

REPUBLIC OF THE PHILIPPINES
CONGRESS OF THE PHILIPPINES
SENATE
Manila

2nd REGULAR SESSION

COMMITTEE ON LABOR, EMPLOYMENT AND HUMAN
RESOURCES DEVELOPMENT

DATE : Wednesday, 25 August 1993

TIME : 8:51 A.M.

VENUE : Session Hall
Executive House Bldg., Manila

MEMBERS PRESENT:

HON. ERNESTO F. HERRERA - Chairman
HON. NIKKI M.L. COSETENG
HON. BLAS F. OPLE
HON. ERNESTO M. MACEDA

MEMBERS REPRESENTED:

HON. ALBERTO G. ROMULO by Ms. Margaret Torres
HON. BLAS F. OPLE by Ms. Milagros Sante
HON. SANTANINA T. RASUL by Ms. Ace Mangahas
HON. VICENTE C. SOTTO III by Ms. Myra Villarico
HON. FRANCISCO S. TATAD by Mr. Erwin Rosas
HON. NEPTALI A. GONZALES by Mr. H. P. Gacutan
HON. JOSE D. LINA, JR. by Ms. Carmelita S. Lao
HON. GLORIA MACAPAGAL-ARROYO by Ms. Gia Saba
HON. ERNESTO M. MACEDA by Mr. Edgardo Apostol

GUESTS/RESOURCE PERSONS:



Sec. M. Confesor - DOLE
Asst. Sec. Ricardo Paras III - DOJ
Dir. Gen. Vicente Leogardo, Jr. - ECOP
Ms. Beng Sta. Clara - FFW Women's Desk Coordinator
Usec. Cresenciano Trajano - Dept. of Labor

SECRETARIAT:

Mr. Eduardo C. Garvida - Legislative COMSEC
Ms. Maria O' Mayor - Committee Stenographer
Ms. Mildred Amador - - do -
Ms. Jeanne Baisa - - do -
Ms. Perla Mayor - - do -

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At 8:51 a.m., the Chairman, Hon. Ernesto F. Herrera, called the meeting to order.

THE CHAIRMAN. May I call to order the public hearing of the Committee on Labor, Employment and Human Resources Development and the very important subject of sexual harassment.

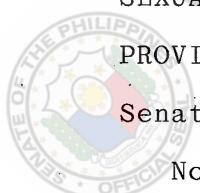
Our agenda today are four important bills.

We have Senate Bill No. 1146 entitled: "AN ACT PRESCRIBING SEXUAL HARASSMENT IN THE EMPLOYMENT ENVIRONMENT AND PROVIDING PENALTIES THEREOF." This is authored by Senator Jose Lina, Jr.

Senate Bill No. 1273 entitled: "AN ACT PRESCRIBING SEXUAL HARASSMENT IN EMPLOYMENT AND NON-EMPLOYMENT ENVIRONMENT AND PROVIDING PENALTIES THEREFOR." This is introduced by Senator Blas Ople.

Senate Bill No. 1326 entitled: "AN ACT PRESCRIBING SEXUAL HARASSMENT IN EMPLOYMENT ENVIRONMENT AND PROVIDING PENALTIES THEREFOR." This is authored by Senator Macapagal-Arroyo.

Now, these three bills covered the same subject. There is another bill which is No. 4 in our agenda, is Senate Bill No. 1236 introduced by Senator Gonzales. "AN ACT EXPANDING THE SCOPE OF ACTS OF DISCRIMINATION AGAINST ANY WOMAN BY AN EMPLOYER AMENDING FOR THE PURPOSE ARTICLE 135 OF THE LABOR CODE OF THE PHILIPPINES AS AMENDED."



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Let me acknowledge the presence of the Undersecretary of Labor, Undersecretary Cresenciano Trajano, representative of the Federation of Free Farmers, Sta. Clara.

MS. STA. CLARA. I'm from the Federation of Free Workers.

THE CHAIRMAN. From the Free Workers. You are Bing Sta. Clara.

MS. STA. CLARA. Yes, sir.

THE CHAIRMAN. Mr. Congressman, good morning.

The representative of ECOP, Atty. Vicente Leogardo, Jr., Director General; now a representative from the Department of Justice, Asst. Sec., Ricardo Paras.

What we will do this morning is to consider the three bills simultaneously so that after all these three bills will eventually be consolidated into one bill.

Now may I call the Department of Labor. I understand that you have Administrative Order No. 68 dealing also with this issue and give us your comment about this bill. By the way, this is a very important subject in the ILO. I understand that the Federal Congress has just passed also a bill or rather a law on this subject. So Mr. Trajano.

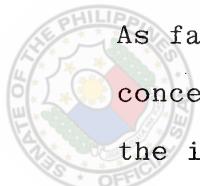
MR. TRAJANO. Thank you, Mr. Chairman. Good morning.

Before I convey to the Committee the position of the Department of Labor and Employment on the bills

under consideration, we would like to express, well, to ask for the understanding of the Committee for the inability of my secretary to be here. She is now attending a very urgent meeting in the Office of the President. But she said that she would follow, the Secretary of Labor and Employment.

As far as the three bills are concerned, Mr. Chairman, the Department of Labor and Employment fully supports the objective of the bill that's making a lawful and prohibiting commission of sexual harassment in the work place and not only in the work place but in an employment situations where persons of authority exercise undue influence over individuals who are transacting business with these authorities.

The objective of the bill is, of course, as the explanatory notes explain in line with the provision of the Constitution which says that the state values the dignity of every person and guarantees full respect for human rights.



As far as the Department of Labor and Employment is concerned, Mr. Chairman, we are at focal point for the implementation of the Philippine Development Plan for Women and as far as this program is concerned we have prioritized sexual harassment as one of the four gender issues that need to be addressed vis-a-vis the implementation of the Philippine Development Plan for Women.

THE CHAIRMAN. It is not just sexual harassment against women.

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MR. TRAJANO. Oho, but as also mentioned in Explanatory Note, most of the victims of sexual harassment is women, but this of course does not exclude male victims from sexual harassment.

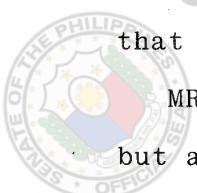
As the Chairman has already intimated, the Department of Labor and Employment has already adopted a policy against sexual harassment which maybe committed against employees, personnel of the Department of Labor and Employment and also against clients or members of the public who transact business with the Department of Labor and Employment. In fact we have issued a series of department orders defining the policy and also providing for a mechanism on how to handle sexual harassment cases, how to investigate and also how to provide sanctions for the commission of sexual harassment.

So again I would like to reiterate, Mr. Chairman, that we are in full accord of the bills.

THE CHAIRMAN. This Administrative Order No. 68 that you are referring to, this has been publicized?

MR. TRAJANO. Well, I don't know that for a fact, but as far as the issuance of guidelines and rules and regulations are concerned, the department, I understand, that we furnished a copy to the University of the Philippines for appropriate publication, Mr. Chairman.

THE CHAIRMAN. I think this administrative order or this procedures in filing complaints of sexual



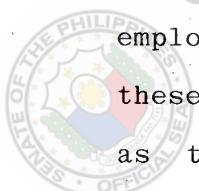
harassment should be well publicized. And I think you should inform unions and maybe this should be also publicized in all industries so that those workers who will be having transactions with the Department of Labor and in the course of transacting their business they will find problems like sexual harassment, they will know whom to approach and how to go about it.

MR. TRAJANO. We'll look into that and if it's not published yet we'll see to it that it's published and we'll conduct an info dissemination campaign, Mr. Chairman, especially in relation to workers group as far as this policy of the department is concerned.

THE CHAIRMAN. May I acknowledge the presence of Mr. Nelson Acebedo.

Now, can we take up the specific provisions, the individual provisions of this bill after all this is a short bill.

Now on this Section 3, the sexual harassment and employment environment as defined, I noticed that all these three bills have the same definitions as well as the circumstances that would constitute the prohibited act of sexual harassment. Now I'm ...



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THE CHAIRMAN. ... sexual harassment. I'm just wondering whether the Department of Labor has additional provisions that you would like to be incorporated in this particular section.

MR. TRAJANO. Wala ho in the meantime, Mr. Chairman. I suppose there will be implementing rules and regulations that would be drawn up as far as the bills are concerned. So we reserve perhaps making our observations when we go to the promulgation of the rules and regulations.

THE CHAIRMAN. Do you have other observations on the bill?

MR. TRAJANO. Wala na ho, sir, wala na. As a whole, we are supportive of the bills.

THE CHAIRMAN. May we ask now the representative of the Civil Service Commission.

MR. ACEBEDO. Thank you, Your Honor.

Well, the Civil Service Commission, Your Honor, fully endorse the proposed bills of the different authors. In fact, it is in accordance with the constitutional mandate that appointments in the civil service shall be made only according to medical fitness and that the Civil Service Commission, as the central personnel agency of the government, shall see to it that employment in the government service shall adopt measures to promote moral efficiency, integrity, responsiveness and courtesy in the civil service.

