



Convention on the Elimination of All Forms of Discrimination against Women

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Committee on the Elimination of Discrimination against Women

Views adopted by the Committee under article 7 (3) of the Optional Protocol, concerning communication No. 155/2020^{*,**}

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Alleged victims:

The authors

State party:

The Philippines

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** The following members of the Committee participated in the examination of the present communication: Brenda Akia, Hiroko Akizuki, Marion Bethel, Leticia Bonifaz Alfonso, Rangita De Silva de Alwis, Corinne Dettmeijer-Vermeulen, Esther Eghobamien-Mshelia, Hilary Gbedemah, Yamila González Ferrer, Dafna Hacker Dror, Nahla Haidar, Dalia Leinarte, Marianne Mikko, Maya Morsy, Ana Peláez Narváez, Bandana Rana, Rhoda Reddock, Elgun Safarov, Natasha Stott Despoja and Genoveva Tisheva.



1.1 The communication is brought by 24 Filipina nationals, Natalia Alonzo, Perla B. Balingit, Virginia M. Bangit, Francia A. Buco, Dela Paz B. Culala, Belen A. Culala, Jovita A. David, Zenaida P. Dela Cruz, Fermina B. Dela Pena, Pilar Q. Galang, Januaria G. Garcia, Rufina C. Gulapa, Marta A. Gulapa, Crisenciana C. Gulapa, Rufina P. Mallari, Erlinda Manalastas, Emilia C. Mangilit, Lourdes M. Navarro, Esther M. Palacio, Teofila R. Punzalan, Maria L. Quilantang, Candelaria L. Soliman, Seferina S. Turla and Isabelita C. Vinuya, members of the Malaya Lolas (“Free Grandmothers”), a non-profit organization, established to provide support to the survivors of sexual slavery perpetrated by the Imperial Japanese Army in the Philippines during the Second World War. The authors claim that the State party has violated their rights under articles 1, 2 (b) and (c) and 6 of the Convention. The Optional Protocol entered into force for the Philippines on 12 February 2004. The authors are represented by counsel.

1.2 Given their advanced age, the authors request the Committee to consider their complaint as a matter of priority and to call upon the State party to provide them urgently with adequate financial compensation.

1.3 On 26 October 2020, the Committee, acting through its Working Group on Communications under the Optional Protocol, examined the admissibility of the communication together with its merits.

Facts as submitted by the authors

2.1 Between 1932 and 1945, the Imperial Japanese Army enslaved hundreds of thousands of civilians and prisoners of war in institutionalized facilities in Japanese-occupied territories. Over 100,000 women were subjected to sexual slavery in the context of the colonial occupation by Japan. This institutionalized system of wartime sexual slavery later became known as the “comfort women” system.

2.2 On 23 November 1944, the authors were forcibly subjected to the system described above when Japanese troops raided the district of Mapaniqui in the municipality of Candaba, Pampanga Province. The authors were forced to march towards the *Bahay na Pula* (Red House), the Japanese headquarters in San Ildefonso, Pampanga Province. They were detained in the Red House between one day and three weeks, where they were repeatedly subjected to rape, other forms of sexual violence, torture and inhumane conditions of detention. They have endured long-term physical, psychological, social and economic consequences, including physical injuries, mental and emotional suffering consistent with medical descriptions of post-traumatic stress, permanent damage to their reproductive capacity and harm to their social relationships in marriage, work and the community.

2.3 Between April 1946 and November 1948, the International Military Tribunal for the Far East, more commonly known as the Tokyo Tribunal, tried Japanese officials for a variety of war crimes and crimes against humanity. However, the indictments remained silent on sexual slavery as a war crime or sexual enslavement as a crime against humanity, despite ample evidence of those crimes.

2.4 On 8 September 1951, Japan signed various multilateral and bilateral peace treaties with the Allied Powers and States of the Asia-Pacific region. The Philippines ratified the Treaty of Peace with Japan in 1956, after a separate reparations agreement was reached that year. However, no mention was made in the negotiations of the women who were victims of the wartime sexual slavery system, and no compensation was provided.

2.5 In December 2000, the Women’s International War Crimes Tribunal on Japan’s Military Sexual Slavery was set up, which established that “the State of Japan is responsible for the rape and enslavement of women and girls as ‘comfort women’

pursuant to the military sexual slavery system, whether such enslavement was carried out by government agents, army personnel, or civilians acting on its behalf” and, consequently, “owes a duty to provide reparations in various forms”.

2.6 In July 1995, the Government of Japan established the Asian Women’s Fund to provide compensation to survivors of the Japanese wartime sexual slavery system. The Fund, a joint “atonement” project between the “people of Japan” and the Government allowed the latter to evade legal responsibility and raise “atonement payments” through private donations and not as State-sanctioned compensation. As pointed out by the former Special Rapporteur on violence against women and girls, its causes and consequences, Radhika Coomaraswamy, the Asian Women’s Fund was “a clear statement denying any legal responsibility for the situation of these women and this is reflected in particular in the desire to raise funds from the private sector”.¹ Many survivors, including the authors in the present case, rejected the award of compensation through the Asian Women’s Fund because it was not accompanied by an acknowledgement by Japan of its legal responsibility.

2.7 The authors first approached the executive branch of the Government of the Philippines, through the Department of Justice, in 1998, requesting assistance to file a claim against Japanese officials and military officers responsible for the establishment of the wartime sexual slavery system in the Philippines. The Department of Justice failed to respond to that request within a period of 15 days, as statutorily required under section 5 (a) of Republic Act No. 6713 of 1989. The authors then turned to the Department of Foreign Affairs and the Office of the Solicitor General. Those entities similarly dismissed the requests and held that the individual claims of the authors for reparations had been waived under the Treaty of Peace with Japan and that, in any case, the authors had already received compensation from the Asian Women’s Fund.

2.8 On 8 March 2004, the Center for International Law Manila filed a petition with an application for a writ of preliminary mandatory injunction (referred to as the “2004 petition”) to the Supreme Court to require the aforementioned government entities to espouse the claims of the authors, who were then named the “Malaya Lolos” in the petition. In the 2004 petition, it was submitted, inter alia, that: (a) the waiver of the claims of the Filipina survivors of the wartime sexual slavery system against Japan through the Treaty of Peace with Japan was void for being contrary to the *erga omnes* obligation not to provide immunity for rape, sexual slavery, torture and other forms of sexual violence constituting crimes against humanity and war crimes; and (b) the refusal of the Department of Foreign Affairs and the Executive Secretary to espouse the claims of the authors constituted a grave abuse of discretion amounting to lack or excess of jurisdiction. On 28 April 2010, the Supreme Court rejected the 2004 petition on the grounds that: (a) the executive branch had the exclusive prerogative to determine whether to espouse the claims of the authors against Japan; and (b) the Philippines had no international obligation to espouse the claims.

