

## **Reaction on Human Rights**

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### *SUBIC RAPE CASE: SMITH MIGHT WALK FREE, WOMEN'S GROUPS FEAR*

More than a year since the historic Philippine court decision that convicted an American soldier for raping a Filipina; women's groups fear another betrayal of justice and sovereignty.

“We learned from reliable sources that the Court of Appeals would [favour] the appeals of Smith, which may mean an acquittal, that the reclusion perpetua [life imprisonment] may not be served,” Task Force Subic Rape (TFSR) member Esperanza Santos shared. She added that fears of seeing the Makati decision overturned is not unfounded, saying that it is on the level of appeals where many cases are thwarted, even as these deserved to be heard by the Supreme Court. “We have reports that the case was given to someone 'who can be paid,’” Santos said. On 4 December 2006, Lance Corporal Daniel Smith, a crew of USS Essex was convicted by Makati City judge Benjamin Pozon for raping a Filipina, (known to media only as “Nicole” to protect her identity and privacy). Both met in a bar at the former US naval base where the ship was docked. Smith carried an intoxicated Nicole into a van where he raped her while three other American soldiers cheered him on. Witnesses verified that Nicole was visibly drunk when the soldiers whisked her from Neptune Club. The seminal stain from her underwear and the condom also matched Smith's DNA.

But in a matter of weeks, the Philippine government surrendered Smith to the US Embassy in Manila. Citing the provisions of the Visiting Forces Agreement between the Philippines and the United States, the US embassy protested Smith's detention in the US and asserted that the soldier must be in American custody until the court proceedings are completed. Immediately after the trial, Smith's lawyers lodged a petition to the Court of Appeals.

The TFSR decried this decision, “Smith should serve time in a Philippine jail. Anything less would transform the landmark conviction to a hollow victory for Nicole.” Santos also noted the “insensitivity” of the Philippine government in handling the case, citing as examples the government's settlement offer to Nicole's family of a new life in the US; the refusal of the government to allow Nicole's feminist lawyer, Evalyn Ursua to cross-examine Smith; and the appointment of the “least experienced prosecutor” for the cross-examination of the accused.

Recently, TFSR requested the Department of Interior and Local Government (DILG) to allow representatives of the group to verify Smith's presence in the US embassy. However DILG denied this request and instead pointed the group to the US Embassy. “This was supposed to be a function of the agency. Now it is shrinking from its monitoring responsibility,” Santos asserted. As the decision from the Court of Appeals is expected to be released within May or early June, women's and civil society groups are more vigilant. Santos explained that once the Court of

Appeals acquits Smith, Nicole would no longer have any recourse but to bring the case to the United Nations.

The Subic rape case is the first case which convicted an American soldier for rape since the US left its Philippine naval and air force bases in 1991. Much more cases of violence were reported when the American military was still leasing Subic naval base and Clark air base. Similar cases of violence, particularly rape, were documented in countries where the US military maintains its presence such as in Japan and Korea.

Just two months ago, a 14 year-old Japanese girl was allegedly raped by a 38-year old soldier. Although Staff Sgt. Tyrone L. Hadnott was convicted through US Court Martial proceedings of assaulting the survivor, he was cleared of rape charges. Japanese court did not indict Hadnott as the survivor decided to drop the case. Another rape complaint filed by a Filipina against US soldier based in Okinawa, was dropped by a Japanese court due to "insufficient evidence."

***Reaction:***

What had happened to Nicole was very frustrating on the part of the Filipinos, most especially to the women. She was abused but at the end the case was closed. It shows that we don't really exercise our rights because even in our own country foreign people still win in cases though we are the ones who were abused. Our government must be protective enough in all aspects of human rights. They shouldn't be tolerating cases like this because it's a shame to our country. At the end, she, Nicole, recanted her rape story and basically admitted she is a liar.

Human rights are "rights and freedoms to which all humans are entitled. So, If we're abused, we must not be afraid to stand and fight for our right.