The proposed bill, Your Honor, is also consistent with the provisions of the Omnibus Civil Service Rules wherein it provides that there will be no discrimination

to be exercised, threatened, or promised against or in favor of any person, examine or to be examined or employed by reason of his political or religious opinion, sex or civil status. It is also consistent with and it will support the existing program of the Civil Service Commission relative to equality advocates or EQUADS(?). While this program promotes equality of treatment and opportunities in the workplace by eliminating discrimination due to gender, among others, Your Honor, we have trained EQUADS and appointed EQUADS among the fourteen regions. Well, these EQUADS look into cases of discrimination, answer queries, offer advice and provide counselling to aggrieved employees. They also assist victims in seeking sanctions against those guilty of discriminatory practices. The intent is not only to provide government employees the comforting thought that they have someone to turn to, but also to involve them to take action against abuses in discriminatory practices by the employers.

THE CHAIRMAN. Pwede bang magsalita ka close to the microphone?

Before you continue, may I just acknowledge the presence of Senator Nikki Coseteng.

MR. ACEBEDO. So the abovementioned laws, policies or programs of the Civil Service Commission strengthen our resolve to attend . . . to the problem of sexual harassment in the government bureaucracy which this proposed bill seeks to address, Your Honor. And therefore, the Civil Service Commission, as I stated earlier, fully endorse this proposed bill, sir.

THE CHAIRMAN. Other than this provision that you cited mandating against discrimination of women, are there other provisions of our Civil Service Law now that would focus on the sexual harassment aspect? As of now, wala ba?

MR. ACEBEDO. There are also provisions in our Omnibus Civil Service Rules implementing the Civil Service Law, Your Honor, among others, as what I have stated earlier, relative to the provision against discrimination, among others, on sex. And of course it is also a ground for disciplinary action because it will fall under disgraceful, immoral conduct or grave misconduct to discriminate against sex.

THE CHAIRMAN. What is the experience of the Civil Service on this matter? Are there cases now involving complaints of sexual harassment by government employees against supervisors, managers in government offices?

MR. ACEBEDO. There are a few cases as may have been defined in the proposed bills, Your Honor. But if there are complaints, they will fall squarely on complaints on disgraceful or immoral conduct or grave misconduct which are grounds for disciplinary actions, Your Honor.

THE CHAIRMAN. How does an employee go about in filing a complaint against his supervisor or head of the office on the ground of sexual harassment? Do we have specific procedures in dealing with this matter?

MR. ACEBEDO. The procedures, Your Honor, are provided for under the Civil Service Law where a complainant perhaps for sexual harassment or sex

discrimination may file a complaint against the person who he is complaining of.

THE CHAIRMAN. In the regional level, saan sila magpa-file ng case nila? Sa region mismo?

MR. ACEBEDO. They can file it ... Because the jurisdiction squarely falls on the agency concerned, so they have to file the complaint with the head of agency or they may file it directly with the Civil Service Commission or any of our regional offices, Your Honor.

THE CHAIRMAN. So the step is that they have to file first with the head of agency.

MR. ACEBEDO. Yes, Your Honor.

THE CHAIRMAN. And if the head of the agency is the subject of the complaint?

MR. ACEBEDO. Then perhaps they can file it with the Civil Service Commission.

THE CHAIRMAN. Direct to the Civil Service Commission?

MR. ACEBEDO. Yes, Your Honor.

THE CHAIRMAN. So before the Civil Service Commission acquires jurisdiction over the case, it has to follow that procedure of filing first with the head of the agency.

MR. ACEBEDO. Yes, Your Honor.

THE CHAIRMAN. Except when the head of the agency is the subject of the complaint, that will be filed directly to the Civil Service Commission.

MR. ACEBEDO. Or perhaps the complainant cannot exact justice with the agency concerned, Your Honor, then he may file it also to the Civil Service Commission.

THE CHAIRMAN. Senator Coseteng.

SEN. COSETENG. Thank you, Mr. Chairman.

I'd like to find out if there are currently courses on gender sensitivity that are being conducted in the different offices. Because we know that inspite of the fact that the women outnumber the men in the rank and file, in the supervisory level or the Director, Bureau Director or higher levels, we really have the men deciding on whether the women are going to get their promotions or whether they're going to get permanently hired, etcetera. My question is: Are you holding or do you even know of these gender-sensitive courses to inform the managerial level about how to go about the cases that are brought up to their attention?

MR. ACEBEDO. Well, as far as the Civil Service Commission, Your Honor, as I have stated earlier, we have a program known as EQUADS or Equal Advocates, wherein cases of discrimination against gender or sex can be brought to the attention of the Civil Service Commission by our trained equality advocates who are scattered in the fourteen regions of the country, Your Honor.

SEN. COSETENG. Is this publicly posted? I mean, are these courses going on regularly? With what frequency? And where can people attend these courses so it's really like a public service that you're doing?

MR. ACEBEDO. It's a continuing program of the Civil Service Commission, Your Honor.

SEN. COSETENG. Is it published? Are people aware? Are the people in the province or people in the communities aware of these exercises?

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MR. ACEBEDO. I think so, Your Honor, because we have the equality advocates in the fourteen regions of the country, Your Honor, who are supposed to train or inform the people ...

/mva



MR. ACEBEDO. ...inform the people / within their respective area of jurisdiction against sexual discrimination, among others.

SEN. COSETENG. Do you have handouts or posters? I mean, in what form? Because we've been all over the country and we've not seen any, like concrete educational programs or handouts. We hear about EQUADS. People talk about it. But beyond a training course or a policy of EQUADS, that's it. I mean, I'm asking these questions simply because we've received too many complaints that when they complain to the supervisors or when they complain to somebody higher, the attitude is - Magpasensiya ka na. O bakit ka naman pikon? Or, bale wala naman iyun e, malayo sa bituka.

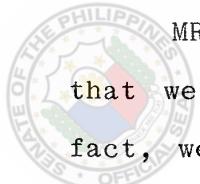
As a matter of fact in, I believe, it was Zamboanga, when our attention was called in the Department of Education, Culture and Sports in -- Pagadian, I believe it was, that sexual favors were extracted from the teachers to guaranty a permanent item or to guaranty a promotion.

Of course, perhaps in the CSC you have these lofty ideals, but I want to find out how are those ideals translated into actual practice in the different agencies because they come to us to complain since they are afraid to complain to the authorities since binabalikan sila ng mga sagot na ganoon - Magpasensiya ka na, bale wala naman iyan, eh. Hindi ka naman naano e. Or, they themselves, because of that reaction choose not to complain. So, the law may be there for their protection, but it is people that have to implement the laws. So, I wanted to call the attention of the CSC if you are not doing it yet.

MR. ACEBEDO. We will take note of that, Your Honor. And perhaps what we can do is double our effort on sexual harassment, Your Honor.

SEN. COSETENG. Yes. You can always tap our NGO, the Women's Media Circle. This is the producer of Woman's Watch. And we conduct these seminars for free in the different regions precisely because we feel that it seems efforts of government seem to be inadequate to address this, although the law is there in their favor.

Another question, Mr. Chairman, is whenever there are two (2) people involved, for example, a man in the government service is having an affair with a woman, whether or not they are in the same level or whether the woman is grade --normally, the woman is of a lower/level than the man, when this is found out, it's normally the woman that gets fired. So, I wanted to find out if there is a policy on this. Because, normally, the man belongs to a higher grade level, so that it is really the position and the power that is used as part of that relationship. So, in that situation, what is the stance of the CSC?



MR. ACEBEDO. Well, Your Honor, we have stated earlier that we have policies relative to that. As a matter of fact, we are fully endorsing these proposed bills to that effect.

SEN. COSETENG. But before these bills are going to even be passed or signed into law, between now and then, what is the CSC doing about this? Because people laugh about these things only because the woman is at the disadvantaged position but that is part of that entire... I mean, we can cite examples, but in the final analysis, it

is always the woman that has to withdraw the complaint, be ashamed, be afraid, be fired, or be subject of ridicule, which is part of that consciousness. So, I wanted to find out. Perhaps as far as Chairman Sto. Tomas is concerned...I mean, she's well aware of it, but how is that going to filter down to the lowest ranks of the bureaucracy?

MR. ACEBEDO. Well, perhaps, Your Honor, we are having a continuing training programs relative to this, as I have stated earlier, and under existing laws, there are remedies to this effect. For instance, in that particular case that you have earlier mentioned, it's a ground for disciplinary action not perhaps for...

SEN. COSETENG. Disciplinary action for whom? The man or the woman, or both? Because it's normally the woman that gets fired or separated.

MR. ACEBEDO. Against the man who harassed the woman or discriminate against the woman.

SEN. COSETENG. No, but in this case, it's no longer harassment. They are having a relationship, both of them, and normally, it's the woman that gets dismissed from office.

MR. ACEBEDO. Then, it may fall under the case of disgraceful or immoral conduct, Your Honor, against both of them.

SEN. COSETENG. Finally, Mr. Chairman, concerning physical attributes, because I believe that that is also a form of discrimination. For example, in the advertisements in the newspapers, you will see "Wanted Bookkeeper, Female, 18 to 24 years old, pleasing personality", you know, this sort of thing. Does a bookkeeper have to be 18 to 24? I

think a sixty year old bookkeeper that is one hundred/^{one}/_{sixty} pounds can even be more efficient. But they use these physical attributes as criteria for hiring women.

You have, for example, also, in the case of Philippine Airlines, I know women who have not been accepted because their hips are one inch or one inch and a half wider than what is the correct proportion between waist, hips and height. So, I wonder if this is again within that scope.

I remember, I was in Alaska Airlines' plane recently, and the stewardess must have been fifty eight (58) years, her face had wrinkles, she had salt and pepper hair, but she kept her job. She wasn't fired for being old or she wasn't fired for being 'kulubot'.