2.9 The Center for International Law Manila subsequently filed a motion for reconsideration on 31 May 2010 and a supplemental motion for reconsideration on 19 July 2010 on behalf of the authors. On 5 August 2014, the Supreme Court denied the motion for reconsideration.

2.10 On 2 November 2016, the European Center for Constitutional and Human Rights and the Center for International Law Manila submitted individual complaints to the Special Rapporteur on violence against women and the Special Rapporteur on contemporary forms of slavery, including its causes and consequences, requesting them to urge the Philippines to espouse the claims of the authors against the

¹ E/CN.4/1996/53/Add.1 and E/CN.4/1996/53/Add.1/Corr.1, para. 134.

Government of Japan. The Special Rapporteur on contemporary forms of slavery, decided that the case “didn’t fall within the identified priority areas of the mandate”, which “has not typically had a strong focus on historical violations relating to slavery”.

2.11 On 6 December 2017, three special rapporteurs, including the Special Rapporteur on violence against women, sent a joint communication to the Government of the Philippines, requesting additional information and/or comments on: (a) the alleged failure of the Philippines to espouse the claims of the authors; and (b) the steps that would be taken to ensure that women and girls who were victims of the wartime sexual slavery system received compensation in accordance with international human rights norms. In its response of 3 April 2018, the State party remained consistent in its position, claiming that it considered the reparations paid by Japan pursuant to the Treaty of Peace with Japan and the Reparations Agreement to be reparations for all damages and suffering caused by Japan during the Second World War.

Complaint

3.1 The authors assert that they have consistently raised their claims at the domestic level in respect of their request that the Government of the State party espouse their claims against the Government of Japan and their right to reparations originating in the system of sexual slavery during the Second World War. It is noted that, although the authors have not expressly raised claims regarding gender or sex-based discrimination in connection with the wartime sexual slavery system, they argue that their consistent references to rape, sexual violence and sexual slavery ought to have given domestic authorities sufficient opportunity to examine those claims.

3.2 The joint communication sent by the three special rapporteurs to the Government of the State party requesting additional information on the facts of their complaint did not constitute a “procedure of international investigation or settlement” within the meaning of article 4 (2) (a) of the Optional Protocol.

3.3 They maintain that the State party ratified the Optional Protocol in 2003 and, while some of the facts of the present communication date back to 1944, they argue that the violations of the Convention have persisted until the present date. Moreover, the last action taken at the domestic level was the Supreme Court’s decision of 2014 to reject the authors’ petition. In its concluding observations on the combined seventh and eighth periodic reports of Japan, the Committee indicates that it was not precluded *ratione temporis* from addressing violations that were perpetrated by the Japanese military during the Second World War, given the continuing effect on the rights of survivors.² In view of that consideration, the communication, according to the authors, satisfied the *ratione temporis* requirements.

3.4 The authors underline that, rather than addressing the responsibility of the Japanese State for the aforementioned crimes on the territory of the State party in the form of the wartime sexual slavery system, the present communication seeks to establish the responsibility of the State party to fulfil its commitments under the Convention to supporting non-discrimination of women and girls on its territory. More specifically, it is aimed at establishing how the failure to do so by the State party has, in essence, resulted in ongoing discrimination against the authors that persists to the present day.

3.5 The authors submit that, in the light of the State party’s continuing failure to espouse their claims, the State party has violated its general legal obligation as contained in the introductory sentence of article 2, namely, to “pursue by all

² CEDAW/C/JPN/CO/7-8, para. 29.

appropriate means and without delay a policy of eliminating discrimination against women”, read in conjunction with article 1, and taking into consideration general recommendation No. 19 (1992) on violence against women, general recommendation No. 28 (2010) on the core obligations of States parties under article 2 of the Convention and general recommendation No. 35 (2017) on gender-based violence against women, updating general recommendation No. 19. The Committee has held that “appropriate means”, the term used in article 2, comprise measures ensuring that a State party, inter alia, “takes steps to prevent, prohibit and punish violations of the Convention by third parties ... and to provide reparation to the victims of such violations (protect)”.³ The authors also submit that the Committee has established that another obligation originating from the introductory sentence of article 2 involves the State party proclaiming its condemnation of all forms of discrimination against women at all levels of State and to the international community.⁴ In this respect, it is held that, during the drafting process of the Treaty of Peace with Japan and the separate Reparations Agreement between Japan and the Philippines, no arrangements were made to address the crimes committed against the authors and other women and girls held as sexual slaves in different types of facilities, nor were they included in the negotiation process. The authors’ unsuccessful attempts since 1998 illustrate the repeated failure of the State party to take the measures necessary to eliminate the discrimination against the authors.

3.6 In a similar case involving the sexual slavery hostages in the Republic of Korea, the Constitutional Court of the Republic of Korea found that the failure of the Government of the Republic of Korea to act on the claims of the survivors of the wartime sexual slavery system in Korea against the Government of Japan violated significant fundamental rights enshrined in its Constitution. By contrast, the Philippines has previously found that no duty exists of the executive to take up the cause of the authors, moreover it added that doing so would be inimical to the national interest. The authors argue that the State party’s position denies their right to claim damages from Japan for the involvement of its armed forces in the commission of crimes contrary to international law at the time and “undermines the *post facto* restoration of dignity, value and personal liberty that have been ruthlessly and continuously violated”.

3.7 The authors claim that, pursuant to the Committee’s relevant interpretation of article 2 (b) of the Convention, they have a right to reparations and the State party has a corollary duty to ensure that they receive measures of satisfaction, such as public apologies, and reparations as appropriate remedies for having been subjected to the wartime sexual slavery system. This duty ought to include the espousal of their claims against the Government of Japan and the securing of adequate sanctions, prosecutions and other measures of satisfaction.

3.8 Referring to the Committee’s general recommendations Nos. 19 and 35, the authors submit that the right to a remedy is implied under article 2 (c) of the Convention. The authors claim that the State party has failed to secure the right of the authors to effective protection and effective remedy in respect of reparations for the abuse that they suffered. In this connection, the authors submit that the Treaty of Peace with Japan and the Reparations Agreement are not to be considered effective remedies since the process of negotiations included neither the participation nor the substantive claims of the authors. In addition, the State party has failed in its obligation to provide a timely remedy to the authors who are of an advanced age. The undue delay in the domestic processes (almost five years passed between the final submission dated 7 June 2005 and the publication of the final decision by the Supreme

³ General recommendation No. 28, para. 37 (b).

⁴ *Ibid.*, para. 15.

Court dated 28 April 2010) illustrates the failure to adjudicate a case involving claims of grave sexual offences in an expeditious manner. The right to effective protection and remedy within the meaning of article 2 (c) includes access to rigorously reasoned and careful judgments of substantively good quality by competent judicial officials. Nevertheless, the decision of the Supreme Court dated 28 April 2010 was replete with plagiarized quotations from a number of improperly referenced sources.

