views and recommendations, to translate them into the Filipino language and other recognized languages, as appropriate, and to distribute the same widely to reach all relevant sectors of society. In this respect, the full text of the views and recommendations is made available through the Philippine Gender and Development Portal of the Philippine Commission on Women (<http://www.ncrfw.gov.ph/index.php/cedaw-philippines/109-op-cedaw-/495-pcw-cedaw-op-views-karen-vertido>).
- (18) The State Party considers the recommendations of the Committee as part of a constructive dialogue between the State Party and the Committee.
- (19) The State Party avails itself of this opportunity to renew to the Committee on the Elimination of All Forms of Discrimination Against Women the assurances of its highest consideration.