Perhaps these are some of the things that you can look into.

Thank you, Mr. Chairman.

THE CHAIRMAN. Would you like to react on that last statement?

SEN. OPLE. May I acknowledge the presence of Senator Blas Ople who is the Vice Chairman of this Committee and who is also the Chairman of the Committees on Civil Service and Foreign Relations. May I also acknowledge the presence of Senator Ernesto Macea.

SEN. OPLE. It will really be helpful, Mr. Chairman, if we have a stronger and broader statistical or data base on sexual harassments committed in the work place. But I am not aware that such a study exists, although this Committee has to take cognizance of a very widespread belief, it seems to me, that there are quite a few acts of sexual harassment going on in work places whether in private or in the public

sector, and in most of these instances, the common denominator is the hold that their superior has over the subordinate, or an employer has over the employee, or a prospective employer, perhaps the personnel manager in this case, requires some payment for the favor of accepting an application for a job.

Now, in the more advanced countries, especially in Europe, we know that they have long adjusted their penal laws in order to provide more specific definitions.... /jmb



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SEN. OPLE.

... provide specific, more specific definitions / of sexual harassment and making this over into a separate and distinct offense from, let us say, the usual crime of vexation, how do you call that?

THE CHAIRMAN. Unjust vexation.

SEN. OPLE. Acts of lasciviousness and vexatious acts that are sex related. We now hope through this bill to institutionalize a more distinct, specific and punishable type of offense, which is sexual harassment itself.

Can we ask the - can we ask Atty. Paras, what the experience of the Department of Justice might be in this regard? The legal environment now. What does the Penal Code provide and what does the Civil Service Act say, if any, concerning sexual harassment, and later^{on} we will as the Department of Labor to make their own contributions from their own experience. Atty. Paras.



MR. PARAS. Thank you, Your Honor.

Your Honor, under the Revised Penal Code, illegal acts relating to sex or perversion are either punishable under the provision on acts of lasciviousness or rape, Your Honor.

SEN. OPLE. Acts of lasciviousness or rape?

MR. PARAS. Or rape. But I was going over **these** bills, Your Honor, and it would seem that these bills are different from what is punishable already,

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because this bill punishes the act of making sexual favors as a condition to employment, Your Honor. So, it is like an indecent proposal, Your Honor. But then, Your Honor, I would also think that the Committee may also consider the fact of the - how about graduating the penalty, Your Honor, so that an attempt would be punishable by a lesser penalty on a consummated act of sex would call for a graver penalty, Your Honor.

SEN. OPLE. Because here we provide for a one year imprisonment and twenty thousand pesos. Of course, over and above what other laws, such as the Labor Code and the Civil Service Act, I now provide even if it is not clear to me whether this constitutes at all a punishment, a punishable offense under the Civil Service Code - I'm not familiar with that.

So, you think that there should be graduations or degrees of the severity of the offense and commensurate improvements in the penalties?



MR. PARAS. That is right, Your Honor. And Your Honor, can I also point out that, Your Honor's bill, Sen. Ople's bill does not only call for harassment in the work place but also in the non-employment environment, particularly Section 8 which states, "whenever a person in authority uses his position or influence to intimidate or coerce another individual who is under his care or supervision or who has a pending business or official transaction requiring

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his approval through unwelcome advances request for sexual favors and other verbal or physical conduct of sexual nature, he shall be liable for sexual harassment in accordance with this act."

So, your bill, Your Honor, is wider in scope.

SEN. OPLE. Yes, it broadens the coverage to include analogous situations where one is in a position of power in order to influence a favorable decision, which is related to a form of sexual favor, no. Now, what comes to my mind, unfortunately for someone I know and he's a friend of mine, I mean the example, a handy example of this was the charged made by timber operator, that when she was working for ^{The} renewal of her timber license agreement in the Department of Environment and Natural Resources, the incumbent Secretary then - it's on the record anyway, Secretary Factoran, you know, touched some parts of her some sensitive erogenous parts of her constitution; and this became highly controversial. I think it reached the level of a Court, and I do not know - it became a **feat** subject for examination, deliberation in the Commission on Appointments under the same distinguished Chairman that we have in this Committee.

Later on I would probably asked in private Sen. Herrera how he adjudicated, this Committee adjudicated that, but this ^{is} one of those situations that will fall under this provision now of the bill if, let us say, something like that occurs or is



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repeated. What do you think of that, Atty. Paras?

MR. PARAS. Yes, sir. We totally agree with the, with that provision of law, Your Honor, since the rationale is that, really it is to avoid or to penalize the use or the abuse of power to solicit sexual acts, Your Honor.

SEN. OPLE. And I would remind you, Mr. Chairman, when analogous case, not exactly analogous, very much lighter, a very much lighter offense to the point of triviality which caused Sen. John Tower, his confirmation in the United States Senate. The FBI sent a report saying that on one occasion, I think this was a ceremonial inauguration of a military airport, he tapped some of the pretty girls, employees of the base on their buttocks, whether or not as a fatherly greeting or he just couldn't resists the temptation. This is normally associated with the Paparizzi, as they are known, no. And according to the culture, it can be just easily set aside as something wholly innocent. You can be pinched on your behind in a Roman street by Paparizzi, which is a form of tribute I believe to your, to the loveliness of your person.

But in this case, this was documented, there were witnesses and the nominee of President Reagan to be Secretary of Defense - the nominee of President Bush. Sen. John Tower of Texas who loomed very large in the political fermament of America. He more than

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any other factor, this was the one I believed that cause his confirmation, in addition to a book, a publishing deal involving only one hundred thousand dollars.

Now, that was, of course, a proceeding of the Senate, functioning as the Commission on Appointments in the United States. But in cultures like the U.S., already this is a rank no matter how trifling that act might have been, there is someone in power with authority, tapping some pretty girls on their behinds, and that was looked upon as very.../pmm



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SENATOR OPLE. ... and that was looked upon as very offensive and a mark of the unworthiness of a very highly praised personality so that he could not be entrusted with the task of helping direct the defense of the United States. Does this mean that this bill is in the mainstream a sort of world mainstream trend to distinguishes offenses of this sort, a separate and distinct from the customary normally recognized offenses in the Penal Code.

MR. PARAS. Yes, Your Honor. It is a welcome addition to our Penal Laws, Your Honor, so that these kinds of harassments would be penalized. Since in the Penal Code rape and acts of lasciviousness would have to have a physical act, in the case of rape there should be violence. In this case, Your Honor, the violence, physical violence -

SENATOR OPLE. Can be verbal or non-verbal or merely a gestures that are offensive.

MR. PARAS. Yes, Your Honor, as long as the purpose is there, the intent is there, Your Honor.



SENATOR OPLE. Mr. Chairman, can we ask Department of Justice on the otherhand, to give this Committee some advice on how this right, the bill is conferring on women and workers in particular and whatever sex might be involved we now have a multiple definitions of this it used to be simpler. It used to be directed only to women. But isn't there a possibility that sexual harassment can be faked, acts of seduction

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emanate from this supposed victim so that someone gets entrapped and maybe for some vindictive purposes is accused of this crime, this offense. Is that a serious risk that you see or this is not something likely to happen.

We know factional politics inside work places whether in the government or in the private sector. In the private sector unions fighting for jurisdiction and sometimes the company has to take sides. In a government office suppose these frictions also occur and women are taking on increasingly leadership roles whether in trade unions, in the private sector or in the associations of employees in the government center. What can you suggest to prevent the abuse of this right?

MR. PARAS. But, Your Honor, the matter of being entrapped or some other motive could be a matter of evidence already in the prosecution of the crime. That could be a defense on the part of the accused. But then that could have to be considered when the proper time for the presentation of evidence would come, Your Honor.

THE CHAIRMAN. Let me just acknowledge the presence of the Honorable Secretary of Labor, Nieves Confesor.

SENATOR OPLE. Now, before we put questions on the Secretary of Labor, I see, Mr. Chairman, that we have Undersecretary Trajano who for many years has dealt

with welfare problems in connection with employment in the Department of Labor. Can you tell this Committee how, in your opinion, in the opinion of the Department of Labor, how widespread are these - is this experience of sexual harassment in the workplace. Well, we do not expect in the nature of things, victims to be very forthcoming, there is a tendency to suppress and to conceal what could be causes of personal embarrassment before ones own fears. But just the same there must be some reports filtering through the screening of self-restraint, self-made cover-ups necessarily imposed. As a matter of prudence by women, exploited women on themselves, there must be filtering through some information to the department on the scale in which this is happening now or has been happening overtime. Do you get reports of sexual harassments in the workplace?

MR. TRAJANO. Thank you. Mr. Chairman, Honorable Senator Ople, earlier before you arrived we expressed support to the objective of the bills on sexual harassment. We feel that it's about time that concrete action is taken by way of legislation to provide deterrent for the commission of sexual harassment in the workplace whether in the private or the public sectors.

As of the present, we don't have, we do not have an official document or instrument indicating the magnitude of the commission of sexual harassment in terms of statistics. But we do get reports verbal at

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One of these provisions, for example, calls for joint formulation of measures to deter, to prevent and to pass upon disputes of this nature between a union and the management. What do you think of that?