3.9 Relying on article 6 of the Convention, the authors claim that the wartime sexual slavery system put in place by the Imperial Japanese Army during the Second World War can be regarded as a form of trafficking in persons for the purposes of sexual exploitation and slavery. The authors were forced to leave their homes and taken to the Red House in San Ildefonso, where they were held against their will for various periods, with the aim of sexually exploiting and enslaving them. Although the Committee has previously made specific recommendations that are relevant to the present communication,⁵ it has yet to fully develop specific content on the obligations emanating from article 6, and the present case represents an opportunity to do so.

State party's observations on admissibility

4.1 On 29 May 2020, the State party submitted that the communication should be declared inadmissible as the facts of the communication occurred prior to the entry into force of the Optional Protocol for the Philippines. The State party notes that the communication involves atrocities that occurred before and during the Second World War, from 1932 to 1945. The Philippines signed the Optional Protocol on 21 March 2000 and ratified it on 12 November 2003. The State party refers to several cases of the Committee in which it found itself to be precluded from examining the complaints because they were incompatible with the provisions of the Convention *ratione temporis*.⁶

4.2 The State party contests the authors' argument that the alleged violation of the Convention, namely, the authors' claim that they have been discriminated against by the State party, is continuing in nature. There is no continuing act of discrimination if the alleged act is not discriminatory to begin with. The State party has addressed the violations that were committed against the authors during the Second World War. This is shown by the State party's active participation in the negotiations in favour of the reparations provisions in the Treaty of Peace with Japan in 1951 and in concluding the Reparations Agreement in 1956 between the Philippines and Japan. In addition, several wartime sexual slavery victims were compensated through the Asian Women's Fund, with which the State party had signed a memorandum to ensure that the resources of the Fund were used to fund services in accordance with the victims' needs. The mere fact that the Supreme Court of the Philippines had ruled against the authors cannot be considered an act of discrimination, in the absence of evidence that the proceedings lacked impartiality. The State party argues that the complaint is inadmissible under article 4 (2) (e) of the Optional Protocol.

4.3 The Supreme Court ruled that the Philippines is not under a non-derogable obligation to prosecute international crimes, in particular if the petition is not concerned with the issue of criminal liability but seeks to obtain monetary compensation from Japan.

⁵ General recommendation No. 19, paras. 16 and 24 (g), and general recommendation No. 30 (2013) on women in conflict prevention, conflict and post-conflict situations, paras. 39, 41 (a), 79 and 81 (g).

⁶ *Muñoz-Vargas y Sainz de Vicuña v. Spain* (CEDAW/C/39/D/7/2005); *Ragan Salgado v. United Kingdom of Great Britain and Northern Ireland* (CEDAW/C/37/D/11/2006); *Dayras et al. v. France* (CEDAW/C/44/D/13/2007); and *B.J. v. Germany* (A/59/38, part two, annex VIII).

Authors' comments on the State party's observations on admissibility

5.1 On 5 October 2020, the authors submitted their comments on the State party's observations on admissibility. They argue that the State party mistakenly characterizes the subject matter of the communication as being concerned with the wartime sexual slavery system maintained by the Japanese Imperial Army. However, the communication is concerned with the State party's violation of its obligations under the Convention.

5.2 With regard to the Committee's jurisprudence, as cited by the State party, the authors note that in all four cases, the Committee decided that there was no continuous element to the violations of the Convention. In *Muñoz-Vargas y Sainz de Vicuña v. Spain*, for example, the Committee considered the succession event to be the basis of the complaint. This, according to the Committee, occurred and was completed prior to the entry into force of the Optional Protocol. Similarly, *Dayras et al. v. France and B.J. v. Germany* were held to be inadmissible on the basis that the alleged violations occurred before the entry into force of the Optional Protocol and did not continue after that date. In contrast, the authors consider that the present complaint, which demonstrates that the State party's violations of its obligations are continuous, should fall under the jurisdiction of the Committee. In this respect, the authors refer to *González Carreño v. Spain*,⁷ in which the author had been a victim of domestic abuse at the hands of her husband. While the Committee acknowledged that some of the abuses did indeed occur prior to the entry into force of the Optional Protocol, the Committee was not barred from considering the communication with regard to two judicial decisions that were taken after the entry into force of the Optional Protocol. In addition, in *S.H. v. Bosnia and Herzegovina*,⁸ the author alleged that she had been a victim of rape in 1995, during the war in the former Yugoslavia, which was prior to the entry into force of the Optional Protocol in 2002. In 2009, the author filed a criminal complaint with the Prosecutor's Office of Bosnia and Herzegovina; however, no progress was made in the investigation. Eventually, the Committee found that it was not barred *ratione temporis* from examining the merits of the complaint, even though the alleged offence had occurred prior to the entry into force of the Optional Protocol. The Committee held that since 2002, when the Optional Protocol had entered into force for Bosnia and Herzegovina, the State party had failed to fulfil its obligation to, among other things, conduct an effective and timely investigation into the alleged crime, provide effective and adequate compensation and promptly attribute redress for the harm suffered by the author in that case.

5.3 The authors argue that the admissibility of their communication should be viewed in the light of the Committee's concluding observations on the combined seventh and eighth periodic reports of Japan, in which it held that "the issue of 'comfort women' gives rise to serious violations that have a continuing effect on the rights of victims/survivors" and that, given the lack of effective remedies for the victims, it was "not precluded *ratione temporis* from addressing such violations".⁹

5.4 Contrary to what the State party is arguing, neither the Reparations Agreement nor the Asian Women's Fund has discharged it from its obligations under the Convention. As to the State party's position that the communication only challenges the outcome of the judicial processes, the authors submit that their communication is concerned not only with the outcome of the domestic decision but also its process. The authors claim that the unreasonable delay in receiving the decision constituted a

⁷ CEDAW/C/58/D/47/2012.

⁸ CEDAW/C/76/D/116/2017.

⁹ CEDAW/C/JPN/CO/7-8, para. 29.

failure of the judicial system and that, in addition, the judgment was of an unsatisfactory standard.

5.5 The authors argue that there is additional evidence of continuous discrimination against them and the violation of their rights under the Convention. For example, the Philippine Commission on Women, which is the main government body charged with monitoring compliance with international obligations affecting women, has never addressed the institutionalized system of wartime sexual slavery, its consequences for survivors or their protection needs. In contrast, Philippine war veterans, who are predominantly male, receive special and esteemed treatment, encompassing educational benefits, health-care benefits, old age, disability and death pensions and burial assistance. It is arguably discriminatory that no corresponding benefits or services or any form of support are provided for the Malaya Lolos, who were also victims of war.

