



**Convention on the Elimination
of All Forms of Discrimination
against Women**

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**Committee on the Elimination of Discrimination
against Women**

Communication No. 30/2011

**Decision adopted by the Committee at its fifty-eighth session
(30 June-18 July 2014)**

Submitted by: M. S. (represented by counsel, H. Harry L. Roque Jr.)
Alleged victim: The author
State party: The Philippines
Date of communication: 10 February 2011 (initial submission)
References: Transmitted to the State party on 4 April 2011
(not issued in document form)
Date of adoption of decision: 16 July 2014

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Annex

Decision 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-eighth session)

Communication No. 30/2011*

<i>Submitted by:</i>	M. S. (represented by counsel, H. Harry L. Roque Jr.)
<i>Alleged victim:</i>	The author
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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 16 July 2014,

Adopts the following:

Decision on admissibility

1. The author of the communication is M. S., a Filipina born in 1951, who claims to be a victim of a violation by the Philippines of articles 1, 2 (c) and (f), 5 (a) and 11 (1)(f) of the Convention on the Elimination of All Forms of Discrimination against Women. The Convention and the Optional Protocol thereto entered into force for the State party on 4 September 1981 and 12 February 2004, respectively. The author is represented by counsel, H. Harry L. Roque Jr.

Facts as presented by the author

2.1 The author worked for a telecommunications corporation (hereinafter “the company”) from 16 August 1998 to 30 June 2000 as Director of the Market and Communications Department. She was supervised by Mr. S., Vice-President and Head of the Business Division, and his superior, Mr. G., Executive Vice-President and Chief Operating Officer. In the early stages of her employment and at the end of her first year, the author was praised for her performance and was awarded a performance rating of more than 90 per cent upon permanency.

* The following members of the Committee participated in the examination of the present communication: Nicole Ameline, Barbara Bailey, Olinda Bareiro-Bobadilla, Niklas Bruun, Náela Gabr, Hilary Gbedemah, Yoko Hayashi, Dalia Leinarte, Violeta Neubauer, Theodora Nwankwo, Pramila Patten, Silvia Pimentel, Maria Helena Pires, Biancamaria Pomeranzi, Patricia Schulz, Dubravka Šimonovič and Xiaoqiao Zou. The text of an individual opinion (dissenting) by Committee member Patricia Schulz is appended to the present document.

2.2 In May 1999, at a cocktail party thrown by the company, Mr. G. asked the author to sit down next to him so that he could better look at her legs (the author explains that she was wearing a short skirt). On 20 August 1999, the author attended a company-wide sales conference in Manila, where, while asking questions about her work, Mr. G. deliberately dropped his hand on her lap and repeatedly stroked her thighs. Following the conference, Mr. G. became increasingly attentive to her and frequently visited her office to engage her in conversation. In October 1999, the author attended a party at the residence of a colleague. Mr. G. was present and insisted that she should dance with him. Unwilling to cause a scene, she danced a few steps with him and then sought to sit down, but Mr. G. blocked her path and pinched her waist.

2.3 On 19 November 1999, the author attended a party at the residence of another employee of the company. She sat on the end of a sofa. Mr. G. sat beside her so closely that he pinned her to the adjacent arm of the sofa and then proceeded to hold her hand and massage it, under the guise of looking at the ring that she was wearing. Feeling uncomfortable, she removed the ring and gave it to Mr. G. in the hope that the physical touching would stop. At that point, Mr. G. slid his hand underneath a pillow that the author had placed between them to separate them and poked her vagina several times. She was unable to free herself because she was hemmed in by the arm of the sofa. Upon pulling herself free, she stood up to walk away, but Mr. G. then pulled her to the dance floor, pressed her close to him and moved his hand across her back, feeling her body. The author sought to release herself subtly, so as not to cause a scene, but Mr. G. whispered to her, "Do not push me, I could make life in the company easy for you; I can take care of your promotion and give you rewards". The author once again sought to move away, but Mr. G. groped her breast with his hand, caressed her back and reached inside her blouse to rub from her brassiere down to her buttocks. Upon another attempt by the author to resist, Mr. G. stated that her promotion would be accelerated if she would only "be nice" to him. She elbowed her way out of his grip and left the party; her ring remained with Mr. G. On 11 February 2000, the author attended a corporate dinner party at which Mr. G. instructed her to start the line for the buffet and rubbed his hand across her back to feel her brassiere.

