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Communication No. 34/2011

Views adopted by the Committee at its fifty-seventh session, 10-28 February 2014

Submitted by:	R. P. B. (represented by counsel, Evalyn G. Ursua and Maria Karla L. Espinosa)
Alleged victim:	The author
State party:	The Philippines
Date of communication:	23 May 2011 (initial submission)
References:	Transmitted to the State party on 26 August 2011 (not issued in document form)
Date of adoption of decision:	21 February 2014

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Annex

Views of the Committee on the Elimination of Discrimination against Women under the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (fifty-seventh session)

Communication No. 34/2011, *R. P. B. v. the Philippines**

Submitted by:	R. P. B. (represented by counsel, Evalyn G. Ursua and Maria Karla L. Espinosa)
Alleged victim:	The author
State party:	The Philippines
Date of communication:	23 May 2011 (initial submission)
References:	Transmitted to the State party on 26 August 2011 (not issued in document form)

The Committee on the Elimination of Discrimination against Women, established under article 17 of the Convention on the Elimination of All Forms of Discrimination against Women,

Meeting on 21 February 2014,

Adopts the following:

Views under article 7, paragraph 3, of the Optional Protocol

1. The author of the communication is R. P. B., a Filipina national born in 1989. She claims to be the victim of a violation by the State party of article 1 and article 2 (c), (d) and (f) of the Convention on the Elimination of All Forms of Discrimination against Women. She is represented by counsel, Evalyn G. Ursua and Maria Karla L. Espinosa. The Convention and the Optional Protocol thereto entered into force for the Philippines on 4 September 1981 and 12 February 2004, respectively.

Facts as presented by the author

2.1 The author comes from a poor family with seven children from suburban Metro Manila. Like two of her brothers, she is deaf and mute. On 21 June 2006, at around 4 a.m., the author, then 17 years old, was raped by J., a 19-year-old neighbour, in her own residence. On the same day, at about 10 a.m., the author reported the incident to the police. She was assisted by her sister, R., who interpreted for her in sign language. The author was interviewed by a male police officer, in violation of Republic Act No. 8505 requiring that such an interview be conducted by a female officer. The police officer drew up an affidavit in Filipino and asked the author and

* The following members of the Committee participated in the examination of the present communication: Ayse Feride Acar, Nicoline Ameline, Barbara Bailey, Olinda Bareiro-Bobadilla, Niklas Bruun, Náela Gabr, Hilary Gbedemah, Nahla Haidar, Yoko Hayashi, Ismat Jahan, Dalia Leinarte, Violeta Neubauer, Theodora Nwankwo, Pramila Patten, Maria Helena Pires, Biancamaria Pomeranzi, Patricia Schulz, Dubravka Šimonović and Xiaoqiao Zou.

her sister to countersign it. The author claims that she does not understand the affidavit because the education system for the deaf is almost exclusively based on written English. However, she was not provided with an interpreter to translate the affidavit from Filipino into English. On the same day, at around 11.30 a.m., the police arrested J. and brought him to the police station. Also on that day, the author underwent a medical examination at the Philippine National Police Crime Laboratory in Camp Crame, Quezon City. Her sister interpreted for her. The resulting medico-legal report indicated the alleged sexual abuse, including the time, date and place of commission. It also stated that "there is clear evidence of recent history of blunt penetrating trauma to the labia minora and posterior fourchette".

2.2 On 4 July 2006, the author's case was filed with the Regional Trial Court of Pasig City, Metro Manila. The perpetrator was charged with qualified rape "aggravated by the circumstances of treachery, abuse of superior strength, night-time and dwelling", under articles 266-A, paragraph 1 (a), and 266-B, paragraph 6 (10), of the Revised Penal Code of 1930 as amended by Republic Act No. 8353 of 1997, and section 5 (a) of Republic Act No. 8369. It was stated that the rape was committed "by means of force, threat and intimidation" against the author, a minor, whose "physical handicap" and "being deaf and dumb" was known to the accused at the time of the commission of the crime. The accused pleaded not guilty.

2.3 The author submits that the hearings scheduled for 2006[1] were not held owing to the unavailability of the prosecution witnesses. Only on 15 January 2007 did the first prosecution witness, the author's mother, testify in court. Other hearings were scheduled on 13 February, 22 August and 6 November 2007. Given that no interpreters for deaf litigants were available, interpretation relied exclusively on a non-governmental organization, the Philippine Deaf Resource Center.[2] On 24 September 2007, the court reset a hearing for 6 November 2007 "with the understanding […] that the prosecution will provide an interpreter connected to the Philippine Deaf Resource Center for the private complainant, who is deaf and mute". The author states that the Center's lengthy correspondence with the court also contributed to the delay of the trial.

2.4 On 19 August 2008, the author testified in court.[3] She was assisted by a male prosecutor, whereas her mother had been assisted by a female prosecutor on 15 January 2007. The prosecution presented only the author and her mother as witnesses, whereas the defence presented only the accused with no documentary evidence. The prosecution and the defence "agreed to enter into admissions and stipulation of facts with respect to the proposed testimonies" by the two other prosecution witnesses — the medico-legal officer who had examined the author after the incident and a police officer who had responded to the author's complaint and arrested J. — without presenting them in court.

2.5 On 31 January 2011, the Regional Trial Court of Pasig City acquitted J. The court was guided by the following three principles derived from previous case law of the Supreme Court: (a) it is easy to make an accusation of rape; it is difficult to prove but more difficult for the person accused, although innocent, to disprove;

[1] The hearings were scheduled on 23 October, 8 and 27 November and 12 December 2006.

[2] The Philippine Deaf Resource Center provides direct services and advocacy to the deaf. The Supreme Court routinely refers requests for sign language interpreting by trial courts to the Center, in the absence of a comprehensive policy on the matter.