5.6 The State party's continuing discrimination against the authors is further underlined by its neglect of the *Bahay na Pula* (Red House), which should have been preserved to memorialize the suffering inflicted there and the continuing struggle for justice.

5.7 The authors maintain that, given their advanced age, the admissibility of their complaint should be examined together with the merits in order to avoid any unjustified delay.

State party's observations on the merits

6.1 By a note verbale of 26 February 2021, the State party submitted its observations on the merits. It contests as unwarranted the allegation of the Malaya Lolos that it has failed to fulfil its commitments under the Convention. The State party denies that the authors have experienced sex- or gender-based discrimination owing to any of its acts or policies. The State party has adopted laws that protect and support the rights of women and has undertaken positive actions to address the needs of "comfort women". For example, it created the Inter-agency Task Force on Former Comfort Women, which implemented projects and initiatives in cooperation with the Government of Japan, through the Asian Women's Fund. The Assistance to Lolos in Crisis Situation project addressed the socioeconomic and counselling needs of the Malaya Lolos, with a total of 185 women receiving an amount equivalent to 1,200,000 Japanese yen.¹⁰

6.2 The State party argues that the Malaya Lolos were accorded preferential treatment as victims of the Second World War, as were other individuals, men and women, who suffered the brutality of the war. It observes that the Malaya Lolos are not clear about the kind of relief that they are seeking from the Committee because if they really needed economic assistance, it may be asked why many of them had rejected the award of compensation from the Asian Women's Fund, when they recognized that the amount offered was symbolically sufficient to address their needs.

6.3 The State party further submits that, assuming that the Malaya Lolos should be given various forms of economic assistance, the authors do not present any quantifiable standard as to what sufficient assistance for them would be, and argues that personal factors, such as mismanagement and misallocation, may be at stake, which are not attributable to the State party. According to the State party, the authors' request for complete living support not only for them, but for their heirs is impracticable, unprecedented and unsubstantiated. The State party considers the sole ground raised by the Malaya Lolos to support their claim of alleged continued violation of their rights, notably the denial of their petition by the Supreme Court, an

¹⁰ See *An Evaluative Research in the Implementation of the Assistance to Lolos in Crisis Situation (ALCS) Project*, available at www.awf.or.jp/pdf/ALCS.pdf.

independent and competent body, as an effective demand for complete economic assistance.

6.4 The State party maintains that its actions are in accordance with article 2 (b) and (c) of the Convention and with domestic and international law. It explains that, as a signatory to the Treaty of Peace with Japan of 1951, it has the obligation to uphold and abide by its provisions, including the waiver therein of all claims arising from any actions committed by the Imperial Japanese Army during the Second World War, in conformity with the principle of *pacta sunt servanda*.¹¹ The State party concludes that it is under no legal obligation to advance the authors claims.

6.5 The claims of the Malaya Lolos had been sufficiently and exhaustively heard, examined and adjudged by the Supreme Court in the *Vinuya* case. The Court ruled that the claims of the Malaya Lolos against the State of Japan cannot be espoused by the Government of the State party because the latter had waived its right thereto by signing the Treaty of Peace with Japan of 1951. The State party observes that its refusal to bring the claims of the Malaya Lolos in any international court or tribunal does not amount to a continuous form of violation and discrimination against the authors. In addition, the alleged lapses that took place in the *Vinuya* case were all properly addressed and justified, as resolved in the case *In the Matter of the Charges of Plagiarism, etc. against Associate Justice Mariano C. Del Castillo*.¹²

6.6 The State party recalls the authors' affirmation that the waiver under the Treaty of Peace with Japan of the claims of the Filipinas who survived the Japanese comfort women/slavery system against Japan was void for being contrary to the *jus cogens* and *erga omnes* obligations of the Philippines not to provide immunity for rape, sexual slavery, torture and other forms of sexual violence, which constitute crimes against humanity and war crimes. However, it reiterates the Supreme Court ruling that there is no non-derogable obligation on the part of the State party to prosecute international crimes, in particular since the petitioners do not demand the imputation of individual criminal liability but seek to recover monetary reparations from the State of Japan. It thus concludes that the refusal to espouse the authors' claims does not violate article 2 of the Convention, because its actions and decisions are in conformity with domestic and international law.

6.7 As to the authors' reference to the decision of 30 August 2011 by the Constitutional Court of the Republic of Korea regarding the issue of wartime sexual slavery, the State party notes a basic principle under its law that "no sovereign is bound to give effect within its dominion to a judgment rendered by a tribunal of another country".¹³ In addition, the State party notes that the Republic of Korea was not a signatory to the Treaty of Peace with Japan of 1951, the Korean Peninsula was engaged in war from 1950 to 1953 and the facts and circumstances presented by the female wartime victims of the Republic of Korea are different. The State party observes that the decision rendered by the Constitutional Court of the Republic of Korea is not binding on its judicial system and nor is it binding on the Committee.

6.8 The State party sympathizes with the suffering experienced by the authors during the Second World War and submits that it has adequately protected their rights, thereby not breaching its obligations under article 2 (b) of the Convention, read in conjunction with paragraph 23 of general recommendation No. 28. The State party underlines that the obligation contained in article 2 gives a "great deal of flexibility for devising a policy that will be appropriate for its particular legal, political, economic, administrative and institutional framework and that can respond to the

¹¹ As expressly set forth in article 26 of the Vienna Convention of the Law of Treaties, which the State party signed on 23 May 1969 and ratified on 15 November 1972.

¹² A.M. No. 10-7-17-SC, 15 October 2010.

¹³ *Corpuz v. Sto Tomas*, G.R. No. 186571, 11 August 2010.

particular obstacles and resistance to the elimination of discrimination against women existing in that State party”.¹⁴ The State party had to consider carefully the most appropriate measures for its particular legal, political, economic, institutional and diplomatic framework. In that regard, the State party actively participated in the diplomatic negotiations in favour of the reparations provisions, for and on behalf of the wartime victims, in the Treaty of Peace with Japan of 1951 and the Reparations Agreement of 1956. It exerted efforts to maximize the financial resources of the Asian Women’s Fund and created the Inter-agency Task Force on Former Comfort Women to provide services. The State party notes, however, that the authors admit that they consciously rejected the State party’s efforts to utilize the atonement money from the Asian Women’s Fund or to participate in projects organized by the Fund. The State party considers that it is not to be faulted for the authors’ voluntary refusal to receive atonement and additional reparations from the Asian Women’s Fund. Other forms of reparation were the apology letters of the former Prime Minister of Japan and the President of the Asian Women’s Fund. In addition, on 9 April 2014, the Ambassador of Japan to the Philippines publicly apologized to the State party for the atrocities perpetrated by the Imperial Japanese Army during the Second World War and vowed that such atrocities would never again be repeated.