THE CHAIRMAN. Well, I think, I recall correctly, there were two incidents which were publicized on a nationwide basis in the case of applicants for teaching positions ...



at times of the commission of sexual harassment cases in government offices even within the Department of Labor and Employment. And in the private sector we suppose that this is translated in the disputes, in the cases, Your Honor, that propped up from time to time in the workplace. And so this will be seen in the cases of unjust dismissals being brought to the Department of Labor and Employment, to the arbitration branches. But we suppose that this is a widespread phenomenon, Your Honor, but we don't have statistics at the moment.

SENATOR OPLE. You have the feeling that this is a widespread phenomenon.

MR. TRAJANO. Well, based on, as we said, reports or verbal most often -

SENATOR OPLE. Grapevine.

MR. TRAJANO. Yes, sir. Grapevine. This is a growing problem.

SENATOR OPLE. I don't mind confessing, Mr. Chairman, that this bill was directly inspired by women workers who got together from some of the companies especially the garment companies owned by foreign employers who saw me several times, tell me that such harassments do occur on a scale probably wider than what we imagine today and they had experiences to report but were wary about making disclosures of this nature in a public forum. But they did help put some of the language in this bill.

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THE CHAIRMAN. ... in the case of applicants for teaching positions / where they were required by the superintendents or supervisors to dance half-naked in Mindanao. And the other was there was an airline three years ago that applied for a franchise. When they start hiring stewards, these stewards were subjected to sexual harassment by homosexual officials of the airline.

SEN. OPLE. These were incidents that were widely reported.

THE CHAIRMAN. Yes, widely reported, published in national papers.

SEN. OPLE. We should ask the Secretariat of this Committee to look for those clippings.

Well, we have a very efficient Secretariat today. In this clipping taken from the Daily Inquirer of January 18, 1993, there is a story: Execs in Dance-for-Job Scandal Spare the Acts. Well, that means the Civil Service Commission must have been very lenient.

THE CHAIRMAN. They were acquitted. I understand that the Civil Service Commission acquitted the superintendent and the supervisors.

SEN. OPLE. May I quote, Mr. Chairman, briefly on this.

"A check at the DECS revealed that no less than the Civil Service Commission had reversed an earlier dismissal order and meted out the erring officials the relatively mild punishment of suspension for six to twelve months and a fine."

This offense occurred in Tubod(?), Ilocos Norte. And in Resolution No. 92-1912 dated November 24, 1992,

the CSC ruled that these DECS officials committed "a mere error of judgment", an offense not so great as would warrant the removal from the service. The CSC appealed the previous DECS' ruling that the officials were penalized not for the indecency or decency of the street dancing but for the act of allowing the use of the division and district offices as a venue of the balldance exhibition. The logic of that ruling eludes me, but may I suggest, Mr. Chairman, that this clipping and other items pertinent to the two incidents you just cited be obtained and submitted to this Committee and be made part of the record.

Now, do we have the Civil Service Commission here?

MR. ACEBEDO. Yes, Your Honor.

SEN. OPLE. Mr. Chairman, may I ask Mr. Nelson Acebedo, Director of the Civil Service Commission, to comment on this incident and the ruling of the CSC apparently reversing a recommendation for dismissal and imposing just the lightest penalty of a six-month suspension on the Education officials responsible for that bold and indecent show that they commanded to be staged with one of the teachers I believe as the victim in the sense that she was directed to strip -- I do not know up to what level -- in order to perform a bold show for the delectation of the higher educational officials present.

Can you comment on that?

MR. ACEBEDO. Well, thank you, Your Honor.

The Civil Service Commission has already made its comment or answer on these news reports.

SEN. OPLE. Please talk closer to the microphone.

MR. ACEBEDO. The Civil Service Commission really abhors these kinds of sexual harassment, Your Honor. But I suppose the Civil Service Commission, in resolving that particular case, has looked into the facts and evidence presented. So although not necessarily questioning the wisdom of that decision of the Civil Service, Your Honor, I would rather suppose that we have resolved it in accordance with the facts and evidence presented.

SEN. OPLE. Would this constitute an act of sexual harassment under this Bill? What do you think? You have read this Bill?

MR. ACEBEDO. Yes, Your Honor. It would really constitute sexual harassment.

SEN. OPLE. It would?

MR. ACEBEDO. Definitely, Your Honor.

SEN. OPLE. Now, Mr. Chairman, this time I want to put the question to the Secretary of Labor who has access to a lot of information in industry, who is in close touch with employers and trade unions, and who must possess some information she should share with this Committee on the nature and on the scale of sexual harassments ...

We are dealing of course mainly with the exploitation of women workers under this heading of sexual harassment because this is a gross form of exploitation. But what does your experience show?

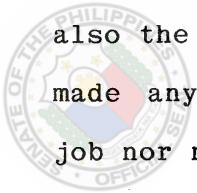
MS. CONFESOR. Thank you very much, Your Honor.

Members of the Committee and Mr. Chairman. Regarding sexual harassment, as my undersecretary has

stated, we are supporting the bills. And the fact that there is almost a very clear statement of what the duty of the employer is, which is so unclear before regarding making sure that this is minimized at the workplace.

Regarding the information of sexual harassment, as I was telling Undersecretary Trajano, we have received reports. And usually these reports, they are not in a survey but basically from forums and workshops that we have held not only with the employers, but also as well as the unions and workers.

What is very critical here, Your Honor, is that I think the other thing that this bill, when it comes into a law, the other advantage or the other value that this law will have when it becomes a law, is that it becomes very clear already to the women that they are being sexually harassed. One of the things that has come out from our consultations is that some of our women workers accept the sexual harassment. I think this is part of our culture in a sense in the sense that the woman feels that this is part of the job. And therefore, that is also the reason why I think our society also has not made any statement that this is not really part of the job nor no woman should accept such harassment. And I think this is also true even in my own department, that there have been cases really of sexual harassment. But both the woman and the man -- and that is even worse, because usually the man is of a higher position, where the power position now becomes part of the dynamics in the relationship -- they accept it as part of the job. That's why even at the Department we have been piloting this. We're trying to raise the awareness, and that a



woman can do something about it.

So basically I think, Senator Ople and Members of this Committee, the other thing that is worthy about this is that, one, it raises the level of awareness -- that there is harassment, that there is something going on for our women especially. Second, it also clarifies very well and states very well the duty of the employer, that he is part of these dynamics, and that there is a duty on his part to make sure that this is minimized at his level.

SEN. OPLE. Now, in this case the employer is solidarily liable. Now, I wonder what you may have to say on solidary liability in the case of a government office. Will the Secretary of Labor be solidarily liable if an act of harassment occurs there? Of course you are just an alter ego ... /mva



SEN. OPLE. ...alter ego of somebody higher.

MS. CONFESOR. Yes.

SEN. OPLE. How will this concept of solidary liability operate in the public sector environment? Maybe it is easier in the case of a government corporation...

MS. CONFESOR. Yeah.

SEN. OPLE. ...where you have an independent chapter.

At this point, can we call on the representative of the Secretary of Justice to comment on this. Should we amend the bill so that it is not the Republic of the Philippines as the employer but certain levels of authority in a department that should be made solidarily liable because of the failure to institute the proper and necessary measures to deter, to prevent, and to punish such acts of harassment?

MR. PARAS. Your Honor, I think the employer here should refer to the immediate supervisor who has knowledge of what is happening and it did not impose any restrictions or it's like confirming what is happening.

SEN. OPLE. This brings us to that old interesting domain of command responsibility - up to what level is a superior to be held responsible when something goes wrong? And I think the general doctrine about this is that it reaches up to the level of the functional superior who has failed to take the appropriate and necessary measures to prevent or deter the commission of an offense by a subordinate. Now, how far up do you go? In the case of a private company... The bill says the employer is solidarily liable. Up to what level of command or authority does this extend?

extend? Usually, it is the personnel manager who represents the employer, or the industrial relations supervisor, or the so-called human resource development chief. But can the victim of an offense of this sort, let us say, implead in a case the chairman of the board, the board of directors, and the president of the company as being solidarily liable?

THE CHAIRMAN. What is now the provision of the Civil Service law---civil service rules on this matter?

SEN. OPLE. Wala. I think the Civil Service Code has nothing to say about that, no?

MR. ACEBEDO. There is no provision to that effect, Your Honor.

THE CHAIRMAN. There is no provision to that effect.

MR. ACEBEDO. Yes, wherein the employer can be solidarily liable with the agent or employee.

SEN. OPLE. There might be something disproportionate when you implead the whole board of directors for an act of sexual harassment committed by, let us say, a jr. executive in a company.

So, I think that is one of the things that we will have to sort out. What do the employers have to say?

I see that we have the distinguished Director General of the Employers Confederation of the Philippines present, Atty. Vicente Leogardo, Jr.

MR. LEOGARDO. Thank you, Your Honor.

Of course, these three (3) bills on sexual harassment merit a full support of the Employers Confederation of the Philippines, and, for that matter, by all other sectors. But, of course, we have certain points and issues to raise that need further clarification, and these points or issues pertain first to the practical application of the law.

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sector employment insofar as the private/is concerned, as presently worded in the three (3) bills. And the other pertain to the certain legal ambiguities in the bill that need further clarifications. Now, of course, underlining these concerns is the fact that the employer is made liable for the acts of a third party, namely, his employees or agents, and even this liability is not very clear. In case of corporations, who in the corporate hierarchy should be made liable, at least civilly, in such cases?

Now, with respect to the practical application of this bill, in the limited confines of an enterprise where workers of all sexes interact in an intimate and close working relationship, there are countless occasions and opportunities where the call of the flesh and the weakness of human nature may be aroused and eventually ripen into acts that may befall under the definition of sexual harassment. Of course, again, this might be a two-way affair, with the consent of both parties...