[3] By then, the author had already attained the age of majority (18 years) under Philippine law.

(b) in view of the intrinsic nature of the crime of rape, in which only two persons are usually involved, the testimony of the complainant must be scrutinized with extreme caution; and (c) the evidence for the prosecution must stand or fall on its own merits and cannot be allowed to draw strength from the weakness of the evidence of the defence. The trial court challenged the credibility of the author's testimony[4] and found that she had failed to prove that the sexual intercourse was not consensual. In particular, the court noted that the author's "overall deportment during her ordeal defies comprehension and the reasonable standard of human conduct when faced with a similar situation". It further observed that "no force or intimidation was employed by the accused. No physical force was used to quell R.'s alleged resistance. Her mouth was not covered nor stuffed with any object. Except for the alleged pulling of her arms, struggling and showing that she was already angry, the prosecution failed to prove that R.'s movement was physically restrained. Neither was intimidation employed against her. Even if her arms were pulled, she was not threatened with bodily or physical harm by […] any object or instrument that the accused could have employed so as to create a real apprehension of dangerous consequences of serious bodily harm. The rule is well settled that where the victim is threatened with bodily injury, as when the rapist is armed with a deadly weapon […], such constitutes intimidation". The court further noted that the author's "demeanour was inconsistent with that of an ordinary Filipina whose instinct dictates that she summons every ounce of her strength and courage to thwart any attempt to besmirch her honour and blemish her purity. […] It is unnatural for an intended rape victim […] not to make even a feeble attempt to free herself despite a myriad of opportunities to do so". In particular, she could have tried to escape or shout for help, given that "her being a deaf mute does not render her incapable of creating noise"; she "could have slapped, punched, kicked and pushed the accused" when he was trying to undress her, given that her physical condition rendered her able to resist; in addition, her clothes were intact, which does not evince a struggle on her part.

2.6 As to the exhaustion of domestic remedies, the author maintains that an acquittal puts an end to the process for the victim. Under Philippine law, she would be barred from filing any appeal against a judgement of acquittal because of the constitutional right of double jeopardy, which forbids a defendant from being tried twice for the same offence. Regarding the existence of an extraordinary remedy of certiorari under rule 65 of the Revised Rules of Court, which could be used in cases of acquittal under certain circumstances, the author argues that the requirements have not been met in the present case. First, one must prove that the decision of the court is null and void because an error in jurisdiction or one amounting to a lack of jurisdiction has occurred. Second, the remedy is available only to the people of the Philippines represented by the Office of the Solicitor General, but not to the victim herself. Third, the Office of the Solicitor General should have used the remedy within 60 days of the date of the acquittal but did not avail itself of that opportunity.

[4] The author testified, in particular, that, in the early morning of 21 June 2006, when she was washing dishes, the accused approached her, touched her hand, pulled her arm and dragged her to the table. He then pulled her shorts down and penetrated her. She tried to struggle and showed anger, but he was very strong. There was nothing on the table that she could use to hit him with. Sometime later, her mother saw them and got very angry at the author. The author cried and pulled her shorts up. The mother went to J.'s house. The author denied knowing J. before the incident, whereas her mother and J. testified that they were neighbours.

2.7 The author lastly explains that the matter has not been and is currently not being examined under any other international investigation or settlement procedure.

Complaint

3.1 The author contends that the decision of the Regional Trial Court of Pasig City was discriminatory, within the meaning of article 1 of the Convention in relation to the Committee's general recommendations Nos. 18 and 19,[5] because it denied her justice. First, the trial court failed to assess the evidence and apply the law properly and with due diligence; second, it relied on gender-based myths and stereotypes; and third, it failed to consider the rape in the context of her vulnerability as a deaf girl. The author claims that the State party did not afford her access to a competent national tribunal that should have effectively protected her from discrimination, thus violating its positive obligations under article 2 (c), (d) and (f) of the Convention.

3.2 As regards the assessment of the evidence and the application of the law, the author submits that the trial court glaringly ignored her repeated statements that she struggled, shouted and made noise when she was attacked by the accused. It saw no proof that her movement was physically restrained and ignored her explanation that the accused was very strong and that there was nothing on the table that she could use to hit him with. The court disregarded her mother's testimony that she had been awakened by noise coming from where her daughter was raped. It relied on outdated jurisprudence, in particular a 1972 decision of the Supreme Court on the requirement of force or intimidation in rape cases, according to which "force or intimidation must be of such character as to create real apprehension of dangerous consequences or serious bodily harm that would overpower the mind of the victim and prevent her from offering resistance". In contrast, according to the prevailing rule in article 266-D of the Revised Penal Code (see Republic Act No. 8353), "any physical overt act manifesting resistance against the act of rape in any degree from the offended party, or where the offended party is so situated as to render her/him incapable of giving valid consent, may be accepted as evidence". The court should therefore have considered the author's condition as a deaf minor as akin to situations in which the victim is incapable of giving valid consent and should have given credence to her testimony that she had not given consent to and resisted the advances of the accused.

3.3 As regards gender-based myths and stereotypes, the author states that her case illustrates the systemic discrimination against victims of sexual violence in the Philippine judicial system. She argues that such myths and stereotypes constitute discrimination on the basis of gender, given that they represent peculiar evidentiary burdens imposed on women in rape trials. The credibility of the complainant in a rape case is mostly based on a standard of behaviour that the courts believe a rape victim should exhibit. Those who satisfy the stereotypes are considered credible, while the others are met with suspicion and disbelief, leading to the acquittal of the accused. The author submits that the court used gender stereotypes and myths similar to those employed in *Vertido v. the Philippines*, although the decision of her case was promulgated several months after the adoption of the Committee's views in *Vertido*.[6]

[5] See reports of the Committee on the Elimination of Discrimination against Women: tenth session, 30 January 1992 (A/46/38); and eleventh session, 1 February 1992 (A/47/38).