2.4 After the incident of 19 November 1999, the author complained to her immediate superior, Mr. S., about the actions of Mr. G., stating that she intended to file a complaint against him. Mr. S. discouraged her from doing so, suggesting that it would be better for her if she simply forgot about it. He also offered to attempt to obtain her ring from Mr. G. Following that conversation, the author noticed an abrupt change in the attitude and behaviour of Mr. S. towards her. He began shouting at her, embarrassing her during regular Business Division meetings and refusing to endorse the projects and programmes that she proposed.

2.5 In February 2000, after a meeting, Mr. S. asked the author to stay with him in his office and asked her in a raised voice, "Mr. G. asked me why you could not look straight at him, as if I've forbidden you?". She replied, "You know very well what he did to me and I didn't want him to think I approved of his advances". At a meeting held on 28 March 2000, Mr. S. spoke to the author in an angry and abusive manner. Two days later, he said to the author, "How come you claim you know so much yet nothing ever gets done in your department?". The author claims that the abusive conversation with Mr. S. caused her anxiety and stress to the extent that she took leave for several days in April 2000.

2.6 The hostile working environment notwithstanding, she continued to work at her optimal level and was therefore shocked to discover that Mr. S. had rated her performance at 60 per cent in April 2000, considering her previous achievement of more than 90 per cent. After she asked Mr. S. to explain her rating, he put increasing pressure on her to boost her department's productivity, which led to an altercation on 27 June 2000 when the author raised the lack of concern shown by Mr. S. for her department and his stonewall treatment of her recommendations and complaints. Mr. S. shouted at the author that if she could no longer handle her work it would be better for her to resign. She replied that she would resign and did so on 27 June 2000 (taking effect on 30 June 2000).

2.7 In January 2001, the author had a conversation with Ms. T., a mutual friend of both the author and Mr. G. She suggested that the author should seek to retract her resignation in order to be offered a retirement package by Mr. G. The author, who was depressed and still in shock following her experience at the company, asked to retract her resignation. After some time, the author was informed that Mr. G would not rehire her on account of what had happened. The author felt exasperated that Mr. G. continued to refuse to acknowledge what he had done to her.

2.8 The author initiated criminal proceedings against Messrs. S. and G., along with labour proceedings against the company and Messrs. S. and G. Concerning the criminal case chronology, the author filed criminal charges of sexual harassment and acts of lasciviousness against Messrs. S and G. before the National Bureau of Investigation on 28 May 2001. On 11 September 2002, the Office of the City Prosecutor dismissed her complaint for lack of probable cause. The Assistant City Prosecutor doubted the author's credibility owing to a psychological evaluation conducted of her, the apparent impossibility of the incident of 19 November 1999 going unnoticed by other guests, the author's failure to put up great resistance and protest in response to the sexual assaults and what was termed the "lackadaisical attitude" of the author in initiating action against Messrs. S. and G. 18 months after the events. The author filed a motion for reconsideration and, on 30 April 2003, the Office of the City Prosecutor reconsidered the previous decision, stating that merit had been found in the allegations against Mr. G. regarding the events of November 1999 and recommended that the author should file a complaint for acts of lasciviousness against Mr. G. only.

2.9 The respondents (Messrs. S. and G.) filed a motion for reconsideration, which was denied in a resolution of 21 May 2004 because there was no sufficient basis or justifiable reason to modify or reverse the resolution of 30 April 2003. Mr. G. filed a petition for review on an unspecified date. The criminal case was dismissed by the Metropolitan Trial Court on 31 March 2005, given that Mr. G had passed away on 1 December 2004.

2.10 Concerning the labour case chronology, the author filed a complaint against the company and Messrs. S. and G. for unlawful dismissal with the Labour Arbiter on 20 December 2001. On 24 April 2003, the Labour Arbiter dismissed her case, stating that the author had voluntarily resigned and that it had not been sufficiently substantiated that she had been forced to resign owing to sexual and professional harassment.

2.11 The author appealed to the National Labour Relations Commission, but her appeal was dismissed on 18 August 2003. She then filed a motion for

reconsideration, which was denied on 30 January 2004 on the ground that no errors had been made by the Commission in its decision.