6.9 The State party submits that the authors’ assertion that the dismissal of their legal claims by the Supreme Court is evidence that the State failed to eliminate discrimination lacks merits. The mere fact that the Court ruled against them cannot be considered to be or equated with an act of discrimination. The authors were not prevented from challenging the decision and were able to file a motion for reconsideration and a supplemental motion for reconsideration. According to the State party, the authors have not presented evidence to substantiate that the decisions of the courts were rendered arbitrarily or with malice or personal bias against them. It argues that the Supreme Court *en banc* decision and resolutions are founded on sufficient factual and legal grounds. The Court applied the general principles of customary international law in dismissing the authors’ motions and did not discriminate against them on the basis of gender or sex. Its decision does not amount to an arbitrary denial by the State party to espouse the authors’ claims against Japan.

6.10 The State party also observes that the Supreme Court ruling is in line with the position of the International Court of Justice in the case of *Belgium v. Spain*,¹⁵ which ruled that a State has the right, but not the duty, to exercise diplomatic protection of its nationals. The State party fully retains the discretionary right to extend diplomatic protection to the Malaya Lolos. The State party did not violate the Convention when it decided on the extent to which to grant protection to the Malaya Lolos when acceding to the Treaty of Peace with Japan and the Reparations Agreement, under which it waived further reparation claims against the Government of Japan. The State party adds that it has adopted legislation seeking to eliminate discrimination against women, notably Republic Act No. 9710, also known as the Magna Carta of Women.

6.11 The State party maintains that the authors have not demonstrated that its alleged failure tended to discriminate against them on the basis of their sex. They did not specify any action, judicial decision or policy that made distinction, restriction or exclusion that specifically affected or prejudiced their right just because they were women. They did not allege any circumstance showing that they were deprived of an effective, accessible and timely remedy.

¹⁴ General recommendation No. 28, para. 23.

¹⁵ Case concerning the Barcelona Traction, Light and Power Company, Limited, *Belgium v. Spain*, Second Phase, Judgment of 5 February 1970, I.C.J. Reports 1970.

6.12 The State party reiterates the Supreme Court reasoning in the *Vinuya* case, that it may rightfully exercise its discretion on whether to espouse private claims as its own.

6.13 With regard to the authors' claim, under article 6 of the Convention, that the State party refused or failed to facilitate their adequate access to remedies against trafficking in women for sexual exploitation and slavery, the State party argues they are unmeritorious. It has made every effort to provide the Malaya Lolos with sufficient and appropriate remedies, by facilitating a timely reparations agreement with the Government of Japan, aimed at providing proper medical, financial and other services, and to compensate them for the moral and material damages that they have undeniably suffered. Several victims had already received due compensation through the Asian Women's Fund, while others received material assistance through the Asian Women's Fund atonement projects.

6.14 The Convention cannot be retroactively applied to cover the atrocities, including cases of sexual exploitation, committed in the State party during the Second World War, and the State party cannot be held accountable for those atrocities as it had no effective control over its territory at the time. The Convention came into force for the State party only on 3 September 1981. The Optional Protocol thereto entered into force only on 12 February 2004. The authors failed to substantiate any specific continuous acts or conduct on the part of the State party that would bar the application of the *ratione temporis* principle in the present case. The State party reiterates that the communication is inadmissible *ratione temporis* in accordance with article 4 (2) (e) of the Convention. It argues that the authors' claim of a violation of their rights under article 6 of the Convention is unsubstantiated, as it lacks a clear and sufficient legal and factual basis.

6.15 The State party observes that its legislation contains criminal provisions specifically designed to protect women's rights against all forms of sexual abuse, including Republic Act No. 9208, also known as the Anti-Trafficking in Persons Act, of 2003 and the Revised Penal Code of 1932 and subsequent specific criminal laws that define and penalize the crimes of rape, acts of lasciviousness and other forms of sexual abuse and violence directed towards women.

Authors' comments on the State party's observations on the merits

7.1 On 13 July 2021, the authors submitted that the State party had failed to demonstrate sufficiently that it had fulfilled its obligations under article 1, the introductory sentence of article 2 and articles 2 (b) and (c) and 6 of the Convention. They reiterated their claim that they have been subjected to continuous gender-based discrimination contrary to the Convention.

7.2 The authors claimed that violence against women through the wartime sexual slavery system is in itself one of the most serious forms of gender-based discrimination and, in consequence, so is the ensuing continuous discrimination they have faced at the societal and governmental levels, including the action (or lack of thereof) by the State party.

7.3 The discrimination of women survivors of the wartime sexual slavery system is evident in the stigma associated with sexual violence and the invisibilization of survivors' claims, including those of the authors. For example, the seriousness of the situation was only acknowledged almost 50 years after the fact, sexual violence was not taken into account at the moment of signing the Treaty of Peace with Japan and the State party's support for the authors has been insufficient and does not meet the standards established under the Convention. According to the authors, this situation

amounts to indirect discrimination.¹⁶ The indirect discrimination is evidenced by the treatment received by male war veterans and victims and the establishment of the Philippine Veterans Affairs Office.

7.4 The authors maintain that the State party's actions did not provide them with sufficient, appropriate or timely remedies under article 2 (b) of the Convention. The State party has failed to demonstrate that the authors of the present communication have directly benefited from the programmes implemented by the Asian Women's Fund or through the Assistance to Lolos in Crisis Situation project.¹⁷

7.5 The authors affirm that, while commendable, the fact that the State party has enacted or reformed laws to eliminate discrimination against women does not prove that in the present case there is no discrimination against them. The existence of a regulatory or legal framework against gender-based discrimination and sexual violence does not mean that de facto discrimination against women has ended, much less for the authors.¹⁸

7.6 The authors argue that the State party assertion that it has provided and advocated reparations and compensation "to the extent it deemed best for its political and economic framework" does not fulfil the requirements of the Convention, read in the light of general recommendations Nos. 28 and 35 of the Committee. Reparations should be adequate, promptly attributed, holistic and proportionate to the gravity of the harm suffered.¹⁹ They further challenge the State party's interpretation that protection against gender-based discrimination is conditional on the evaluation of its appropriateness or convenience by State parties. On the contrary, the protection enshrined in the Convention is unconditional and it does not depend on any circumstances or "amount" of discrimination.

7.7 The authors also claim the State party has failed to secure effective legal protection, remedies and reparation, thus violating their rights under article 2 (c) of the Convention, read in conjunction with general recommendation No. 28. The authors underline: (a) the overall delays in providing reparations and the impacts thereof on the authors; (b) the dismissal by the Supreme Court of the Philippines of the petitions filed by the authors; (c) the failure by the Inter-agency Task Force on Former Comfort Women and the Assistance to Lolos in Crisis Situation project to fulfil the standards under article 2 (c) of the Convention; (d) the misattribution by the State party of the speech of the former Ambassador of Japan to the Philippines, Toshinao Urabe, as a sufficient form of reparation; and (e) the misleading interpretation by the State party of the Treaty of Peace with Japan to avoid the provision of reparations to the Malaya Lolos through the denial to espouse their claims before the State of Japan.