[6] Communication No. 18/2008, *Vertido v. the Philippines*, views adopted on 22 September 2010.

3.4 The author alleges that the following gender myths and stereotypes were invoked by the court in her case. The first myth and stereotype is that the victim must have used all conceivable means to evade or resist the perpetrator's advances and her struggle must be evidenced by, for instance, torn clothing. The author argues that the court's decision is discriminatory, given that it requires that the victim display a "reasonable standard of human conduct" in a rape case and that it discounts the wide range of behavioural responses exhibited by victims threatened with rape, in particular by a woman with disability. Furthermore, looking for evidence of struggle such as torn clothes excludes from protection victims who were subjected to non-physical coercive circumstances that perpetrators exploit to subjugate them.

3.5 The second myth and stereotype is that only physical force or the use of a deadly weapon can negate the victim's consent to the perpetrator's advances. The author contends that the court did not appreciate other evidence of lack of consent. The court's finding discriminates against victims who were subjected to non-physical force, threat or intimidation, or who, like the author, were placed in situations tantamount to the same.

3.6 The third myth and stereotype is that a Filipina rape victim "summons every ounce of her strength and courage to thwart any attempt to besmirch her honour and blemish her purity". The author argues that a victim is thus expected to struggle actively to show her disconsent, for instance by slapping, punching, kicking or pushing the offender. The court found that the author failed to do so and therefore considered her claim of rape to be not credible. According to the author, such reasoning denies legal protection to victims who do not conform to this stereotype and blames the victim for employing insufficient or inadequate means to avoid rape.

3.7 Furthermore, the author claims that, almost 30 years since the ratification of the Convention by the Philippines and after the Committee's finding violations of the Convention and making recommendations to address them, discriminatory assumptions, myths and stereotypes in jurisprudence continue to place victims of rape at a legal disadvantage and significantly reduce, if not negate, their chances of obtaining redress for the harm suffered. In view of the foregoing and with reference to *Vertido*, the author submits that, by the court's use of gender myths and stereotypes, she was deprived of her right to have a competent tribunal hear her case, which constitutes discrimination within the meaning of article 1 of the Convention in relation to general recommendations Nos. 18 and 19.

3.8 The author contends that the State party disregarded her rights on account of her disability and gender and thus violated its legal obligations under both the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of Persons with Disabilities.[7] First, the court not only rendered judgement against the author using gender stereotypes and myths, but also reasoned with manifest prejudice against her as a deaf minor victim. It viewed the author as an incredible witness and therefore acquitted the accused, notwithstanding the fact that there was nothing in the evidence to disprove her story, except the accused's bare denials and the court's sexist notions of how an ordinary Filipina, regardless of her being a deaf minor, should behave in the circumstances. According to the author, the above reveals gross ignorance of the situation of deaf women and

[7] The Philippines ratified the Convention on the Rights of Persons with Disabilities on 15 April 2008 but is not a State party to the Optional Protocol thereto.

girls and reveals the failure of the Philippines, as a State party to the Convention on the Rights of Persons with Disabilities, to comply with its obligation to give appropriate training to those involved in the administration of justice in order to ensure effective access to justice for persons with disabilities.[8] The author further contends that deaf women, especially girls, occupy a difficult position in Philippine society because they are disadvantaged both to men (men with or without disability, including deafness) and women (women without or with disability other than deafness). In addition, deaf women and girls, who are victims of sexual violence, often suffer from poverty and lack access to formal education. The court ignored the reality, recognized by the States parties to the Convention on the Rights of Persons with Disabilities, that "women and girls with disabilities are often at greater risk, both within and outside the home, of violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation"[9] and that they are "subject to multiple discrimination".[10] In particular, by stating that "being a deaf mute does not render her incapable of creating noise [or …] resist[ing] the aggression", the court not only disregarded the author's evidence that she had made noise and expressed her objection to the sexual advances, but also demonstrated the discriminatory expectation of a standard response from a deaf minor. The author asserts that the court's statement trivializes her especially difficult situation and denies the reasonable accommodation[11] of not subjecting her to the same standards used for hearing persons. Those standards, used in cases of sexual violence, constitute gender stereotypes and discriminate against women.

3.9 The author alleges that other serious inadequacies and irregularities in the police investigation constituted discrimination. First, sign language interpreting was not provided to her during the police investigation and during a number of court hearings, including during the pronouncement of the judgement, in violation of

[8] Reference is made to article 13 of the Convention on the Rights of Persons with Disabilities, which reads: "1. States Parties shall ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages. 2. In order to help to ensure effective access to justice for persons with disabilities, States Parties shall promote appropriate training for those working in the field of administration of justice, including police and prison staff".

[9] Reference is made to the preamble of the Convention on the Rights of Persons with Disabilities, paragraph (q), under which the States parties "recogniz[e] that women and girls with disabilities are often at greater risk, both within and outside the home, of violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation".

[10] Reference is made to article 6 of the Convention on the Rights of Persons with Disabilities, which reads: "1. States Parties recognize that women and girls with disabilities are subject to multiple discrimination, and in this regard shall take measures to ensure the full and equal enjoyment by them of all human rights and fundamental freedoms. 2. States Parties shall take all appropriate measures to ensure the full development, advancement and empowerment of women, for the purpose of guaranteeing them the exercise and enjoyment of the human rights and fundamental freedoms set out in the present Convention".

