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SUBIC RAPE CASE:

Nightmare Once Again Becomes Real

The ties that bind: Philippine and US Marines during a joint exercise in late October, 2005 (below and top).

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■ By Rhoda U. Viajar

IN NOVEMBER 2005, news about the rape of a 22 year-old Filipina by American servicemen broke the monotony of political bickerings. A preliminary investigation of the case yielded probable cause for legal rape charges against four US Marines. State prosecutors allege that Marine Lance Cpl. Daniel Smith raped the Filipina victim last November 1 inside a van at the Subic Freeport as fellow Marines cheered him on. Smith claims he engaged in consensual sex.

Smith and his three co-accused, Lance Cpl. Keith Silkwood, Lance Cpl. Dominic Duplantis, and Staff Sgt. Chad Carpentier, all from the US Marines' 31st Expeditionary Unit, 3rd Marine Expeditionary Force, are currently being held

under US custody despite persistent calls to have them turned over to the Philippine government.

Arrest warrants for the Americans were issued on January 13, 2006 by Olongapo Regional Trial Court Judge

Renato Dilag. Weeks later, Judge Dilag recalled the warrants when he decided to grant the motion for reconsideration filed by Carpentier, who asked for a deferment of court proceedings against him until the Department of Justice (DOJ) has resolved his petition for review. News reports also said Chief State Prosecutor Jovencito Zuño claimed to have informed Dilag that warrants have been served to the Americans before they were recalled.

What is currently unfolding before the public eyes is a tragic circumstance forewarned by women's groups and critics of the Visiting Forces Agreement (VFA). At the height of deliberations on the VFA, social

movements and progressive organizations strongly opposed the agreement, highlighting its disadvantageous provisions that trample on Philippine sovereignty, and the impact on Filipino women rendered vulnerable to sexual abuses by visiting American personnel.

With the Subic rape case, it appears that the harsh consequence of a lopsided and disastrous agreement amidst a macho and sexist culture is happening.

The Coalition Against Trafficking in Women - Asia Pacific (CATW-AP), which is among the many groups that have vehemently denounced the rape of the Filipina and demanded for justice and full accountability of the US marines, is aghast at the political moves of the US Embassy on the issue of custody of the accused GIs.

"The US government's continued refusal to turn over the custody of the four US marines is an affront to Philippine laws and its Constitution," says a statement signed by CATW-AP and several other organizations.

Since November, the US government has ignored the request of the Philippine government (in the form of a note verbale) asking for the surrender of the marines to Filipino authorities. The US invokes Article V paragraph 6 of the VFA which states: "The custody of any United States personnel over whom the Philippines is to exercise jurisdiction shall immediately reside with the United States, if they so request, from the commission of the offense until completion of all judicial proceedings."

CATW-AP argues that the US cannot invoke the VFA provision since the US government has not even submitted any formal written request for the custody of the Marines.

The anti-trafficking advocates further assert that continued US custody will only "unjustifiably grant[...] the accused Americans immunity from Philippine laws." According to them, this is a "blatant abuse of the international legal principle of diplomatic immunity, where only foreign ambassadors and ministers are

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immune from suit, and no one else."

The importance of Philippine custody over the Americans cannot be overemphasized. Olongapo City Prosecutor Prudencio Jalandoni succinctly captured its implications when he said: "In the remote possibility that the VFA is terminated and thereafter the court renders a judgement of conviction, it is clear that there is no way for the government to be able to execute the judgement if the accused are not in its custody."

The custody issue clearly reveals the flaws of the Visiting Forces Agreement, which many lawmakers now want to review. Yet, the Arroyo administration, particularly the Department of Justice, seems hell-bent on



On TV: a US embassy official announces that they will not give up the accused marines.
PEPITO FRIAS

defending it. In the next several months, it is hoped that the issues and questions on the VFA and its impact on Philippine sovereignty will be substantively discussed. Groups like the CATW-AP are prepared to wage struggles for the termination of the agreement.

Equally crucial issues must never be put aside. The Filipina rape victim seeks justice. The Philippine government must have custody over the US marines for justice to be rendered. Philippine authorities must assert Philippine sovereignty and stand for the rights of a

violated citizen.

Yet, the Filipina rape victim is also in need of healing. In most cases, rape victims are left to fend for themselves. Without sufficient assistance, many carry on the pain and burden of the violation inflicted upon them for many years. It is therefore of utmost importance that assistance and support from the Department of Social Welfare and Development and other groups and institutions address the victim's needs to help her deal with and heal from the trauma caused by the US Marines' terrible acts.



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