2.12 The author appealed against the previous decision to the Court of Appeals. The Court annulled the previous decisions regarding the author's case, finding, among other things, that various circumstances had been "conveniently ignored" by the Labour Arbiter and the National Labour Relations Commission. The Court further stated that the author's resignation had been a form of constructive dismissal and that the sexual harassment claims were inextricably linked to that constructive dismissal. Moreover, the Court affirmed that the author's psychological report had been used selectively, to her detriment.

2.13 A motion for reconsideration was filed by Messrs. S. and G. and the company, which was denied on 10 November 2003. Subsequently, the company and Messrs. S. and G. appealed to the Supreme Court, which found in their favour in its decision of 26 June 2006 and thus reinstated the decision of the National Labour Relations Commission of 18 August 2003. On 28 August 2006, the Court denied the motion for reconsideration filed by the author on 22 July 2006. The author claims that all available domestic remedies have therefore been exhausted. She requests that the State party compensate her for the suffering that she endured owing to the violation of her rights.

Complaint

3.1 The author submits that the State party has failed to fulfil its obligations under the Convention. While some stages of the author's national labour and criminal cases were heard before the Optional Protocol entered into force for the Philippines, those judicial proceedings occurring after the entry into force of the Protocol are directly subject to scrutiny by the Committee. Moreover, those judicial proceedings occurring before the entry into force of the Protocol provide essential background and context to the communication.

3.2 The author claims a violation of her rights under articles 1, 2 (c) and (f), 5 (a) and 11 (1)(f), read in conjunction with the Committee's general recommendation No. 19. The alleged violations are specified in three distinct claims.

3.3 First, according to the author, the reasoning of the Supreme Court in its decision of 26 June 2006 relied heavily and inappropriately upon gender myths and stereotypes that are ultimately discriminatory against women. The author asserts that the State party has not provided her with legal protection on an equal basis with men, nor has it protected her against discrimination through competent national tribunals, contrary to its obligations under article 2 (c) of the Convention. Specifically in relation to the Court's decision of 26 June 2006, the author refers to the following extracts:

"As regards the five incidents of sexual harassment attributed to [Mr. G], a discussion of even only one of them betrays its non-conformity to human experience.

...

"[The author] claimed that she was cornered by [Mr. G.] on a sofa in such a way that she was virtually pinned against its side, making it impossible for her to elude his advances. It is not disputed that it was raining at the time and that

the about 60 guests had no choice but to stay in the living room and covered lanai of [a] residence. Could not have at least one noticed the incident? She presented no one, however. On the other hand, [Mr. P.] denied her claim

...

“[The author] went on to claim that [Mr. G.] crept his hand under a throw pillow and ‘poked’ her vagina several times. She justified her failure to flee by claiming that she was ‘hemmed in by the arm of the sofa’. But if indeed [Mr. G.] did such a condemnable act, could she not have slapped him or stood up and/or left?”

...

“Yet still, by her claim, [the author] danced on the same occasion with [Mr. G.], albeit allegedly through force, during which he pressed her close to him and moved his hand across her back to feel her body. Any woman in her right mind, whose vagina had earlier been ‘poked’ several times without her consent and against her will, would, after liberating herself from the clutches of the person who offended her, raise hell”. “But [the author] did not”.

...

“If indeed [the author] was sexually harassed, her resignation would have been an effective vehicle for her to raise it. Instead, however, of raising it in her resignation letter, ... she even thanked the petitioner [Mr. S.] ‘for the opportunity of working with [him]’. Again, this is contrary to human nature and experience. For if indeed the petitioner [Mr. S.] was her sexual harasser, she would have refrained from being cordial to him on her resignation. Not only that, by her claim (in her affidavit), she had an altercation with [Mr. S.] on June 27, 2000, the day she filed her resignation letter dated June 28, 2000 (post date). So why such cordiality?”

3.4 That excerpt, according to the author, demonstrates the gender myths used by the Supreme Court, especially that women must attempt to escape, if not succeed in escaping, from sexual assaults (if they do not attempt to escape or succeed in escaping, then no sexual assault could possibly have occurred); if women are unable to escape from a sexual assault, then they must instead respond with physical violence against their aggressor; immediately upon escape from sexual violence (unless psychologically deranged), women must take strong and forceful action in response to the violence; and women must be actively hostile to their harasser (any cordiality or politeness on the woman’s part undermines the existence of harassment in the first place).