SEN. OPLE. A case of, what I call, consenting adults.

MR. LEOGARDO. Yes, Your Honor.

And the problem may only come to the surface if some...

SEN. OPLE. If they are not adults, then it's something else.

MR. LEOGARDO. ...misunderstanding arises.

Now, two (2) of the bills, including your bill, Your Honor, make the employer solidarily liable if he fails to take the "necessary" steps to prevent the commission of such acts. Under the confines of such continues interfacing between male and female employees, especially in

organizations which employ thousands of workers of both sexes, the employer would be at a loss exactly what should be the necessary steps he should take in order to prevent the occurrence of such acts of sexual harassment.

Due to the vagueness of such requirement, this would make the employer virtually the guarantor or insurer, if I may say so, of the moral conduct of his employees. The only effective way it can minimize the occurrence of such sexual harassment is to segregate the sexes in the working place, but this would cause more problems for the employer.

So, I think the requirement that it should be the duty of the employer to take such necessary steps should be first clarified.

SEN. OPLE. Should be clarified.

MR. LEOGARDO. Should be clarified. I mean, they should be spelled out, I suppose, so that at least the employer can take the necessary steps, and if he feels to do so then the employer will be willing to accept liability for such failure.

Now, with respect to the legal ambiguities, Your Honor, there are a number of points we would like to raise, because, as I have earlier said, the liability of the employer is predicated upon the acts of a third party, not of his own. Of course, individual employer may commit the sexual harassment, there is no question about this, but if the acts of sexual harassment / committed by a third party, maybe an employee or an agent, then this is the issue...

There are certain issues that we would like to be clarified on. First, were the acts of sexual harassment are

imputed against an employee or agent by employer, what will be the valid cause of action that can be instituted, and what would be the appropriate forum or fora where such cause of action can be filed, or which has jurisdiction... (inaudible).

SEN. OPLE. Well, I will call your attention, Mr. Chairman, to the provision, at least in the bill that I have filed, which designates the regional office of the Department of Labor or of the Civil Service Commission as the first venue of examining such complaints of sexual harassment.... /jmb



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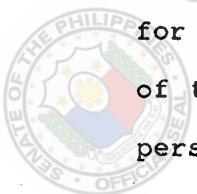
SEN. OPLE.

... such complaints of sexual harassment, do you have in mind any alternative procedure?

MR. LEOGARDO. I'm speaking only, sir, of private sector employment cause. I'm only limiting myself to the private sector situation, so that the point I'm raising here is, what is the cause of action and where should the cause of action, the civil aspect of the cause of action, and where should it be filed?

Second....I will...As I will show it, as I will discuss later, I don't believe that this will fall under the ambit of the Labor Code, and I would like, if permitted, I would like to point out why not. Second. Can resignations allegedly as a result of sexual harassment be considered as a just cause falling within the ambit of ^{the} Labor Code? And third, can an employer be solidary held liable for damages for the acts of a third party? Because under the law of torch, the person who has supervision over another person who has caused the damage is only subsidiary liable in case the person primarily responsible for the act cannot pay himself.

Now, the Labor Code of the Philippines becomes operative only where employer/employee relation exists, and jurisdiction is expressly conferred upon the appropriate agencies or competent authority standard arising from violations of the Labor provision of Labor Code as well as violations of the contractual



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terms and conditions of employment. So, in other words, the legal tie here is based upon employer/employee relationship and the violation is committed by the employer himself upon the rights of the employee.

SEN. OPLE. You do not see this as a possible potential labor standard?

MR. LEOGARDO. I cannot say because this is not committed by the employer on the rights of - there is no violation of the labor standards of the provisions of the Labor Code, as presently worded by the employer.

SEN. OPLE. Are you aware of any international convention or recommendation in the International Labor Code, covering sexual harassment issues?

MR. LEOGARDO. At this point in time, Your Honor, I have not...



SEN. OPLE. May I address...
THE CHAIRMAN. If I may just intervene because this is a very important issue that you said. In a practice of the company where there is a great potential of abuse that will resolve to sexual harassment, is it your position that the employer should not be liable? Let's take the case of the practice in the garment and electronic industry where after working hours before they allow the workers to go home, they will be inspected to prevent pilferage, and normally, this is being abused by the security guard, they touched the

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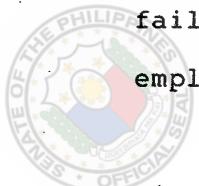
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private parts of the female workers. Now, don't you think that in this respect, considering the potential of abuse that the employer for failure to protect the - especially the female workers should be liable?

MR. LEOGARDO. Yes. This one specific case. I think that the employer if it has not take necessary precaution to select his security guard and briefed them on how to search, conduct appropriate searches, then I think the employer can be made liable in such a case. But as I said, the term, "to take the necessary steps," is rather very general.

THE CHAIRMAN. Yeah. But the point here, Mr. Leogardo is that, in a company practice where there is a great potential for abuse that will result to sexual harassment, don't you think that the responsibility of the employer is also great that to see to it that this will not be abused, and that failure to exercise that responsibility, the employer should be liable?



MR. LEOGARDO. Yes. There is a specific situation - that specific situation, Your Honor, that you mentioned, I think this can be done, but where in the ordinary day-to-day cause of business where female employees and male employees interact, I really don't know what precautions the employee can take except to issue warnings and so on, but I cannot see what other steps I think. What other steps the employer can take in order really to minimize.

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THE CHAIRMAN. Well, usually the practice of the management is just to hire security guard who are screened by a separate business entity, the security agency, and you do not have the participation in determining whether these are sexual perverts, whether these are lesbians or homosexuals. There is carelessness on the part of the employer, because these are abuse made by or abuse made by these security guards.

MR. LEOGARDO. Then it is about time...

THE CHAIRMAN. I understand that there was even one company, if I recall correctly, where the female workers are required to take off their clothes, parang half-naked ito, just to make sure na walang mga items na ninakaw nila.

MR. LEOGARDO. Then it's about time that the employer takes a direct hand in the appropriate selection of security guards who are given this duty of searching each employees before they check out of the company premises.



Now, one suggestion I may make, Your Honor, is the fact that I noticed in these three bills that the offender, in the case he is an employee, of course, is liable for I supposed damages as well as criminal sanctions, but I think it should be specified that the commission of sexual harassment by the employer should be considered one of the just causes for termination of such kind of employee. I think this should be specified in the law, in the

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bill itself in order - so that this will avoid, you know, ambiguities and controversies when the...

SEN. OPLE. Mr. Chairman, I believe that is a very sound suggestion. Do you want to suggest a more appropriate language with respect to employer liability? Well, I will not ask you to do that now, you may need to consult with some of your experts in the Employers' Confederation. But the concept of the employers sharing a liability where there is patent failure to provide for appropriate deterrent and preventive measures, I suppose you do not question that.

MR. LEOGARDO. No, no.

SEN. OPLE. Now, Mr. Chairman, I believe it's about time we heard from the workers, and may I ask that Attorney, Congressman to be, Temistocles Dejon be recognized.

THE CHAIRMAN. We have three representatives here. From the workers, we have one from the Federation of Free Workers, Johnny Tan, and one from the government sector, from the PSLINK.

SEN. OPLE. May I suggest that we shift our attention to the side of the workers. So, we will put questions to Atty. Dejon, Ms. Marilyn Ignacio of PSLINK, and Bing Sta. Clara of the Federation of Free Workers, right?

MS. STA. CLARA. (Nodding her head).

SEN. MACEDA. Mr. Chairman.

THE CHAIRMAN. Sen. Macea.

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SEN. MACEDA. If I may be allowed to just give a few inputs. I am not a member of the Committee, but I came here today in view of the subject-matter. Maybe I'll become a member of the Committee soon, as I'm reviewing my Committee memberships in representation of the Minority in the Senate.

SEN. OPLE. We want to actively solicit your membership in this Committee.

THE CHAIRMAN. That's a welcome announcement.

SEN. MACEDA. As well as in the Civil Service Committee.

I think the bill is timely and the timing cannot be more appropriate following yesterday's dramatic hearings on the Brunei Beauty issue. I'm sure that nobody here will say that, ano ba ang pakialam ng Senado sa mga bagay na ganito, which was the issue that was raised yesterday, na hindi raw dapat pakialaman iyong buhay ng mga artista.

I would like to say that the bill is really timely, but I'm glad that extensive hearings are made.../pmm



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SENATOR MACEDA. I would like to say that the bill is really timely but I'm glad that extensive hearings are made /because I think the Technical Working Group will have to do a lot of refinement of this bill to really make it effective. Of course they are more advance in this in the United States but I think not because of existing legislation but because women as a rule in the U.S. have become more active in crying sexual harassment everytime an employer in the U.S. tries anything. And so really in the U.S. employers are even sometimes afraid even to talk to their employees outside of the normal environment because if there's, you know, how so conscious Americans are and there's really a lot of problems.

Having said that, I do hope that with the new provision of the Constitution allowing government workers to organize but there is going to be more courage if that activism on the part of government workers to come out and to complain. Although the fact that there are labor unions for decades in the private sector does not also give us any optimism because even with the labor unions this is a matter that has always been there but has always been swift aside and the comment of the Secretary of Labor is significant that heretofore even many or some of our women have accepted a certain amount of what is normally called sexual harassment in the U.S. or in

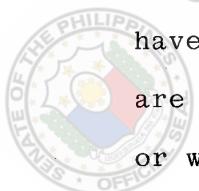


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country as part of the conditions of work.