[11] Under article 2 of the Convention on the Rights of Persons with Disabilities, "'reasonable accommodation' means necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms".

article III, section 1, of the 1987 Constitution of the Philippines,[12] and article 21 (b) of the Convention on the Rights of Persons with Disabilities.[13] Thus, a deaf relay interpreter or/and a hearing interpreter was present only during the hearings on 19 August 2008 and 1 April 2009. The author claims that the court did not officially engage or summon the interpreters for purposes of the proceedings. The interpreter would attend the hearing only if contacted by the author's family or happened to be informed in court of the schedule of the next hearing. The interpreter did not attend the hearing when the acquittal was pronounced, given that she was informed thereof only on short notice by the author's family. The author further argues that, when she testified, the entire communication process between her and the interpreters was not reflected in the transcript and the court did not take measures to ensure the accuracy thereof. In addition, the transcript was certified only by the court stenographer and not by an official interpreter for the deaf.

3.10 Second, the State party's authorities failed to provide psychosocial services, such as counselling or therapy, and protective measures to the author as a victim, which are critical for her healing and recovery, in violation of article 16 of the Convention on the Rights of Persons with Disabilities[14] and national law.[15]

3.11 Third, the author contends that the court was utterly insensitive to her as a deaf person. Thus, the court called her case last among those scheduled for the day, which obliged her to wait long hours in the presence of the accused. In such circumstances, very little time was left for hearings, which were often postponed. That contributed significantly to the delay of the proceedings, which took more than

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[12] Article III, section 1, of the 1987 Constitution of the Philippines, reads: "… nor shall any person be denied the equal protection of the laws".

[13] Article 21 of the Convention on the Rights of Persons with Disabilities reads: "States Parties shall take all appropriate measures to ensure that persons with disabilities can exercise the right to freedom of expression and opinion, including the freedom to seek, receive and impart information and ideas on an equal basis with others and through all forms of communication of their choice, […] including by: (b) Accepting and facilitating the use of sign languages […] and all other accessible means, modes and formats of communication of their choice by persons with disabilities in official interactions".

[14] Under article 16 of the Convention on the Rights of Persons with Disabilities, States parties shall: 1. "take all appropriate legislative, administrative, social, educational and other measures to protect persons with disabilities, both within and outside the home, from all forms of exploitation, violence and abuse, including their gender-based aspects". 2. "take all appropriate measures to prevent all forms of exploitation, violence and abuse by ensuring, inter alia, appropriate forms of gender- and age-sensitive assistance and support for persons with disabilities and their families and caregivers, including through the provision of information and education on how to avoid, recognize and report instances of exploitation, violence and abuse. States Parties shall ensure that protection services are age-, gender- and disability-sensitive".[...] and 4. "take all appropriate measures to promote the physical, cognitive and psychological recovery, rehabilitation and social reintegration of persons with disabilities who become victims of any form of exploitation, violence or abuse, including through the provision of protection services. Such recovery and reintegration shall take place in an environment that fosters the health, welfare, self-respect, dignity and autonomy of the person and takes into account gender- and age-specific needs".

[15] Reference is made to Republic Act No. 9710 (2010), or the Magna Carta of Women, which entitles the author to services and interventions, such as counselling and critical incident stress debriefing, because she belongs to the category of "women in especially difficult circumstances", which includes "victims and survivors of sexual and physical abuse, […] of rape and incest, and such other related circumstances which have incapacitated them functionally" (sects. 30 and 31).

five years, even though only the author, her mother and the accused were heard in court.[16]

3.12 The author further claims that the aforementioned violations of her rights had negative effects on her. In particular, she received no counselling or support services from the authorities after the rape and during the five years of the court proceedings, notwithstanding the authorities' claim that such services are available under the Rape Victim Assistance and Protection Act of 1998. The lack of psychological support made it difficult for her to cope with the experience of victimization, given her youth and socioeconomic situation. In particular, when she was raped, she interrupted her studies and, with her sister's help, was transferred to Quirino High School, situated far from her parents' residence. The author became involved in student misconduct and was sanctioned a few times. A teacher at the school described the author's behaviour as "troubled" and attributed it to the sexual abuse; she saw the author's disciplinary difficulties, rebellion and transformation from a quiet, well-mannered student as a mechanism to cope with the rape trauma. The author claims that the school guidance counselling provided to her after the rape was inadequate, given that it was intended for the majority of the hearing student population. Furthermore, the author faces the daily humiliation of seeing the perpetrator in her neighbourhood; she is victimized and is the subject of talk and ridicule. Her family, especially her mother, is also taking the acquittal very badly.

3.13 The author contends that her case is not isolated and illustrates systemic discrimination. According to the unpublished estimates of the Philippine Deaf Resource Center for 2011, 1 in 3 deaf women is raped, while 65 to 70 per cent of deaf children suffer from molestation. Many of the cases filed drag on for years and are dismissed or end in financial settlement. The author submits that there is no comprehensive policy in the Philippines promoting equality and accessibility of the justice system to deaf people, in particular women and girls. Furthermore, there are no standards or procedures for interpreting, in particular for courtroom interpreting for deaf litigants. The author argues that the absence of such standards and procedures is discriminatory and dangerous, given that deaf sign language users and hearing non-users do not know whether the sign or voice interpretation is accurate and impartial. She submits that there are only two policies for cases involving deaf parties or witnesses, i.e. Supreme Court Memorandum Order No. 59-2004 of 10 September 2004 and Supreme Court, Office of the Court Administrator circular No. 104-2007 of 18 October 2007, which deal mainly with the appointment of sign language interpreters and do not address the complexities of interpretation between spoken and sign languages. The author argues that these policies are also discriminatory, given that they require interpreting only when the deaf person "needs to be fully understood", in violation of the right to information, including both the right to understand and to be understood.[17]

3.14 The author contends that, in the absence of any official policy on the issue, the burden of addressing the needs of deaf victims has fallen on the Philippine Deaf

[16] See para. 2.4.