3.5 In the author’s opinion, by upholding and perpetuating those gender myths, the Supreme Court failed to perform the duties of the State party to abolish the customs and practices which constitute discrimination against women, in accordance with article 2 (f) of the Convention, and to eliminate prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women, in accordance with article 5 (a) of the Convention. The author is of the opinion that the Court did not consider any other factors that could determine a person’s behaviour in such a situation, such as the psychological effects of sexual violence, the power relations between an employer and an employee and the social and cultural influences at play.

Accordingly, the gender stereotyping applied by the Court directly impeded her right to a fair trial, thereby also potentially denying her access to a remedy. This means that the State party failed to provide her with effective protection under article 2 (c) of the Convention.

3.6 Second, the author claims that the State party has failed to protect her right to non-discrimination in the workplace. By basing its decision on gender myths and misconceptions and thereby not providing a fair and impartial national tribunal, the Supreme Court failed to take all appropriate measures to eliminate discrimination against women in the workplace, in accordance with article 11 (1) of the Convention. In addition, article 11 (1)(f) of the Convention was breached by the failure to protect the author's rights to health and safety in the workplace. The author asserts that the State party has failed to provide her with an effective remedy for the sexual violence that she suffered in the workplace. Sexual harassment is, according to general recommendation No. 19, a major barrier to employment equality and constitutes a health and safety issue.

3.7 Third, the author contends that the decision of the Supreme Court was defective on grounds other than gender discrimination. In addition, according to the author, the Court's refusal of 28 August 2006 to give suit to her motion for reconsideration was not an impartial one, as demonstrated by the selective nature of its reasoning and analysis.

3.8 The author submits that the Supreme Court failed to consider the professional and sexual harassment that the Court of Appeals had extensively discussed. The issue of constructive dismissal comprised elements of both types of harassment. Indeed, the two are so strongly interlinked that it was a serious error for the Supreme Court to separate the two issues and subsequently focus heavily on the sexual aspects alone. Moreover, the Supreme Court chose to discredit the findings of the medico-legal report by Dr. M. (which had been carefully examined and discussed by the Court of Appeals), with an arbitrary dismissal of Dr. M.'s experience based solely upon Dr. M.'s professional title of "clinical psychologist". This unfounded and arbitrary approach underscores the bias and determination against the author that is found throughout the Supreme Court's decision.

3.9 According to the author, the Supreme Court also seized upon the author's delay in filing proceedings. While conceding that there was "no fixed period within which an alleged victim of sexual harassment may file a complaint", the author was then castigated for failing to bring charges expeditiously. The Court yet again neglected to consider the findings of the Court of Appeals and ignored the issues of psychological stress and varying emotional thresholds of different individuals.

State party's observations

4.1 The State party submitted its observations by a note verbale of 8 March 2012. It explains that, while it understands the author's complaint, it must address it in conformity with the rule of law and the interest of justice. It points out that, in the Supreme Court's determination of the legal right and liability of the parties in the case involving the author, fairness required an application of the practical test of common human experience, which is consistently applied in the Philippines and in other jurisdictions. Unfortunately, the evidence presented by the author lacked sufficient substance and credibility to pass the fairness test.

4.2 According to the State party, the Supreme Court's determination in the case did not involve discrimination against the author on account of her gender. The State party reiterates its firm policy of upholding the rights of women under the Convention and stresses that it seeks to promote and protect women's rights in all aspects of governance.

4.3 The State party adds that within the Supreme Court there is a committee on gender responsiveness in the judiciary,¹ which is engaged in continuing efforts to train judges, lawyers and court personnel on gender sensitivity and gender myths and stereotypes, in particular in relation to handing down court decisions. The State party believes that gender responsiveness and awareness in the judiciary is best served by continuing education.

Author's comments on the State party's submission

5.1 On 16 July 2012, the author submitted comments on the State party's observations. She first notes that, in those observations, the State party failed to address the gender myths to which the Supreme Court referred in its decision (see para. 3.4).

5.2 The author contends that the so-called "common human experience" is reminiscent of sexism. She notes that, according to such logic, every Filipina caught in an exploitative situation would thus be expected to physically assault her attacker or molester. The author adds that the State party does not take into account the other factors that may determine a person's behaviour in such a situation, such as the psychological effects of the sexual violence, the relationship of subordination between an employer and an employee (let alone between a sexual harasser and a victim) and the social and cultural influences. Instead, the author is scrutinized solely by reference to a rigid gender stereotype, to her detriment.