Now I will leave the private sector to you and the Secretary and the former Secretaries of Labor here. Let me just say for the record, that in the five years that I was Chairman of the Defense Committee and the one year that I was Chairman of the Blue Ribbon Committee, it is my impression that the situation is worst in the government sector. So I'm glad that reading Senator Ople's bill for one, that there are specific sections here dealing with the government sector.

There were quite a few, I would say, as many as two dozen widows of military personnel who complained that everytime they follow-up their benefits as widows of military personnel they were subject to sexual harassment before they could get their death or retirement benefits. And I think that is the worst kind of sexual harassment in the government service when widows, poor widows even of soldiers who have been killed or policemen who have been killed are subject to this kind of sexual harassment by RSBS or whatever it is in Camp Crame or Camp Aguinaldo.



SENATOR OPLE. May I just add to that comment, Mr. Chairman. The fact that this form of harassment of widows of soldiers killed in combat was one of the causes that fueled the military rebellion. It was very very high up of the agenda of grievances presented to President Marcos formally by the

Reform the Armed Forces Movement.

SENATOR MACEDA. Well, the Senate on its own with the bill that I and Senator Herrera supported, I authored it, did something positive to help relieve this problem, Senate Bill No. (inaudible) the last Congress became law which ordered that within 72 hours after death, six months salary of the dead soldier or policeman is immediately released to the family so that the widow has all the time to work out and pay for the burial bills, etcetera, etcetera. So I think that help really the situation.

Secondly, it is my impression and having been even the son of a superintendent of the public school teacher, of course I always kid my mother that she had no choice because when the superintendent courted her how can you say no to the Division Superintendent of Schools, but that and probably because there are about 400 thousand teachers most of whom are women, but the probably numerically the biggest not only in the Lanao dancing case but the biggest number of sexual harassment cases would be with the teachers in the Department of Education, Culture and Sports whether it is a principal or supervisor or superintendent in the rural districts. And this is really where the bigger problem is.

I think that the women, government employees in the urban areas or Metro Manila normally would be more resistant and more active in denouncing this. But poor teachers in the rural areas palagay ko



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walang kalaban-laban. So we go into such practices and maybe this is part of the things that the Technical Working Group can look into of not only superintendents but even let's say provincial heads of offices whether they are Health, Labor or Agriculture, usually asking if not compelling subordinates to go with them to attend a conference in the region or to attend a conference in Baguio. And that is I think usually part of the sexual harassment process. Of course you have the usual complaints about promotions being occasions but one clear case is in the matter of in effect compelling women employees to go with their superiors to conferences outside their immediate area of work should be clarified that employees cannot be compelled to go with their superiors to conferences if they don't want to, specifics like that.

I remember when I was a young boy I used to attend the annual conference of superintendents and supervisors in the Teacher's Camp in Baguio. The usual tsismis was that every superintendent had teacher girlfriend coming up with him to Baguio every summer.

Now in addition to that and this contributes to the crime situation. You have and we received quite a few of these complaints from public, well, members of the public who are offended parties or victims of a crime that when they report to the Police Station to a policeman they are subject to sexual harassment by the investigating officer. And that's why many of



them really no longer report because instead of their being the complainant and the victim and the oppressed party, in the end the police officers impose certain demands on them in the nature of sexual harassment if they are women or they are especially the victims of sexual harassment or sexual crimes themselves.

So I have a very distinct impression based on the last six year here in the Senate that it is a very serious problem in the government sector. And, therefore, as I said in that context, it is timely. Now, of course, a minority of our officials will also raise the point but there are indeed women who try to seduce to get promotions, you know, so how do you deal with a situation like that. Of course parenthetically, I just want to mention for the record that during the Marcos administration, I remember, a Secretary of Justice was very notorious because all of the judges were complaining that everytime he went to a province to conduct an inspection or a conference the Executive Judge was always ...



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SEN. MACEDA. ... conference, the Executive Judge was always / reminded by the advance party of the Secretary of Justice that he had to have three or four women available for him when he arrives. And I think that was a matter of public knowledge in the Department of Justice at that time, you know.

I only raised that because once you have that kind of a department secretary, then you can be sure that the whole culture of sexual harassment in that whole department will become a fact and will become more serious because you have no less than the cabinet member himself.

SEN. OPLE. Mr. Chairman, pwede bang pakiusap ko kay Senator Maceda na ibulong lang sa akin, ng marahang marahan ...

SEN. MACEDA. A, yes, it was not the Secretary of Labor, of course. As I said, it was the Secretary of Justice. (laughter)

Now, of course, if you listen to Deo Macalma's Espesyal na Balita or to some columns, there are quite a few members of the Ramos Cabinet that are supposed to be of this inclination. So maybe I do not know how we are going to deal with this problem right now. Of course there will be Cabinet Members who tell you that we have role models higher than us. So that is also a problem under the present situation.

SEN. OPLE. You want to be a little more explicit about that?

SEN. MACEDA. I think we will ask the Secretary of Labor to be the one to whisper to us that

information. (laughter)

Thank you very much, Mr. Chairman.

THE CHAIRMAN. May we get reaction from the comments of Senator Macea from the government sector?

Secretary of Labor.

We'll ask also the government unions later to give their comments/reaction.

MS. CONFESOR. Thank you very much, Mr. Chairman.

Senator Macea's comments, actually a part of his comments, really showed that -- that's why I would like to disagree with the employers' representative. And that's why I said the Department has taken the position that we will support the bills especially the issue of clarifying what is the employer's liability. Because the employer, like we were saying, he could very well ... What are the steps that he can take? He can make a clear statement of it in the company rules. We don't even have to legislate that it will be a basis for dismissal. An employer can place it in his own company rules. And this is how we see the portion of the bill that says the employer must take the necessary steps. And as Senator Macea has said -- of course he has made the departments and the cabinet his favorite example. But the employer, in a sense, is responsible also for creating the culture or the environment in which sexual harassment should not be part of the job.

So here, in a sense, what he has said is that even for government, and also most likely in the private sector where there may be much more freedom, the employer should have that liability and should be very clear in what he is supposed to do. The Department

later on can assist any employer in telling him what measures he can take so that he can partake or carry out this responsibility of making sure that sexual harassment is not something that he considers part of the job or it is something that he considers should not be part of the job. And he can do it in many ways.

THE CHAIRMAN. May we ask the union in the government sector?

MS. IGNACIO. Your Honor, Mr. Chairman, I would like to emphasize that Senator Ople's proposed bill is more exhaustive in the sense that it includes the non-working environment in the public sector. Because I came from a state university and it's prevalent that mere professors commit sexual harassment to their students. For example, in our case -- I won't mention our university -- there are male professors who get students pregnant for the reason that, you know, they'll get higher grades.

But how would the bill make concrete measures so that students -- maybe they are not consenting adults -- would have greater guts to complain. Where will they complain? To the Civil Service Commission or to the head of the agency?

SEN. OPLE. Under this bill it's the Civil Service Commission Regional Office. But we are open to suggestions with respect to venues for complaints.

Do you believe that is sufficient in the case of the state colleges and universities? That in the first instance it is the regional office of the Civil Service Commission that will deal with the complaint? Or are you not satisfied with that?

MS. IGNACIO. Because if, let's say, student files his complaint to the head of the agency, of course the head of the agency would protect the faculty.

THE CHAIRMAN. Are there factual incidents of this nature in the university you are referring to?

MS. IGNACIO. Yes, there are factual evidences.

THE CHAIRMAN. Where the students filed a complaint but the head of the university protected the faculty so that nothing happened to the case?

MS. IGNACIO. Actually, the students would not file a complaint; they just go out of the university if they get pregnant. The students were at a loss. There are no cases filed, I think. But it's a common knowledge that professor so and so has ...

SEN. OPLE. They haven't heard of the family planning program of Secretary Flavier? (laughter)

THE CHAIRMAN. Is it not a form of sexual harassment to distribute condoms also to ... (laughter)

SEN. OPLE. But that is a very good point, related also to Senator Maceda's earlier suggestion that these cases such as the Tugod(?), Ilocos Norte ... a, Lanao del Norte incident, is merely a tip of the iceberg(?) that you have probably a scale of harassment going on in the educational sector far bigger than what we imagine.

And here Marilyn Ignacio says that this is probably also endemic in the state colleges and universities; but this time between the professor and the instructor as the authority holder, and the student in the role of the supplicant for grades to be passed,

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for example, so that there is a relationship that makes the student highly vulnerable and the professor extremely powerful. And that is the sort of thing that this bill is trying to address, precisely, where power is exercised in order to carry sexual favors.

You have anything more to add, Ms. Ignacio?

MS. IGNACIO. No more, Your Honor.

THE CHAIRMAN. I understand Senator Coseteng would like to ask questions to Ms. Ignacio.

SEN. COSETENG. Thank you, Mr. Chairman.

Concerning the student-teacher example that was cited by our friend from a university, I would like to cite the concrete example of a case in the University of the Philippines, where a male professor was, not just on one count but on several counts, taking advantage of his students. And we had written an official letter of complaint to the President of the University. And I think the action taken was just to create a committee to investigate, to find out whether it's true or not, whether who is guilty or not. And nothing ever came out of it, and the professor continues to be connected with the University.