[17] Supreme Court Memorandum Order No. 59-2004 recognizes that "some cases before trial courts may involve parties or require witnesses who, to be fully understood and prevent possible miscarriage of justice, may require a sign language interpreter" and that "the procedure [of hiring the sign language interpreter] may cause delays". The fee of the sign language interpreter is covered by courts. Supreme Court, Office of the Court Administrator circular No. 104-2007 provides guidelines on the payment of the services of a hired sign language interpreter.

Resource Center, a non-governmental organization that gathers data on deaf cases, in particular on gender-based violence against deaf women. In 2006-2010, the Center documented more than 70 cases involving either a deaf party or witness, whereas from 2006 to 2011 it monitored 80 such documented cases, in which only 28 had interpreters. In cases in which the deaf person is the complainant, 85 per cent are rape cases and about 25 per cent involve deaf girls. After observing a number of problems in court proceedings involving the deaf, the Center launched an advocacy project for the adoption of a policy on sign language interpreting in courts. In particular, the Center has observed the following problems, in particular in relation to sexual abuse cases of deaf minors, aged 4 to 16 years, including that of the author, throughout the country: many trial courts are unaware of Supreme Court Memorandum Order No. 59-2004 and Circular No. 104-2007; some courts and agencies do not allow sign language interpreting for a deaf party, considering relay interpreting to be "hearsay"; many courts consider sign language interpreting to be a service for deaf litigants, who have to find an interpreter and pay for the service; some courts do not recognize the need for both a deaf relay interpreter and a hearing interpreter; no provisions for sign language interpreting exist in other stages of proceedings, such as investigation; and, in the absence of official legal training for interpreters for the deaf, some interpreters do not possess adequate skills.

3.15 The author underlines the lack of knowledge and capacity of professionals involved in the administration of justice to handle cases of women and children with disabilities, such as deaf victims of sexual violence. She claims that the national authorities have to address this serious problem. She points out that, although the Philippine Judicial Academy conducted workshops on the Convention and gender-sensitivity training, none covered the specific needs and concerns of women and girls with disabilities.

3.16 The author asks the Committee to establish that she has been a victim of discrimination as a deaf girl-child victim of rape, owing to the State party's failure to fulfil its obligations under the Convention and other human rights instruments. She invites the Committee to recommend that the State party offer her compensation commensurate with the physical, mental and social harm caused to her and to the seriousness of the violation of her rights. She also requests that the State party provide her free-of-charge counselling and therapy, including sign language interpreting, barrier-free education with interpreting and employment opportunities after study. She also requests that her family be provided with free-of-charge psychological counselling, pursuant to Republic Act No. 8505, section 3 (e), the absence of a government rape crisis centre in Metro Manila notwithstanding.

3.17 The author also asks the Committee to recommend that the State party take measures in its judicial, legislative and executive branches, in line with those requested in *Vertido v. the Philippines*[18] and with particular focus on the intersectionality of gender, disability and age. She also requests that a law be enacted making mandatory the use of interpreting in all judicial, quasi-judicial and investigative proceedings and public hearings involving deaf individuals; that issues resulting from the intersectionality of gender, disability and age be addressed in programmes and services of the relevant agencies of the State party; that a deaf sexual violence hotline be established through mobile phone text messaging to be accessible throughout the country; that a professional system of interpreting be

[18] *Vertido v. the Philippines*, paras. 3.15-3.17.

mandated, with legal and mental health counselling interpreting as priorities; that the Filipino sign language be recognized as the national sign language; that sexual violence studies be included in the educational curricula of colleges and universities; that schools with special education programmes for deaf girls and women be required to provide fully accessible guidance and counselling, including the hiring of deaf counsellors, in addition to fully accessible and age-appropriate education on sexuality and gender values; that the University of the Philippines be mandated to institute a national academic programme on sign language interpreting, including legal and mental health interpreting; and that jurisprudence on deaf issues be included in all law school curricula.

State party's observations on admissibility

4.1 On 18 June 2012, the State party argued that the communication was inadmissible under article 4, paragraph 1, of the Optional Protocol to the Convention because the author had failed to exhaust domestic remedies by filing a petition for certiorari. The State party challenges the author's argument that this remedy was ineffective and unavailable to her, asserting that a petition for certiorari is a sufficient remedy. It submits that, under rule 65 of the Rules of Court, a judgement of acquittal may be set aside if a petitioner for certiorari shows that the lower court, in acquitting the accused, committed not only reversible errors of judgement but also grave abuse of discretion amounting to lack or excess of jurisdiction, or a denial of due process, thus rendering the judgement void. Consequently, the accused cannot be considered at risk of double jeopardy. The Supreme Court, in *People of the Philippines v. De Grano et al.*, held that a judicial act was considered to be a grave abuse of discretion when it was performed in a capricious or whimsical exercise of judgement amounting to lack of jurisdiction. The abuse of discretion must be so patent and gross as to amount to an evasion of a positive duty, or to a virtual refusal to perform a duty enjoyed by law, as where the power is exercised in an arbitrary and despotic manner because of passion or hostility.[19]

4.2 The State party submits that, if the gender discrimination demonstrated by the trial court in the author's case was to the extent that she was deprived of due process, then the trial court's judgement may be set aside as void for lack of jurisdiction. The author should have referred the judgement to the Office of the Solicitor General to ascertain whether there were sufficient grounds for filing a petition for certiorari.

Author's comments on the State party's submission

5. On 22 October 2012, the author challenged the State party's observations on admissibility. She notes that the State party put forward the same arguments as in *Vertido v. the Philippines*. She therefore refers to the argumentation regarding the inaccessibility and ineffectiveness of the certiorari remedy made by the author in *Vertido*[20] and argues that the same applies to her case.