5.3 The author refers to the Committee's views in *Vertido v. the Philippines*,² where, in paragraph 8.4, the Committee noted that, by articles 2 (f) and 5 (a), the State party was obligated to take appropriate measures to modify or abolish not only existing laws and regulations, but also customs and practices that constituted discrimination against women. In that regard, the Committee stressed that stereotyping affected 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 or a victim of gender-based violence, in general.

5.4 The author notes that the State party's arguments on the uniformity of human experience are discriminatory and deny the provision of legal protection on an equal basis with men; such arguments undermine the competence of the Supreme Court, contrary to article 2 (c) of the Convention. The State party thus admits, according to the author, that the Court continues in its failure to abolish customs and practices which constitute discrimination against women, under article 2 (f) of the Convention, and to eliminate prejudices and customary and all other practices which are based on the idea of the inferiority and the superiority of either of the sexes or on

¹ Created on 27 March 2003.

² Communication No. 18/2008, *Vertido v. the Philippines*, views adopted on 22 September 2010.

stereotyped roles for men and women, for purposes of article 5 (a) of the Convention.

5.5 The author next expresses the opinion that the State party's contention that gender responsiveness and awareness is best served through continuing education does not serve to support gender responsiveness and awareness, but instead continues the stereotypical understanding of gender because it insists on a sexist construction of common human experience.

5.6 According to the author, by refusing to admit the sexist nature of the so-called "common human experience", the State party and its Supreme Court continue in their failure to take all appropriate measures to eliminate discrimination against women in the field of employment, as required under article 11 (1) of the Convention.

5.7 The author contends that the State party's perpetuation of gender myths also violates article 11 (1)(f) of the Convention, given that it constitutes a failure to protect the author's rights to health and safety in the workplace, considering that, under paragraphs 17 and 18 of general recommendation No. 19, sexual harassment is a major barrier to equality in employment and constitutes a health and safety problem.

5.8 The author adds that the State party continues to fail to provide a competent national tribunal, thus depriving her of equal protection under the law and just and favourable conditions of work, for purposes of paragraphs 7 (e) and (h) of general recommendation No. 19. The State party has also failed, according to the author, to provide her with an effective legal remedy for the sexual violence that she suffered in the workplace, for purposes of paragraph 24 (t)(i) of the general recommendation.

5.9 In the light of the above considerations, the author invites the Committee to recommend that the State party compensate her for the suffering that she endured owing to the violation of her rights.

Issues and proceedings before the Committee concerning admissibility

6.1 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 66 of its rules of procedure, the Committee may examine the admissibility of the communication separately from the merits.

6.2 As required under article 4 (2)(a) of the Optional Protocol, the Committee is satisfied that the same matter has not already been examined or is being examined under another procedure of international investigation or settlement.

6.3 The Committee has noted the author's claims under articles 1, 2 (c) and (f), 5 (a) and 11 (1)(f) of the Convention, read in conjunction with the Committee's general recommendation No. 19. According to her, the reasoning of the courts relied heavily upon gender myths and stereotypes that are ultimately discriminatory against women and that deprived her of a fair trial and the Supreme Court failed to take all appropriate measures to eliminate discrimination against women in the workplace. The Committee notes that the State party has pointed out that the evidence presented by the author in court lacked substance; thus the Court's determination in the case was based on the lack of substantiation of her claims. It

also notes that the State party has pointed out that the decision of the Court was not imbued with gender-based discrimination.

6.4 The Committee notes that, in substance, the author's claims aim at challenging the manner in which the national courts, and the Supreme Court in particular, assessed the circumstances of her case and applied national law. The Committee emphasizes 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.³ The Committee, first, considers that it is generally for the courts of the States parties to the Convention to evaluate the facts and evidence or the application of national law in a particular case, unless it can be established that this evaluation was biased or based on gender harmful stereotypes that constitute discrimination against women, was clearly arbitrary or amounted to a denial of justice. In this connection, the Committee notes that nothing in the material before it suggests elements likely to demonstrate that the examination by the courts of the author's case, whether regarding her claims of sexual harassment and acts of lasciviousness or her labour dispute, suffered from any such defects.