In other cases, as I mentioned earlier, before Secretary Confesor arrived, most of the time, whenever there is this situation, it is usually the woman that either gets fired, the woman that gets laid off, so that the women are discouraged from complaining. Or if they complain, as I mentioned ...

/mva

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SEN. COSETENG. ...as I mentioned earlier before Secretary Confesor arrived, most of the time whenever there is this situation, it's usually the woman that either gets fired, the woman that gets laid off, so that the women are discouraged from complaining. Or, if they complain, as I mentioned to Director Acebedo earlier, when the women complain, they are told that: Pasensiya ka na, malayo naman sa bituka e. Or, bale wala naman iyun, maliit na bagay lang.

So, I don't know if the Department of Labor can manifest its sympathy or can show how women can be embolden to take these concrete steps since their promotions, their permanent items, the security of their jobs depends on the support that you are giving them, or depends on the sexual favor that they are willing to grant.

MS. CONFESOR. Thank you very much.

Senator Coseteng, I had earlier said that we have been in favor of this law for two (2) things. We think that sexual harassment is being accepted at this point. Sabi nyo nga hindi naman problema iyan. The law not only puts very clearly what a victim can do and what is the venue, because we also found out, even my little department, that our people were not complaining because of three (3) things: one is the most sad one - because they did not know it was sexual harassment, as I had said earlier. Second, when they wanted to complain, they didn't know who to complain to, so we have set up a mechanism within the Department. Three is, the Department itself didn't know what sexual harassment was all about, and deprioritized it.

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And that's why when we said we took the position that we were supporting all of these bills, it is because: one, the women is now emerging and is already one-half of your labor force, therefore, sexual harassment is here. Second, we would want to erase the ignorance about sexual harassment that this is as bad as ULP, or any other forms of unjust acts against a worker. And, third, is there are people who know already that sexual harassment is bad, therefore, they just want to know what is or what they can access to, so they get the justice that they deserve.

So, to us these bills will really help, because, at present, we think that this whole thing of acts of lasciviousness na lang iyan, pupunta ka pa sa korte, and you don't have a culture that supports the woman in pursuing such an action, already kills off the woman or the victim. And totoo iyung sinasabi ni Senator Coseteng. But what we need to do is that it cannot be just the Department of Labor to say, you know... the law has to set the framework. That's why to us it's very clear, especially on employer liability. I think that's the most innovative of this thing. Because all along when people talk of sexual harassment, they think of it as a private act between two (2) persons. Our position has been - No, it cannot be a private act, because, unang-una, iyung kultura natin already comes in, and dictates the kind of relationship or how to treat this relationship. Obviously, we are not in agreement. Okay?

Senator Ople said, the dynamics of power is in place, and that makes it. And I would like to raise this issue, that there is no such thing as consenting adults. Even if a

student or a worker where to go out with a person and enjoy it, to me that is consent to you, to me it is not consent, because your power dynamic is in place. She has no other choice, and, therefore, she might as well enjoy it, as somebody said. But that is not true. What is happening here is that we must protect.

And we talk of always saying, levelling the playing field. This is the where I think the law is going to be critical. It is really levelling the playing field for the woman. And this is what we need; and this is where I think legislation is necessary. Executive action, at this point, will have very little basis to get this issue of sexual harassment into the minds of everybody and make it part of the playing field.

THE CHAIRMAN. Earlier, there was a question raised by Senator Ople to the unions in the private sector regarding the incidence of sexual harassment in the private sector. So, may we now ask Attorney or Congressman Ting Dejon, then, later Bing Sta. Clara.

MR. BEJON. Thank you, Mr. Chairman, and the Honorable Members of the Committee for this privilege of giving us the opportunity to give the TUCP, the Trade Union Congress of the Philippines, our stand on the three (3) bills filed.

And we would like to categorically state here that we are in full accord - one hundred per cent in support of these bills of the sexual harassment.

To our mind, Mr. Chairman, and Members of the Committee, this is very timely, perhaps I will say, long overdue, because, to our mind, this is a gross exploitation of the women sector in our Trade Union Movement

on sexual harassment. And we are very happy that this bill has been calendared for deliberations. And out of these three (3) bills, we favor Senator Ople's bill which expands the full coverage, not only the sexual harassment taking place in the work place or establishment, but likewise in the non-working environment.

We have observed, Mr. Chairman, and Honorable Members of the Committee, that we have in our garment unions taking place the sexual harassment, but because of the fear of our members to come out openly, and since there is no specific law yet on sexual harassment, the apprehension and fear that they will come out openly is in the negative. And, therefore, with the passage of this bill to become law, our women in the garment industry as well as in the other important industries will have the courage, Mr. Chairman, and Members of the Committee, to come out openly to protect their interest.

And after listening to the other speakers about the liability, I agree, Mr. Chairman, that the liability of the employers should be specific and that they should be liable. Because I have noticed that the employers in the private sector can impose offenses under the so-called company rules, company policies at their own discretion, and the workers are at a loss. And so much so that when a case of sexual harassment comes out, we cannot invoke this because there is no existing law.

So with this existing passage of this bill to become into law, we can even put that as a grievance that sexual harassment is a ground for a legal dismissal, and we can file it in the Department of Labor for the protection of our

Now, as to the employer, the company, I agree with Senator Ople that there should be some degree of liability pinpointing people with their liability. For instance, the executive officer who is responsible for the operations of the company, he should be liable. Of course, I am agreeable that the members of the board who have nothing to do whatsoever with the sexual harassment should not be included, but those people, like personnel officer... Because one of the reasons why we have this sexual harassment bill, and I have read the bill, is the duty of the employer to protect their employees against sexual harassment. So, it is the duty of the employer to protect their employees. Now, the executive officer or personnel officer or any officer that has the command responsibility should be accountable for this act, and therefore, they should be solidarily liable. And if they are solidarily liable, they should be jointly included in the complaint for criminal act, damages and, to the employee, illegal dismissal.... /jmb



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MR. DEJON.

... to the employee illegal dismissal. I would also state here, Mr. Chairman, that with the announcement in the papers about the sexual harassment bills, there is now a fear on the part of the employers and their agents to be afraid of committing sexual harassment; and this is one deterrent now to protect exploitation of the women sector in our trade union movement, to come out openly and testify, Mr. Chairman, because there are so many cases unheard of, not publisized because of fear, because of their reputation that will be destroyed in the investigation.

So, we agree, Mr. Chairman, in full accord that this will have a far-reaching effect to the women sector in the trade union movement.

Thank you very much, Mr. Chairman.

THE CHAIRMAN. May we now hear Bing Sta. Clara of the FFW.



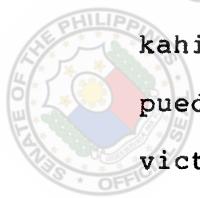
MS. STA. CLARA. Maraming salamat po, Mr. Chairperson, at sa mga kasamahan natin dito sa Senado, na binigyan ng pagkakataon ang FFW na ibahagi ang position nito tungkol sa mga bills on Anti-Sexual Harassment. Sinusupportahan po namin iyong mga bill lalung-lalo na po siyempre iyong bill ni Sen. Ople, dahil sa punto po nong coverage, ika nga, mas malawak po ang bill ni Sen. Ople, kasama po iyong doon sa non-employment environment.

Mayroon lang po kaming mga nakitang kung baga

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kakulangan sa mga nasabing bill, doon sa punto po ng definition ng sexual harassment. Para pong kulang po iyong sa punto ng classification nong crime. Ano po ba siya - against chastity or against person. Kasi po dito po magdedepende kung iyong karapatan ng biktima o ng mga kasamahan niya kung sino iyong puedeng mag-file ng kaso. Kaya po - parang doon po sa classification ng rape, meron na po ngayon mga aksyon na para gawin siyang crime against person, para hindi po sa maging private crime, maging public crime na ang ibig pong sabihin, hindi lang po iyong biktima mismo na kadalasan ayaw mag-file, puedeng iyong union officers o iyong union mismo o iyong kamag-anak niya, puedeng guardian, parents o witness na nakakita nong pangyayaring iyon na puedeng mag-file nong sexual harassment case na iyon. So, isa pong punto iyon, classification ng crime. Sana po gawing crime against person para po puede pong kahit - hindi naman basta kahit sino, kundi iyong puede pong mag-file ng crime iyong other than the victim.



Pangalawa po. Pag na-classify po nga kasi siyang crime against person, pati po iyong penalty, ika nga, tataas din, hindi lang kasi iyong - kung ang classification niya parang crime against chastity, wala din siyang pinag-iba doon sa sina-cite kanina ni Atty. Paras, doon sa Revised Penal Code, iyong Acts of Lasciviousness o minsan puede pa nga - iyong iba ang ginagamit lang unjust

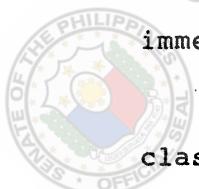
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vexation - mababa po masyado iyong penalty. Kung doon sa Revised Penal Code, habang wala pa po itong - hindi pa nagiging batas itong bill na ito sa sexual harassment, ang puede lang pong fallback nong mga nagiging biktima ng sexual harassment, kapag unjust vexation po, dalawang daan lang po ang puede niyang makuhang fine doon sa harasser.