[19] Supreme Court, *People of the Philippines v. De Grano et al.*, General Register No. 167710.

[20] *Vertido v. the Philippines*, paras. 5.1-5.5.

State party's additional observations

6.1 By notes verbales of 5 December 2012 and 17 September 2013, the State party was invited to submit to the Committee observations on the merits of the communication. By a note verbale of 10 October 2013, the State party reiterated its previous observations to the effect that the author had failed to avail herself of the certiorari remedy. It argues that several private complainants in criminal cases have requested the Office of the Solicitor General to file a petition for certiorari in a judgement of acquittal or, where petitions have already been filed by private complainants, the Office has joined and adopted their petitions.[21]

6.2 The State party submits that the author may also pursue a civil claim, independently of the criminal prosecution. It argues that the acquittal of the accused does not automatically preclude a civil judgement against him or her, considering the lower evidentiary requirement in the civil case (preponderance of evidence) against the criminal case (proof beyond reasonable doubt).

6.3 The State party also argues that the author's allegation of denial of justice, on account of the trial court's failure to appreciate her evidence and gender-based myths and stereotyping, is groundless.

Issues and proceedings before the Committee concerning admissibility

7.1 In accordance with rule 64 of its rules of procedure, the Committee must decide whether the communication is admissible under the Optional Protocol. Pursuant to rule 72, paragraph 4, of its rules of procedure, it is to do so before considering the merits of the communication.

7.2 With regard to article 4, paragraph 1, of the Optional Protocol, requiring the exhaustion of domestic remedies, the Committee recalls that authors must use the remedies in the national legal system that are available to them and that would enable them to obtain redress for the alleged violations.[22] The Committee considers that the crux of the author's complaints relates to the alleged gender-based myths and stereotypes about rape and rape victims, in particular those with disabilities, which were relied upon in the judgement of the trial court and which led to the acquittal of the accused. It notes both the author's and the State party's explanations, according to which a verdict of acquittal was immediately final with no possibility of appeal. It also notes the State party's argument that the communication ought to be declared inadmissible under article 4, paragraph 1, of the Optional Protocol on the grounds of non-exhaustion of domestic remedies because the author has not availed herself of the special remedy of certiorari provided under section 1, rule 65, of the Rules of Court.

7.3 The Committee recalls its jurisprudence, especially the case of *Vertido v. the Philippines*, whereby it established that the remedy of certiorari was not available to the author, especially because it was available only to the people of the Philippines represented by the Office of the Solicitor General; that it was intended to correct errors of jurisdiction and not errors of judgement, whereas sex-based discrimination

[21] Reference is made to the cases of *People of the Philippines et al. v. Mangalindan, Jr.* (Special Civil Action PSY-03250, RTC Br-119, Pasay City); *People v. Nathaniel Mondejar et al.* (CA-GR SP. No. 04073, CA-Cebu City); and *People of the Philippines v. Hon. Anastacio D. Anghad* (CA-GR SP. No. 81209, CA-Manila).

[22] See *Vertido v. the Philippines*, para. 6.2.

was likely to be considered to be an error of judgement; and that certiorari was a civil remedy.[23] The Committee observes that the similarity of the factual and procedural backgrounds of the two cases and the absence of new pertinent information from the State party on the matter do not warrant another conclusion in the present case. In the circumstances, the Committee considers that it is not precluded by article 4, paragraph 1, of the Optional Protocol from examining the present communication.

7.4 In accordance with article 4, paragraph 2 (a), of the Optional Protocol, the Committee is satisfied that the same matter has not been and is not being examined under another procedure of international investigation or settlement.

7.5 The Committee recalls that it does not replace the national authorities in the assessment of the facts, nor does it decide on the alleged perpetrator's criminal responsibility.[24]

7.6 The Committee considers that the author's allegations under article 1 and article 2 (c), (d) and (f) of the Convention have been sufficiently substantiated for purposes of admissibility. Accordingly, it declares the communication admissible and proceeds to its examination on the merits.

Consideration of the merits

8.1 The Committee has considered the present communication in the light of all the information made available to it by the author and by the State party, as provided in article 7, paragraph 1, of the Optional Protocol.

8.2 The Committee notes that the author claims that the State party has failed to protect her from gender-based discrimination, in particular by not providing her with accessibility, on an equal basis with other victims, to the court, as a woman who is also deaf and mute. In this connection, it notes that the author's specific allegations on this account relate in particular to the use by the trial court of gender-based myths and stereotypes about rape and rape victims, which led to the acquittal of the alleged perpetrator; the court's failure to consider her vulnerability as a deaf girl and to provide reasonable accommodation on this basis, such as sign language interpreting; and the court's failure to conduct the proceedings without undue delay. The Committee will determine whether the above amounted to a violation of the rights of the author and a breach of the corresponding obligations of the State party to end discrimination in the legal process under article 1 and article 2 (c), (d) and (f) of the Convention.

8.3 With regard to the author's claim in relation to article 2 (c) of the Convention, the Committee recalls that the right to effective protection, which also includes the right to an effective remedy, is inherent in the Convention.[25] It falls within the ambit of article 2 (c), whereby States parties are required "to establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination", in conjunction with paragraph 24 (b) and (i) of general recommendation No. 19, whereby States parties should "ensure that laws against family violence and abuse, rape, sexual assault and other gender-based

[23] Ibid.

[24] Ibid., para. 8.2.