6.5 The Committee has further taken note of the author's reference to *Vertido* when requesting the Committee to apply similar *modus decidendi* in the present case. It considers, however, that the two cases and the claims of violations of the Convention contained therein are fundamentally different. The Committee takes note of the fact that the Supreme Court has examined the author's claims of sexual harassment and gender-based discrimination but found that those allegations were not corroborated by sufficient evidence. In the circumstances, and in the absence of any other pertinent information on file, the Committee notes that, even if it could be argued that some aspects of gender-based stereotypes may appear to be indicated in the Court's decision, they do not suffice, per se, to demonstrate that they have negatively affected the Court's assessment of the facts and the outcome of the trial, or to corroborate the author's claims of a violation of articles 1, 2 (c) and (f), 5 (a) and 11 (1)(f) of the Convention for purposes of admissibility. In the circumstances, the Committee considers that the communication is insufficiently substantiated for purposes of admissibility and that it is therefore inadmissible under article 4 (2)(c) of the Optional Protocol.

7. The Committee therefore decides:

(a) That the communication is inadmissible under article 4 (2)(c) of the Optional Protocol;

(b) That this decision shall be communicated to the State party and to the author.

³ See, for example, communication No. 34/2011, *R. P. B. v. the Philippines*, views adopted on 21 February 2014, para. 7.5.

Appendix

Individual opinion of Committee member Patricia Schulz (dissenting)

1. I disagree with the analysis of the Committee leading to the finding that the communication is insufficiently substantiated for purposes of admissibility and that it is therefore inadmissible under article 4 (2)(c) of the Optional Protocol (para. 6.5). I concur that the communication is inadmissible, but on another ground, that of article 4 (2)(d) regarding an abuse of the right to submit a communication. I will treat each question in a separate section.

Substantiation of the communication by the author

2. To introduce my position, I consider that, for admissibility purposes, the author has brought sufficient elements to substantiate her claim. Indeed, I find that the quotations and/or the information provided by the author and presented in paragraphs 2.1 to 2.8 and 3.1 to 3.9 cast doubt as to the absence of discriminatory treatment by some of the authorities that dealt with her criminal proceedings and her labour law complaint. I remark that the State party has not discussed these elements, in order to sufficiently dispel doubt, at the admissibility stage (paras. 4.1-4.3). The author has stressed, in her comments on the State party's submission (paras. 5.1-5.9), this absence of response to her claim that the Supreme Court referred to gender myths.

3. In particular, I find that paragraphs 2.8, 3.3 and 5.2 to 5.4 are convincing regarding the existence of a gender-stereotyped approach by the Assistant City Prosecutor (para. 2.8), the Labour Arbiter and the National Labour Relations Commission (paras. 2.10-2.11), as well as by the Supreme Court (paras. 3.3-3.8). This discriminatory approach by the Assistant City Prosecutor (para. 2.8), the Labour Arbiter and the National Labour Relations Commission (paras. 2.10-2.11) had been, according to the author, recognized by the Court of Appeals (para. 2.12) in a detailed analysis that underlined that elements had been "conveniently ignored" and that the letter of resignation had been a "form of constructive dismissal".

4. I have italicized the elements where I believe that we can see gender stereotyping in action:

(a) Paragraph 3.3: "As regards the five incidents of sexual harassment attributed to [Mr. G.], *a discussion of even only one of them betrays its non-conformity to human experience*"... [The author] claimed that she was cornered by [Mr. G.] on a sofa in such a way that she was virtually pinned against its side, making it impossible for her to elude his advances ... But if indeed [Mr. G.] did such a condemnable act, *could she not have slapped him or stood up and/or left? ... Any woman in her right mind, whose vagina had earlier been 'poked' several times without her consent and against her will, would, after liberating herself from the clutches of the person who offended her, raise hell. But the author did not*";

(b) Paragraph 3.3 continues regarding Mr. S and her resignation letter: "If indeed [the author] was sexually harassed, her resignation would have been an effective vehicle for her to raise it. Instead, however, of raising it in her resignation letter ... she even thanked the petitioner [(Mr. S.)] 'for the opportunity of working with him'. *Again, this is contrary to human nature and experience*";

(c) In paragraph 3.4, the author analyses the gender myths used in her eyes by the Supreme Court, including “*especially that women must attempt to escape, if not succeed in escaping, from sexual assaults ... then they must instead respond with physical violence against their aggressor; immediately upon escape from sexual violence (unless psychologically deranged), women must take strong and forceful action in response to the violence; and women must be actively hostile to their harasser (any cordiality or politeness on the woman’s part undermines the existence of harassment in the first place)*”;