¹⁶ General recommendation No. 28, para. 16.

¹⁷ As reflected in *An Evaluative Research in the Implementation of the Assistance to Lolos in Crisis Situation (ALCS) Project*, available at www.awf.or.jp/pdf/ALCS.pdf, the majority of the Lolos perceived the food assistance to be inadequate (p. 21), more than half of the Lolos perceived the medical assistance (p. 22), shelter assistance (p. 24) and livelihood assistance (p. 24) to be inadequate, and more than half of the Lolos considered the counselling provided to be just enough or inadequate (p. 23).

¹⁸ See *Akbak et al. v. Austria* (CEDAW/C/39/D/6/2005), para. 12.1.2: "The Committee notes that the State party has established a comprehensive model to address domestic violence that includes legislation, criminal and civil-law remedies, awareness-raising, education and training, shelters, counselling for victims of violence and work with perpetrators. However, in order for the individual woman victim of domestic violence to enjoy the practical realization of the principle of equality of men and women ... the political will that is expressed in the aforementioned comprehensive system of Austria must be supported by State actors, who adhere to the State party's due diligence obligations."

¹⁹ General recommendation No. 35, para. 46.

7.8 As to the State party's obligation, under article 2 (c) of the Convention, to provide reparations in a timely manner, the authors refer to *Trujillo Reyes and Arguello Morales v. Mexico*, in which case the Committee considered "that the application of domestic remedies has been unreasonably prolonged, and that the inaction of the competent authorities rendered the application of a remedy that may bring effective relief to the authors highly unlikely".²⁰ The authors submit that, in the present case, too, the delay in the provision of effective and timely remedies amounts to a violation of the Convention. The Malaya Lolos are older women who have various health issues, and some have passed away. They have health and economic concerns that have been aggravated by the coronavirus disease (COVID-19) pandemic, the greatest of which is their access to medicine and adequate health care.

7.9 It is untrue that they have made "impracticable, unprecedented and unsubstantiated" requests for support for their heirs. Their demand for support for their heirs stems from the fact that few of the authors will enjoy the reparations, if such are made, given their advanced age and that several of them have passed away already. The authors do not consider their demand for living support for their heirs to be unreasonable. The State party continues to deny their rights to reparations by refusing to espouse their claims against the Government of Japan or by adopting any other adequate, effective and timely measure, as the window of opportunity for them to enjoy any reparations narrows. The longer the proceedings take, the less likely it is that the authors themselves will be able to enjoy the reparations, as their average age is 91 years.

7.10 As to the Supreme Court's ruling, the authors contest the State party's submission that their claims should be dismissed as having been settled already in national jurisdiction. The legal issues discussed in the petition for certiorari before the Supreme Court, even though they were also addressed in the communication, did not refer to the issue of discrimination and non-compliance with the international obligations of the State party before the Committee, as is being done here.²¹

7.11 The issue claimed before the Committee is the responsibility of the State party for not complying with its obligations in the light of the Convention, because of the actions that were taken (and not taken) by it that motivated the petition for certiorari, and the dismissal of the petition by the Supreme Court. While some of the arguments in both the petition and the present communication are identical, they have to be examined in the light of the issue of discrimination and the non-compliance of the State party with its international obligations under the Convention – a matter not discussed before the Supreme Court. The State party can therefore not claim that this matter has already been settled in Philippine national jurisdiction. According to the State party, the Supreme Court ruled that "the claims of the Malaya Lolos against the State of Japan cannot be espoused by the Philippine Government". All that was stated by the Supreme Court was that it could not force the Government to espouse the claims of the Malaya Lolos; it did not rule that the claims could not be espoused. Consequently, it cannot be stated that the State party is prohibited from espousing the claims of the Malaya Lolos against Japan. As for the decision of the Supreme Court that there is no non-derogable obligation on the part of State party to prosecute international crimes, it fails to take into consideration the duty of State parties to the Convention to ensure the effective protection of women and to provide remedies, as indicated in article 2 (c) of the Convention and the Committee's general recommendations Nos. 19 and 35.

7.12 The authors also contest the appropriateness of the Asian Women's Fund as a mechanism for compensating victims of the sexual slavery system imposed by the

²⁰ CEDAW/C/67/D/75/2014, para. 8.8.

²¹ The authors refer to X and Y v. Georgia (CEDAW/C/61/D/24/2009), paras. 6.5 and 6.7.

Imperial Japanese Army. The Inter-agency Task Force and the Assistance to Lolos in Crisis Situation project cannot be qualified as “effective”, as they do not take into consideration the agency of the Malaya Lolos. Instead, they reveal a paternalistic and discriminatory attitude towards the provision of “assistance”. For example, they treat the Malaya Lolos as second-class citizens, in their capacity as both women and seniors, who are not able to make their own decisions. While the proclaimed aim of the project was to “rebuild the Lola’s self-esteem”, it did not acknowledge their needs or the structures of discrimination in which the Malaya Lolos lived and continue to live. The structure, design and implementation of the project lacked a participatory character that, while preceding the date of entry into force of the Optional Protocol, reflects the pattern of not acknowledging the claims and needs of the Malaya Lolos, thereby amounting to continuing discrimination, which is prohibited under article 1 of the Convention.

7.13 The authors underline that the involvement of women in the process of seeking justice, as well as in the design and implementation of reparation and compensation mechanisms, was clarified in general recommendation No. 30 (2013) on women in conflict prevention, conflict and post-conflict situations, in which the Committee recommends that States parties “ensure that women are involved in the design, operation and monitoring of transitional justice mechanisms at all levels so as to guarantee that their experience of the conflict is included, their particular needs and priorities are met and all violations suffered are addressed; and ensure their participation in the design of all reparations programmes”.²²

7.14 Regarding the speech of the former Ambassador of Japan to the Philippines, the authors point out that the Ambassador referred only to the promise to never again engage in war and to the suffering caused in the Second World War; he did not refer to any war crimes or human rights violations that were perpetrated during that time. This action does not constitute an official or direct apology to the Malaya Lolos, or to any other survivor/victim of crimes committed in that period. Even if the speech could be considered an official apology, it cannot be regarded as the only form of reparation due to the authors in the light of the discrimination that they have faced ever since they were victimized, as the speech is not attributable to the State party.

7.15 The authors argue that the Treaty of Peace with Japan does not prevent the State party from fulfilling its obligations under article 2 of the Convention. The claims of the Malaya Lolos were not taken into consideration in the negotiation of the Treaty.²³ In that respect, the Women’s International War Crimes Tribunal noted the “inherent gender bias underlying” the Treaty of Peace with Japan and other treaties of the era.²⁴ It is argued that, when these and other post-war treaties were being forged, the Government of Japan hid the extent of the Japanese military’s involvement in the horrifying treatment of sexually enslaved women.²⁵ The authors reiterate the same objections against the Reparations Agreement between the Philippines and Japan, in which no mention is made of the claims of the victims/survivors of the wartime sexual slavery system against the Government of Japan.