[25] *Vertido v. the Philippines*, para. 8.4.

violence give adequate protection to all women, and respect their integrity and dignity" and provide "effective complaints procedures and remedies, including compensation" to overcome all forms of gender-based violence. The Committee also recalls that, for a remedy to be effective, adjudication of a case involving rape and sexual offences claims should be dealt with in a fair, impartial, timely and expeditious manner.[26] It further recalls its general recommendation No. 18, where it observed that "disabled women are considered as a vulnerable group", "who suffer from a double discrimination linked to their special living conditions". In this context, the Committee emphasizes that it is crucial to ensure that women with disabilities enjoy effective protection against sex and gender-based discrimination by States parties and have access to effective remedies.

8.4 Having regard to the above, the Committee notes the undisputed fact that the author's case, in which only the author, her mother and the accused were heard in court, remained at the trial court level from 2006 to 2011. It also notes that the State party has not refuted the author's contention that the lack of adequate planning by the trial court, in addition to its lengthy correspondence with the Philippine Deaf Resource Center providing interpretation to her, contributed significantly to the undue delay in the proceedings.

8.5 The Committee observes that the free assistance of an interpreter in cases where the parties concerned, such as the accused or the witnesses, cannot understand or speak the language used in court, is a fundamental fair trial guarantee enshrined in human rights treaties[27] and further developed in the jurisprudence of treaty bodies.[28] It notes that, in the present case, the author, a young deaf woman, understood only written English and was unable to hear, whereas the proceedings, including the court hearings, were conducted both in spoken and written Filipino and English.

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[26] Ibid., para. 8.3.

[27] See, for example, article 14, paragraph 3 (f), of the International Covenant on Civil and Political Rights (ratified by the Philippines in 1986); article 40, paragraph 2 (vi), of the Convention on the Rights of the Child (ratified by the Philippines in 1990); and article 18, paragraph 3 (f), of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ratified by the Philippines in 1995). Article 21 (b) of the Convention on the Rights of Persons with Disabilities, ratified by the Philippines in 2008, requires that the States parties accept and facilitate "the use of sign languages […] by persons with disabilities in official interactions".

[28] For example, the jurisprudence of the Human Rights Committee shows that there is no right under article 14, paragraph 3 (f), of the International Covenant on Civil and Political Rights to have court proceedings conducted in the language of one's choice (see, for example, communications Nos. 221/1987 and 323/1988, *Yves Cadoret and Hervé Le Bihan v. France*, views adopted on 11 April 1991, para. 5.7; and communication No. 327/1988, *Hervé Barzig v. France*, views adopted on 11 April 1991, para. 5.6). Only if the accused or the witnesses have difficulties in understanding, or in expressing themselves in the court language, is it obligatory that the services of an interpreter be made available (see, for example, communication No. 327/1988, para. 5.5). Article 14, paragraph 3 (f), provides for the right to an interpreter during the court hearing only (see, for example, communications Nos. 273/1988, *B. d. B. et al. v. The Netherlands*, decision of 30 March 1989; 221/1987, *Yves Cadoret v. France*, decision of 11 April 1991; and 323/1988, *Hervé Le Bihan v. France*, decision of 9 November 1989). However, the Committee found that a confession that took place in the sole presence of the two investigating officers, one of whom typed the statement and the other provided interpretation into the author's language, deprived the latter of a fair trial under article 14, paragraph 1, of the International Covenant on Civil and Political Rights (see, for example, communication No. 1033/2001, *Nallaratnam Singarasa v. Sri Lanka*, views adopted on 21 July 2004, para. 7.2).

8.6 The Committee further notes the author's claim that sign language interpreting was not provided to her in the course of the investigation and in some of the court hearings, including during the pronouncement of the acquittal of the accused, even though she attended all the hearings; and that the burden of finding sign language interpreters and ensuring their presence in court was placed, at least partly, on the author.[29] The Committee notes that the State party has not contested the author's claim. Neither has it shown how the provisions regarding sign language interpreters, contained in Supreme Court Memorandum Order No. 59-2004 and Supreme Court, Office of the Court Administrator circular No. 104-2007, were applied in practice in the present case. In this connection, the Committee notes that, as pointed out by the author, and not disputed by the State party, according to a study by the Philippine Deaf Resource Center, the majority of cases brought by deaf complainants in the Philippines in 2006-2010 concerned rape, where fewer than 1 in 3 victims benefited from sign language interpreting.[30] It takes note of the author's contention as to the absence of a comprehensive policy in the Philippines promoting equality and accessibility of the justice system to deaf people, in particular women and girls, in addition to the absence of standards and procedures for interpreting for such litigants. It further notes that the State party's policy requires the provision of interpreting only when the deaf person "needs to be fully understood". It also notes, with reference to the study carried out by the Center, that some courts are unaware of this requirement and do not authorize the provision of sign language interpreting to a deaf party, considering it to be "hearsay" or an extra service to be borne by deaf litigants.

8.7 The Committee notes that the above-mentioned information and claims remained uncontested by the State party. In the light of the above, the Committee considers that, in the circumstances of the present case, the provision of sign language interpretation was essential to ensure the author's full and equal participation in the proceedings, in compliance with the principle of equality of arms and hence to guarantee her the enjoyment of the effective protection against discrimination within the meaning of article 2 (c) and (d) of the Convention, read in conjunction with the Committee's general recommendation No. 19.[31]

8.8 With regard to the author's claim under article 2 (f) of the Convention, the Committee recalls that the Convention places obligations on all State authorities and that States parties are responsible for judicial decisions that violate the provisions of the Convention. It notes that, under this provision of the Convention, the State party is to take appropriate measures to modify or abolish not only existing laws and regulations, but also customs and practices that constitute discrimination against women. In this regard, the Committee stresses that stereotyping affects women's right to a fair and just trial and that the judiciary must take caution not to create inflexible standards of what women or girls should be or what they should have done when confronted with a situation of rape based merely on preconceived notions of what defines a rape victim.[32] In the particular case, the compliance of the State party's obligation to banish gender stereotypes on the grounds of article 2 (f) needs to be assessed in the light of the level of gender, age and disability sensitivity applied in the judicial handling of the author's case.