(d) In paragraph 3.5, it is summed up by saying that “the author is of the opinion that the Court did not consider any other factors that could determine a person’s behaviour in such a situation, such as the *psychological effects of sexual violence, the power relations between an employer and an employee and the social and cultural influences at play*”;

(e) Paragraph 3.8 presents the reproach that the author made to the Supreme Court regarding its refusal to give suit to her motion for reconsideration regarding the separation of the two complaints and the concentration on the sexual aspects (Mr. G.) and not the professional part (Mr. S), with the author stating: “Indeed, the two are so strongly interlinked that it was a *serious error for the Supreme Court to separate the two issues and subsequently focus heavily on the sexual aspects alone ... This unfounded and arbitrary approach underscores the bias and determination against the author that is found throughout the Supreme Court’s decision*”;

(f) Lastly, paragraph 3.9 presents the author’s reproach that the 18-month delay in filing her claims was used against her. This argument is discussed below.

5. The State party’s observations under paragraphs 4.1 to 4.3 indicate that, while the State party “understands the author’s complaint, it must address it in conformity with the rule of law and the interest of justice. It points out that, in the Supreme Court’s determination of the legal right and liability of the parties in the case involving the author, fairness required an application of the practical test of common human experience, which is consistently applied in the Philippines and in other jurisdictions. Unfortunately, the evidence presented by the author lacked sufficient substance and credibility to pass the fairness test.”

6. Neither of the following two paragraphs of the State party’s observations discuss the claims made by the author in paragraphs 3.1 to 3.9, which why I cannot follow the Committee’s reasoning in paragraph 6.4 concluding that “nothing in the material before it suggests elements likely to demonstrate that the examination by the courts of the author’s case, whether regarding her claims of sexual harassment and acts of lasciviousness or her labour dispute, suffered from any such defects”. Indeed, without a discussion of the elements in paragraphs 3.1 to 3.9 by the State party, I can follow the reasoning of the author regarding the use of gender myths by the Supreme Court and the sexism of the reliance on the “so-called ‘human experience’” (paras. 5.1-5.7). These elements are also not discussed in the views of the Committee in paragraphs 6.3 to 6.5.

7. I therefore consider that the author has sufficiently substantiated the gender-stereotyped character of the proceedings before some of the national authorities and especially before the Supreme Court, as expressed in paragraphs 3.3 to 3.8 and 5.1 to 5.7 on the discriminatory nature of “the uniformity of human experience”, the lack of granting her the “right to a fair trial, thereby potentially denying her access

to a remedy” and the denial of “the provision of legal protection on an equal basis with men”, so that the communication is, in my eyes, admissible.

8. As mentioned earlier, however, I find that there is another ground on which the communication should have been declared inadmissible, which I discuss below.

Delay in filing the communication amounting to an abuse of the right to present a communication

9. I can only to a limited extent follow the author’s reasoning summed up in paragraph 3.9 regarding the 18-month delay in filing the criminal and labour law charges. Given that Filipino law has no statute of limitations when it comes to filing charges on the basis of sexual harassment, the author could indeed sue 18 months after the facts, as she did. She claims that the 18-month delay in filing her claims was used against her, that “she was then castigated for failing to bring charges expeditiously”. In paragraph 3.9, it is indicated that “the Court yet again neglected to consider the findings of the Court of Appeals and ignored the issues of psychological stress and varying emotional thresholds of different individuals”.

10. I should like to stress that many countries, of common law or civil law, have statutes of limitation (meaning limitation periods or periods of prescription) defining the time in which to introduce legal proceedings in cases of sexual and/or moral harassment. These are sometimes as short as three months. Such very short statutes of limitation present victims with grave obstacles and put great pressure on them. Indeed, victims of sexual and/or moral harassment often experience a situation of sideration (being stunned, in shock), preventing them from reacting immediately and/or “adequately”. They need time to recover from the trauma experienced and to regain the capacity to defend themselves through legal proceedings: that is why there should be a balance between their legitimate needs and the need to have the cases introduced in a reasonable time frame. Where the statutes of limitation are extremely short, victims risk being denied access to justice if they need a longer time than those statutes foresee to recover from the trauma that they have experienced before being able to face a judicial procedure, whether civil, criminal and/or administrative, depending on the cases and the possibilities offered by national legislation.

11. Here, the author took 18 months to lodge her criminal and labour law charges. It seems to me that the Court could rightly remark that she had not acted “expeditiously”. Even taking into account the trauma suffered by the author, there are valid reasons to request that court proceedings be introduced more rapidly, among others to facilitate the administration of justice, ensure legal security and the possibility of bringing proof and counter-proof to the arguments of the claimant.