So, isipin lang po natin na magkano iyong gagastusin ng tao kapag magpa-file siya ng case, iyong pabalik-balik na punta niya sa kung anumang departamentong ng gobyerno - DOJ ba, CSC o sa DOLE; magkano na lang iyong pamasahé non, tapos dalawang daan lang iyong makukuha niya. Kaya nga nababawasan iyong effectiveness nong mga batas natin dahil hindi na siya commensurate doon sa puedeng makuha o mabawi nong nagiging biktima.

SEN. OPLE. May I intervene at this point, Mr. Chairman. Can we ask Atty. Paras to comment immediately on that?



MR. PARAS. Yes, Your Honor. With regards the classification of the crime, whether it is a crime against person or crime against chastity, it does not matter, because the classification in the Revised Penal Code will not apply to your bill, because the bill if it becomes law will become a Special Law, and so it becomes a public crime, so much so that even the Union can file a complaint, the criminal case in Court on behalf of the victim, Your Honor.

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SEN. OPLE. So, is that reassuring for you, Bing?

MS. STA. CLARA. Opo. At least mas malinaw po ngayon, kasi nong pinag-uusapan nga po itong bill, malabo po iyong - sino lang iyong puedeng mag-file ng kasalanan, dahil kadalasan nga po ang nagiging problema ng mga biktima, ayaw nilang magharap ng kasalanan dahil puede silang matanggal sa trabaho or iyong tinatawag nating - parang dalawang beses pa siyang ma-harass dahil i-interrogate siya, baka naman ikaw iyong may kasalanan, nagpapakita ka ng na motibo, iyong pananamit mo. So, iyong puntong/sa biktima na mas mahirap na siya mismo ang kumilos.

Kaya kung magiging Special Law nga siya at ang classification ay public crime, mas mapapadali po iyong pagporsige natin doon sa mga tao na gumagawa nitong harassment na ito.

THE CHAIRMAN. You have some more to add?



MS. STA. CLARA. Tapos iyong punto po doon - kasi sa definition ng sexual harassment in the non-employment environment, para pong kulang pa po, parang bitin, ika nga. Kasi po iyon pong defintion doon, nagpapatungkol lang sa mga tao na may pending transaction, business or official transaction, tapos kailangan under - iyong tao na magpe-perpetuate nong harassment eh, a person in authority or in power or in position, para pong - paano po iyong sitwasyon na nasabi po kanina ni Ms. Ignacio, iyong sa

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teacher-student, pero meron pa rin naman pong punto ng power relationship. Pero paano po iyong halimbawa, nasa non-employment environment pero wala pong ganong klaseng relationship. Halimbawa, kami dito ni Atty. Paras. Hindi kami magkakilala, hindi kami magkasama sa opisina, pero puedeng halimbawa, ako iyong nag-harass sa kanya o siya iyong nagharass sa akin. Paano po iyong sistema doon? Kasama po ba siya doon sa section na iyon o iba pong kasong iyon?

SEN. OPLE. What provisions of the Penal Code pertained to that, Atty. Paras?

MR. PARAS. Then, Your Honor, in that case that will fall under either Acts of Lasciviousness or attempted rape, if it goes to that extent.

SEN. OPLE. Which means it follows the course of an ordinary crime in the Penal Code?



MR. PARAS. Yes, Your Honor.

SEN. OPLE. Well, we will take note of Bing Sta. Clara's comments. I do not think, we however, can make this, the coverage of this bill co-extensive with the coverage of the Revised Penal Code. I believe that, well, this is important really in focusing on those relationships where power is exercised arbitrarily in order to exploit a victim who very likely is a subordinate or is in a subordinate relationship or is in a supplecant relationship or servant to master relationship or

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employer-employee relationship.

Ngayon siguro iyong mga nasa labas noon, noong balangkas na iyon, sakop na nong Revised Penal Code. I think as representatives of workers, you would be more basically more preoccupied with the defense of the rights of workers especially the women. I am not foreclosing other possibilities where a woman example boss - we have a concrete/of the Secretary of Labor being a woman, the first in history to be a woman, and of course, I do not want to make an example of such a distinguished personality, but let us say, a woman supervisor, supervising men, whether in a government or in a private sector environment. If there are.../pmm

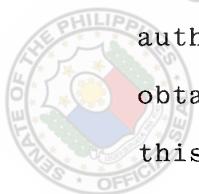


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SENATOR OPLE. ... whether in a government or in a private sector environment, if there are/ undue solicitations and acts of seduction that maybe construed as involving the use of power, the prerogative of a superior, then I suppose the harassment law also applies. Kasi dumarami ang mga genders of ambiguity, hindi ba? I suppose although we speak generally of women discovers all forms of sexual exploitations regardless of gender. 'Yong sinabi ni Chairman Herrera tungkol sa isang airline 'yata, 'yon naman ay men soliciting men using the power of their office to do so, saklaw din 'yon. But still you are within the framework of the relationship where power is abused. Sa halimbawa na ibinigay mo Bing magkatabi kayo ni Atty. Paras, hindi naman kayo magkakilala, you harass him or he harasses you. I do not see how this can belong to, you know, the kind of framework this bill would like to underline which is that authority should not be used to solicit, procure, obtain, extract or even cooks and widdle favors of this sort that we have in mind.



THE CHAIRMAN. Anyway we are going to have a Technical Committee to work out in the refinement of the bills and the consolidation of these three bills. We hope that in this Technical Committee we can have representative from the Department of Justice in order to clearly delineate what specific acts which are now covered under our Penal Code and those that

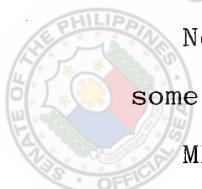
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will fall under the sexual harassment bill. We'll also invite representative from the ECOP and the Union to sit in the Technical Committee.

SENATOR OPLE. Mr. Chairman, in advance of that, may I suggest that the Committee request the institutions represented here including the private sector to submit their memoranda to this Committee since we lack the time for more elaborate testimonies in which they can also include and I hope they will, proposals for the improvement of the provisions, the language and as Bing was saying, the coverage of his proposed law.

THE CHAIRMAN. I was about to come to that but I would like to reiterate we would like to ask the institution representing here to submit memoranda especially in the case of the ECOP where you expressed a very strong reservation in regards to the liability of the employer in certain specific acts that will qualify sexual harassment under the bill.

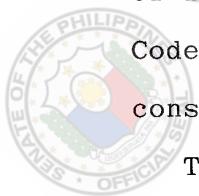
Now Undersecretary Paras, you would like to say something?



MR. PARAS. Sir, I just like to stress two things, no? The first is on the solidary liability of the employer. The solidary liability, if I recall, of an employer for acts of an employee is not new. I think there is a provision in the Civil Code which provides that an employer is solidarily liable for damages caused by his driver at the time a damage of his negligent act was caused if the employer was inside

the vehicle and he failed to exercise due diligence in warning or cautioning his driver from continuing in performing a negligent act. I think the Technical Working Group should look into that provision of the Civil Code.

The second thing, Your Honor, is that may I point out also Article 245 of the Revised Penal Code on abuses against chastity. This is a crime committed by public officers. It punishes any public officer who shall solicit or make immoral or indecent advances to a woman interested in matters pending before such officer for decision or with respect to which he is required to submit a report to or consult with a superior officer. Or it also covers any warden or other public officer directly charge with the care and custody of prisoners or persons under arrest who shall solicit or make immoral or indecent advances to a woman under his custody. This provisions of law, Article 245, Your Honor, of the Revised Penal Code. I think this provisions of law should be considered in drafting the final bill.



THE CHAIRMAN. Thank you for that, Asst. Sec. Paras. I would appreciate very much also if the memoranda would contain data regarding the incident of sexual harassments in the workplaces or outside the workplaces as envisioned to be covered by these bills. Now I think it's important that the Committee can be guided properly on the rampant form of sexual

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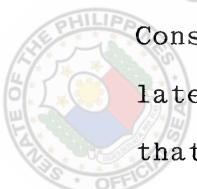
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harassment maybe this will have relation also regarding to the relation of penalties. That's why it's important that we have to know what are these usual sexual harassments committed.

Now, yes, Atty. Leogardo.

MR. LEOGARDO. May I suggest that the Secretary of Labor and Employment be authorized to promulgate rules governing sexual harassment in the private sector so that there can be no doubt about her rule making power in terms of implementing this bill and so that she's better situated also to lay down the standards.

THE CHAIRMAN. We shall discuss that in the Technical Committee level because, you know, this is very sensitive issue when it comes to giving authority to the executive department to define what are those acts that will constitute sexual harassment. I would like to mention this that there is always a resistance in Congress when it comes to that other than certain Constitutional infirmities that might be raised later. So let's study that carefully. We're open to that but let's study that carefully.



Now I would just like to mention here that few weeks ago certain women workers came to my office to complain one of the department stores in Mandaluyong where the owner is already 85 years old but he is a dirty old man and been harassing the female workers there especially the good looking ones just to emphasize that there is really a wide spread commis-

sion of sexual harassment especially in workplaces.

Now, before we adjourn, I would like also to make an announcement that this coming Friday, this is now an invitation to the Secretary, to the POEA and the Unions regarding the hearing on fishermen, Filipino fishermen recruited by Taiwanese and some of them have been murdered. There are already witnesses who are willing to testify regarding this killing of Filipino fishermen. This is a joint hearing by the Committee on Labor and the Committee on Foreign Affairs of Senator Blas Ople since many of these crimes or the killing are done outside of Philippine water.

So thank you and I would like to declare the hearing adjourned.

The hearing was adjourned at 11:00 a.m.