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[29] See paras. 2.3, 3.9 and 3.14 above.

[30] See para. 3.14 above. Precisely, according to the study by the Philippine Deaf Resource Center, only 28 of the 80 cases involving a deaf party or witness had interpreters.

[31] See para. 8.3 above.

[32] *Vertido v. the Philippines*, para. 8.4.

8.9 The Committee notes that, under the doctrine of stare decisis, the court referred to guiding principles derived from judicial precedents in applying the provisions of rape in the Revised Penal Code of 1930 and in deciding cases of rape with similar patterns. At the outset of the judgement, the Committee notes a reference in the judgement to three general guiding principles used in reviewing rape cases. With regard to the alleged gender-based myths and stereotypes spread throughout the judgement,[33] the Committee, after a careful examination of the main points that determined the judgement, notes that, first, the trial court expected a certain type of behaviour from the author that an ordinary Filipina female rape victim had to demonstrate in the circumstances, i.e. to "summon every ounce of her strength and courage to thwart any attempt to besmirch her honour and blemish her purity". Second, the court assessed the author's behaviour against this standard and found that her "demeanour was inconsistent with that of an ordinary Filipina" and the "reasonable standard of human conduct" because she had not sought to escape or resist the offender, in particular by making noise or using force. The court stated that "her failure to even attempt to escape […] or at least to shout for help despite opportunities to do so casts doubt on her credibility and renders her claim of lack of voluntariness and consent difficult to believe". The Committee finds that those findings in themselves reveal the existence of strong gender stereotyping resulting in sex and gender-based discrimination and disregard for the individual circumstances of the case, such as the author's disability and age.

8.10 The Committee further notes that the gender stereotypes and misconceptions employed by the trial court included, in particular, lack of resistance and consent on behalf of the rape victim and the use of force and intimidation by the perpetrator. It recalls its jurisprudence that to expect the author to have resisted in the situation at stake reinforces in a particular manner the myth that women must physically resist the sexual assault. It reiterates that there should be no assumption in law or in practice that a woman gives her consent because she has not physically resisted the unwanted sexual conduct, regardless of whether the perpetrator threatened to use or used physical violence.[34] It also reiterates that lack of consent is an essential element of the crime of rape, which constitutes a violation of women's right to personal security, autonomy and bodily integrity.[35] In this regard, the Committee notes that, notwithstanding the specific recommendation to the State party to integrate the element of "lack of consent" into the definition of rape in the Revised Penal Code of 1930,[36] the State party has not reviewed its legislation.

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[33] See paras. 3.3-3.6 above.

[34] See *Vertido v. the Philippines*, para. 8.5.

[35] See also *Vertido v. the Philippines*, para. 8.7.

[36] Ibid., para. 8.9 (a.i.). Article 266-A of the Revised Penal Code of the Philippines, as amended by Republic Act No. 8353 of 1997, reads "Rape: When and How Committed. Rape is committed:

1. By a man who shall have carnal knowledge of a woman under any of the following circumstances:
   (a) Through force, threat, or intimidation;
   (b) When the offended party is deprived of reason or otherwise unconscious;
   (c) By means of fraudulent machination or grave abuse of authority; and
   (d) When the offended party is under 12 years of age or is demented, even though none of the circumstances mentioned above be present.
2. By any person who, under any of the circumstances mentioned in paragraph 1 hereof, shall commit an act of sexual assault by inserting his penis into another person's mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person."

8.11 The Committee further recognizes that the author has suffered material and moral damage and prejudice, in particular by the excessive duration of the trial proceedings, by the court's failure to provide her with the free assistance of sign language interpreters and by the use of the stereotypes and gender-based myths and disregard for her specific situation as a mute and deaf girl in the judgement.

9. Acting under article 7, paragraph 3, of the Optional Protocol to the Convention, and in the light of all the above considerations, the Committee is of the view that the State party has failed to fulfil its obligations and has thereby violated the rights of the author under article 2 (c), (d) and (f), read in conjunction with article 1 of the Convention and general recommendations Nos. 18 and 19 of the Committee. The Committee makes the following recommendations to the State party:

(a) Concerning the author of the communication:

(i) Provide reparation, including monetary compensation, commensurate with the gravity of the violations of the rights of the author;

(ii) Provide free-of-charge psychological counselling and therapy for the author and her affected family members;

(iii) Provide barrier-free education with interpreting;

(b) General:

(i) Review the legislation of rape so as to remove any requirement that sexual assault be committed by force or violence, and any requirement of proof of penetration, so as to place the lack of consent at its centre;

(ii) Review the appropriate legislation and practice in order to guarantee the free and adequate assistance of interpreters, including in sign language, at all stages of the proceedings whenever necessary;

(iii) Ensure that all criminal proceedings involving rape and other sexual offences are conducted in an impartial and fair manner and free from prejudices or stereotypical notions regarding the victim's gender, age and disability;

(iv) Provide adequate and regular training on the Convention, the Optional Protocol thereto and the Committee's general recommendations, in particular general recommendations Nos. 18 and 19, to the judiciary and legal professionals so to ensure that stereotypes and gender bias do not affect court proceedings and decision-making.

10. In accordance with article 7, paragraph 4, of the Optional Protocol, the State party shall give due consideration to the views of the Committee, together with its recommendations, and shall submit to the Committee, within six months, a written response, including information on any action taken in the light of the views and recommendations of the Committee. The State party is also requested to publish the Committee's views and recommendations and to have them translated into Filipino and recognized regional languages, as appropriate, and widely disseminated in order to reach all relevant sectors of society.

[Adopted in Arabic, Chinese, English, French, Russian and Spanish, the English text being the original version.]