12. Having been only partially convinced by the author’s argumentation regarding the 18-month delay in bringing her claims before the institutions responsible for a complete examination of the case, I then wondered how to deal with the time that the author took — almost five years — to submit her communication to the Committee criticizing the judgements of the Supreme Court of 26 June 2006 and 28 August 2006 for gender discrimination. The communication was submitted some 10 years after the author initiated both her criminal charges (28 May 2001) and her labour law complaint (20 December 2001), regarding alleged facts dating from May 1999 to June 2000 (see paras. 2.2-2.5), and finally judged on 28 August 2006 after almost five years of legal proceedings before the national authorities. Of course, this

duration of the legal proceedings is in no way to be used against the author, given that it is the time that was needed to reach the last instance and thus exhaust domestic remedies.

13. On the web page of the Office of the United Nations High Commissioner for Human Rights on the communication procedure, the reason for acting rapidly is given in a nutshell: “It is important to submit the complaint as soon as possible after the exhaustion of domestic remedies. Delay in submitting the case may make it difficult for the State party to respond properly and for the treaty body to evaluate the factual background thoroughly. In some cases, submission after a protracted period may result in the case being considered inadmissible by the Committee in question.”^a

14. The Optional Protocol and the rules of procedure do not contain periods of prescription during which a communication should be presented to the Committee. No comment on this issue is given in the views of the Committee, the author has not explained why she needed that time and the State party has not commented thereon in its observations (paras. 4.1-4.3).

15. Referring to the rules established by other treaty bodies, one sees that the statutes of limitation vary from six months (for the Committee on the Elimination of Racial Discrimination, pursuant to article 14 (5) of the International Convention on the Elimination of all Forms of Racial Discrimination) to “one year after the exhaustion of domestic remedies, except in cases where the author can demonstrate that it had not been possible to submit the communication within that time limit” (for the Committee on Economic, Social and Cultural Rights, pursuant to article 3 (2)(a) of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, and for the Committee on the Rights of the Child, pursuant to article 7 (h) of the Optional Protocol to the Convention on the Rights of the Child on a communications procedure). The Human Rights Committee, however, foresees a longer delay (rule 96 (c) of the rules of procedure, up to five years, or, where applicable, three years).

16. Striking a balance between the right of the victims of discrimination prohibited by the Convention (in this case sexual and moral harassment) to defend themselves by submitting a communication and the right of States parties not to be held accountable past a “reasonable time” is indeed a delicate exercise.

17. While wanting to respect “the psychological stress and varying emotional thresholds of different individuals” (as mentioned by the author regarding the 18-month delay in para. 3.9), there appeared to me to be no justified grounds for waiting almost five years after the decision had been taken by the last instance. Even considering that losing her case before the Supreme Court may have reactivated the trauma experienced previously or may have been traumatizing in itself, I find that the author should have submitted her communication in a shorter delay than she did, or else she should have explained why she was not able to act more rapidly. Without an explanation for the time needed by the author, I concluded that her communication should have been declared inadmissible for constituting an abuse of the right to submit a communication, under article 4 (2)(d) of the Optional Protocol.

^a See www.ohchr.org/EN/HRBodies/TBPetitions/Pages/IndividualCommunications.aspx#whencan.

18. It was not without hesitation that I came to that harsh conclusion, especially because my reasoning is based on an application by analogy of the rules of procedure of other treaty bodies (the Committee on the Elimination of Racial Discrimination, the Committee on Economic, Social and Cultural Rights and the Committee on the Rights of the Child), given that the rules of procedure of the Committee on the Elimination of Discrimination against Women contain no period of prescription after which a communication will be declared inadmissible. I therefore hope that this unsatisfactory situation will bring the Committee to see the need to introduce a period of prescription of one year after the last instance's decision — with justifiable exceptions — in which communications should be brought before the Committee. I believe such a statute of limitations — with justifiable exceptions — would respect both the needs of the victims of discrimination and the needs of States parties to the Convention. Many grounds therefore appear to me in favour of such a period of prescription: harmonization of the procedures of treaty bodies and of the procedural protection offered under various human rights instruments; legal security for States parties and for claimants; and facilitation of the administration of justice, including the capacity to bring proof and counter-proof in a sure manner.