7.16 The authors reiterate their argument that, according to the Women’s International War Crimes Tribunal, the negotiating parties to the Treaty had no power to waive individual claims. Similarly, in her final report on systematic rape, sexual

²² General recommendation No. 30, para. 81.

²³ “The government did not have any comment to offer about the Treaty of Peace with Japan, but candidly admitted that the comfort women issue was never raised by any side at that time.” Ustinia Dolgopol and Snehal Paranjape, *Comfort Women: an Unfinished Ordeal – Report of a Mission* (Geneva, International Commission of Jurists, 1994), p. 153.

²⁴ Women’s International War Crimes Tribunal on Japan’s Military Sexual Slavery, Judgment, The Hague, 4 December 2001, para. 1051.

²⁵ [E/CN.4/Sub.2/1998/13](#), appendix, para. 56.

slavery and slavery-like practices during armed conflict of 1998, the Special Rapporteur on contemporary forms of slavery maintained that “the claims for compensation by the former ‘comfort women’ are not barred by the waiver at all because they do not fall within the claims discussed in the treaty”.²⁶ In fact, the authors argue that the State party itself made a reservation against any rigid interpretation of the waiver clause. Hence, the authors maintain that the waiver clause must be reconciled with the fundamental considerations of respect for human rights, which form part of the context of the Treaty, as articulated in its preamble.²⁷ They refer to the statement of the International Commission of Jurists that no evidence is available to indicate that the right of individuals to seek compensation for injury intrinsic to them as human beings was waived or given up. Moreover, the authors note that sexual slavery, as encompassed by the prohibition of slavery and constitutive of a war crime and a crime against humanity, was therefore prohibited as a matter of *jus cogens* with no derogation possible.²⁸ The State party has the corresponding *erga omnes* obligation not to provide impunity for such a crime. The authors therefore have a right to compensation as established under international law. This argument is strengthened by the view in international law that a treaty may be subordinate to *jus cogens* laid down in other treaties. Thus, the authors argue that the provisions of the Treaty of Peace with Japan cannot prevail over *jus cogens* norms and the State party’s *erga omnes* obligations. Accordingly, they cannot prevail over the obligations under the Convention.

7.17 The authors assert that the reparations requested of the State party are sufficiently clear. Specifically, the authors have enumerated the provision of the following as constituting “sufficient assistance” to them: (a) regular medical care and assistance, as survivors are now all advanced in age, with ailments attendant to old age that are a drain on the already meagre resources of most, if not all, of them; (b) livelihood assistance for their families, most of whom are in an economically disadvantaged situation; (c) educational opportunities for their grandchildren or close kin; and (d) housing support, given the economically disadvantaged situation of most of them.

7.18 Lastly, the authors reiterate that, in the case at hand, the Committee is not precluded *ratione temporis* from considering their communication given the ongoing and continuous nature of the State party’s violations of the Convention and in the light of the Committee’s concluding observations on the combined seventh and eighth periodic reports of Japan on the issue of the wartime sexual slavery system.²⁹

Issues and proceedings before the Committee

Consideration of admissibility

8.1 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 (4), it is to do so before considering the merits of the communication.

²⁶ Ibid., para. 60.

²⁷ See Merlin Magallona, “The San Francisco Peace Treaty with Japan and the Case of Filipino Comfort Women”, in *International Law Issues In Perspective* (Quezon City, Philippines, Law Center, University of the Philippines, 1996), pp. 265–266.

²⁸ As established in the Vienna Convention on the Law of the Treaties of 1969, art. 53, which entered into force on 27 January 1980. *Jus cogens* norms include aggression, genocide, crimes against humanity, war crimes, piracy, slavery and slave-related practices, and torture, according to M. Cherif Bassiouni, “International crimes: *jus cogens* and *obligatio erga omnes*”, *Law and Contemporary Problems*, vol. 59, No. 4 (1996), p. 68.

²⁹ CEDAW/C/JPN/CO/7-8, para. 29.

8.2 The Committee recalls that, under article 4 (1) of the Optional Protocol, it is precluded from considering a communication unless it has ascertained that all available domestic remedies have been exhausted or that the application of such remedies is unreasonably prolonged or unlikely to bring effective relief.³⁰ The Committee notes the authors' submission that they have exhausted all available domestic remedies to the level of the Supreme Court to claim compensation in accordance with international human rights norms, yet the State party's consistent position has been that the reparations paid by Japan pursuant to the Treaty of Peace with Japan and the Reparations Agreement are considered reparations for all damages and suffering caused by Japan during the Second World War. The Committee notes that the State party has not contested that the domestic remedies have been exhausted. Accordingly, the Committee is not precluded, by virtue of the requirements of article 4 (1) of the Optional Protocol, from considering the present communication.

8.3 In accordance with article 4 (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.

8.4 In accordance with article 4 (2) (c) of the Optional Protocol, the Committee shall declare a communication inadmissible where it is manifestly ill-founded or not sufficiently substantiated. The Committee notes the authors' claim that the wartime sexual slavery system put in place by the Imperial Japanese Army during the Second World War can be regarded as a form of trafficking in persons for the purposes of sexual exploitation and slavery. With regard to that claim, which relies on article 6 of the Convention, the Committee also notes the authors' assertion that, rather than addressing the responsibility of the State of Japan for the aforementioned crimes on the territory of the State party in the form of the wartime sexual slavery system, they are seeking to establish the responsibility of the State party to fulfil its commitments under the Convention in supporting the non-discrimination of women and girls on its territory. However, the Committee observes that, given that the State party has the obligation to uphold and abide by the Treaty of Peace with Japan of 1951, including the waiver of all claims arising from any actions committed by the Imperial Japanese Army during the Second World War, the authors' claims under article 6 cannot be brought against the Philippines. In the absence of any other pertinent information in that respect, including a detailed substantiation of the alleged violation of article 6 of the Convention by the State party, the Committee considers that the authors have failed to sufficiently substantiate those claims for the purposes of admissibility. Accordingly, the Committee considers that it is precluded from considering the authors' allegations regarding violations of their rights under article 6 of the Convention and concludes that this part of the communication is inadmissible under article 4 (2) (c) of the Optional Protocol.³¹

8.5 In accordance with article 4 (2) (e) of the Optional Protocol, the Committee shall declare a communication inadmissible where the facts that are the subject of the communication occurred prior to the entry into force of the Protocol for the State party concerned, unless those facts continued after that date.³² The Committee notes that the State party argues that the facts of the present communication occurred prior to the entry into force of the Optional Protocol for the Philippines and contests the authors' claims that the discrimination against them is continuing in nature. It takes note of the authors' argument that the subject matter of the communication is focused

³⁰ *E.S. and S.C. v. United Republic of Tanzania* (CEDAW/C/60/D/48/2013), para. 6.3; *L.R. v. Republic of Moldova* (CEDAW/C/66/D/58/2013), para. 12.2; and *S.H. v. Bosnia and Herzegovina* (CEDAW/C/76/D/116/2017), para. 7.6.

³¹ *O.M. v. Ukraine* (CEDAW/C/73/D/87/2015), para. 8.3.

³² *Kayhan v. Turkey* (CEDAW/C/34/D/8/2005), para. 7.4; and *S.H. v. Bosnia and Herzegovina*, para. 7.3.

not on the wartime sexual slavery system maintained by the Japanese Imperial Army but on the continuous discrimination against the authors by the State party. In that regard, the Committee observes that, since 2003, when the Optional Protocol entered into force for the State party, it has had the obligation to provide recognition and effective and adequate remedies and to promptly attribute redress for the continuous discrimination suffered by the authors. In these circumstances, the Committee considers that it is not precluded *ratione temporis* from considering the authors' claims regarding violations of their rights under articles 1 and 2 (b) and (c) of the Convention.

8.6 Having found no impediment to the admissibility of the remainder of the communication, the Committee proceeds to its consideration of the merits.

Consideration of the merits

9.1 The Committee has considered the present communication in the light of all the information made available to it by the authors and the State party, in accordance with article 7 (1) of the Optional Protocol.

9.2 The Committee notes the State party's argument that the authors' claims against the State of Japan cannot be espoused by the Philippines because the latter had waived its right thereto by signing the Treaty of Peace with Japan of 1951 and that its refusal to bring the claims of the Malaya Lolos in any international court or tribunal does not amount to a continuous form of violation and discrimination against the authors. The Committee, however, also notes the authors' submission that they have been subjected to continuous discrimination by the State party in violation of their rights under the Convention. It further notes that the main Philippine government body charged with monitoring compliance with international obligations affecting women, the Philippine Commission on Women, has not addressed the institutionalized system of wartime sexual slavery, its consequences for victims/survivors or their protection needs. It notes that, in contrast, Filipino war veterans, who are predominantly male, benefit from State-sanctioned special and esteemed treatment, including educational benefits, health-care benefits, old age, disability and death pensions and burial assistance. The Committee takes note of the authors' assertion that it is discriminatory that no corresponding dignified treatment, recognition, benefits or services or any form of support are provided for the Malaya Lolos. The Committee also notes the authors' argument that the continuing discrimination against them is also reflected in the State party's neglect of the *Bahay na Pula* (Red House), which should have been preserved to memorialize the suffering inflicted there and the struggle for justice.

9.3 With regard to the authors' allegations that the failure of the State party to provide them, as civilian victims of armed conflict and survivors of the wartime sexual slavery system, with adequate social support, reparation, benefits and recognition commensurate with the harm suffered results in a violation of articles 1 and 2 (b) and (c) of the Convention, the Committee refers to paragraph 19 of its general recommendation No. 33 on women's access to justice, in which it recommends that States parties ensure that remedies are adequate, effective, promptly attributed, holistic and proportional to the gravity of the harm suffered. Remedies should include, as appropriate, restitution (reinstatement), compensation (whether provided in the form of money, goods or services) and rehabilitation (medical and psychological care and other social services). Remedies for civil damages and criminal sanctions should not be mutually exclusive.

9.4 In that context, the Committee against Torture recalls that States parties are obliged to provide redress to victims of torture procedurally and substantively.³³ To satisfy their procedural obligations, States parties shall enact legislation and establish complaints mechanisms and ensure that such mechanisms and bodies are effective and accessible to all victims.³⁴ On account of the continuous nature of the effects of torture, statutes of limitations should not be applicable, as they deprive victims of the redress, compensation and rehabilitation due to them.³⁵ The Committee on the Elimination of Discrimination against Women considers that redress, including restitution, compensation and rehabilitation, should cover all the harm suffered by the victim and measures to guarantee that there is no recurrence of the violation, always bearing in mind the circumstances of each case.

9.5 Given the extreme severity of the acts of gender-based violence to which the authors were subjected and their right not to be continuously discriminated against and to obtain restitution, compensation and rehabilitation, and given the absence of any possibility of enforcing their rights as fully as possible, the Committee concludes that the State party has breached its obligations under articles 1 and 2 (b) and (c) of the Convention.

10. Acting under article 7 (3) of the Optional Protocol and in the light of the aforementioned considerations, the Committee is of the view that the State party has failed to fulfil its obligations and has thereby violated the authors' rights under articles 1 and 2 (b) and (c) of the Convention.

11. The Committee makes the following recommendations to the State party:

(a) Concerning the authors of the communication: ensure that the authors receive from the State party full reparation, including recognition, redress and an official apology for material and moral damages, for the continuous discrimination that they have suffered, and restitution, rehabilitation and satisfaction, including the restoration of their dignity and reputation, which includes financial reparation proportionate to the physical, psychological and material damage suffered by them and to the gravity of the violations of their rights;

(b) General:

(i) Establish an effective, nationwide reparation scheme to provide all forms of redress to victims of war crimes, including sexual violence, with equal access for men who are war veterans and women who are survivors of wartime sexual slavery to recognition, social benefits and other support measures to which they are entitled;

(ii) Ensure that the authorities remove restrictive and discriminatory provisions from legislation and policies relating to redress for civilian victims of war, including survivors of wartime sexual violence and slavery;

(iii) Establish a State-sanctioned fund to provide compensation and other forms of reparation to women who are victims of war crimes, in particular the institutionalized system of wartime sexual slavery, to ensure the restoration of their dignity, value and personal liberty;

(iv) Create a memorial to preserve the site of *Bahay na Pula* (Red House) or establish another space to commemorate the suffering inflicted to the

³³ Committee against Torture, general comment No. 3 (2012) on the implementation of article 14 by States parties, para. 5.

³⁴ Ibid.

³⁵ Ibid., para. 40.

victims/survivors of wartime sexual slavery and to honour their struggle for justice;

(v) Mainstream in the curricula of all academic institutions, including in secondary and university education, the history of Filipina victims/survivors of wartime sexual slavery, as remembrance is critical to a sensitive understanding of the history of human rights violations endured by these women, to emphasize the importance of advancing human rights, and to avoid recurrence.

12. In accordance with article 7 (4) of the Optional Protocol, the State party shall give due consideration to the views of the Committee, together with its recommendations, and submit to the Committee, within six months, a written response, including information on any action taken in the light of those views and recommendations. The State party is requested to publish the Committee's views and recommendations and to have them widely disseminated in order to reach all sectors of society.
