ADDRESSING SEXUAL HARASSMENT IN THE WORKPLACE: THE PHILIPPINE EXPERIENCE

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ADDRESSING SEXUAL HARASSMENT IN THE WORKPLACE: THE PHILIPPINE EXPERIENCE[1]

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I. Introduction

On 8 February 1995, the Philippine Congress passed Republic Act No. 7877, otherwise known as the "Anti-Sexual Harassment Act of 1995."[3] This law took effect on 5 March 1995.[4]

Before Republic Act No. 7877 was enacted, there were policies addressing sexual harassment in government institutions issued by two government agencies, the Civil Service Commission (CSC) and the Department of Labor and Employment (DOLE). The DOLE Policy (Administrative Order No. 80, Series of 1991, as amended by Administrative Order No. 68, Series of 1992) applied only to DOLE officials and employees who commit sexual harassment against fellow DOLE officials or employees, applicants for employment, or DOLE clients. It defined the acts constituting sexual harassment and directed its administrative prosecution as a disgraceful and immoral act, classified as a grave offense. It also created a Special Fact Finding Committee to receive and investigate sexual harassment complaints and submit recommendations for action to the DOLE Secretary. Subsequently, the CSC issued Memorandum Circular No. 19, Series of 1994, entitled "Policy on Sexual Harassment in the Workplace." MC No. 19 enjoined all heads of departments, bureaus and agencies of the national and local government including government-owned and controlled corporations and state colleges and universities to adopt and implement the Policy on Sexual Harassment adopted by the CSC on May 31, 1994 through Resolution No. 94-2854.

In the private sector, before Republic Act No. 7877 was passed, private agencies were left to deal with sexual harassment as they saw fit. There were reported efforts in the private sector to address sexual harassment before the law was passed, but these were generally unpublicized, except for the policy on sexual harassment of the Philippine Daily Inquirer which was published sometime in June 1993.

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[3] The complete title of the law is "An Act Declaring Sexual Harassment Unlawful in the Employment, Education or Training Environment, and For Other Purposes."

[4] The President of the Philippines approved Republic Act No. 7877 on 14 February 1995.

II. The prevalence of sexual harassment in the workplace

The passage of Republic Act No. 7877 in 1995 was a feat given that there was no authoritative or systematic national study about the phenomenon of sexual harassment in the Philippines. There is still none to date. There is no national data on the incidence or prevalence of sexual harassment in the country. No study shows Filipinos' perceptions about and attitudes and responses to sexual harassment in the workplace. While there are indicative studies, these are limited and do not specifically deal with sexual harassment in the workplace.[5]

Despite the lack of national data, the prevalence of sexual harassment in the workplace has been reported. The *Philippine Plan for Gender Responsive Development for 1995-2025* cites a 1993 survey by the Institute of Labor Studies (of the University of the Philippines) showing that sexual harassment in the workplace "was prevalent but rarely reported by women employees due to fear of reprisal and the more severe consequence of losing their jobs."[6] In a 1988 talk, the then Chairperson of the National Committee of Women Workers of the National Union of Workers in Hotel, Restaurants and Allied Industries (NUWHRAIN) declared that "sexual harassment is very common in the hotel industry."[7] The 1991 publication, *Sexual Harassment at the Workplace,* of the Bureau of Women and Young Workers, cites key informants stating that sexual harassment is prevalent in "factories where women workers are supervised mostly by males, as in the textile and electronics industries; in hotels and banks where beauty is a criterion for employment; or even in educational institutions and business and professional offices which employ women" and also occurs among local officials and in the entertainment industry. The publication also cites a 1985 study showing a high incidence of sexual harassment in the Export Processing Zone (EPZ).

Recently, an organization of women workers, MAKALAYA (*Manggagawang Kababaihang Mithi ay Paglaya*), reported, based on a survey it conducted in 1999 (hereinafter, "MAKALAYA survey"), that "sexual harassment cases typically happen in a Filipino-owned private corporation with a large employment size located in Metro Manila in the financial, real estate, insurance and business services and in the community, social, and personal services industries."[8] The survey covered 43 unionized and 291 non-unionized establishments in Manila, Bulacan, General Santos City, Davao, Cebu City and

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[5] See Elena L. Samonte, *Sexual Harassment: Definitions and gender difference in perception*, in Philippine Social Science Review, Vol. 52, Nos. 1-4, January-December 1995; Sexual Harassment: Perceptions of UP Students and Faculty, in Review of Women's Studies, Vol. III, No. 2 (1993). Both articles tackled academic-related sexual harassment.

[6] Philippine Plan for Gender Responsive Development 1995-2025, p. 329.

[7] Mina Malabed, "Insult to Injury: Sexual Harassment in the Hotel Industry," Sexual Harassment in the Workplace, Conference Proceedings No. 6, Center for Social Policy and Public Affairs, Ateneo de Manila University, 1990.

[8] *Manggagawang Kababaihang Mithi ay Paglaya* (MAKALAYA), Friedrich-Ebert-Stiftung (FES) and Labor Education and Research Network (LEARN), " The Anti-Sexual Harassment Law in Retrospect, Advancing or Retarding Women's Status?," Manila, Philippines, November 2000 (hereinafter referred to as the "MAKALAYA survey").

Zamboanga, and involved 364 women respondents, of which 89 were management representatives. Of the total 334 establishments covered by the survey, 57 (or 17%) have records of sexual harassment cases. Of this number, 46 are non-unionized firms and 11 are unionized establishments.

The then Department of Labor and Employment Secretary Bienvenido Laguesma also reportedly claimed that "women workers are often asked to do overtime work by managers who have sexual designs on them. ... incidents of sexual harassment on women were especially high in jobs that put a premium on physical appearance, like hotel attendants, waitresses, bank tellers, media talents and entertainers. In the latter industry, newcomers are prone to sexual advances from their co-stars, directors, producers and managers."[9]

Based on a nationwide socio-economic survey conducted by the Social Weather Stations in December 1994, it appears that the Filipino public is generally aware of the problem of sexual harassment. The survey involved a total sample size of 1,200 voting-age Filipino adults as respondents and covered the National Capital Region (NCR) and the rural and urban sections of Luzon (outside the NCR), Visayas and Mindanao.[10] Eighty nine percent (89%) considers sexual harassment in the workplace a problem. Of the 89%, 67% believes the problem is serious, 26% sees it as moderately serious and only 7% shrugs it off as not serious. The percentages are higher for school-related sexual harassment. Ninety three percent (93%) believes sexual harassment in schools is a problem; 78% of the 93% believes it is very serious, 18% regards it as moderately serious, and only 4% thinks it is not serious.[11]

Beyond the workplace, there is one significant study conducted in September 1996 involving one of the most vulnerable and marginalized groups of women in Philippine society: women offenders. The study, which involved 552 female adult and minor inmates in 18 rehabilitation centers in the National Capital Region and Region IV (Rizal), found that sexual harassment happens against women inmates. Twenty two inmates admitted having experienced sexual harassment, while 25 were aware that it occurs in jails, either because they were told by the victims or were informed by fellow inmates. The study suggests that the number could be higher because some inmates disclosed sexual harassment incidents only during conversations after the formal interviews, others discreetly pinpointed victims who denied having been sexually harassed, and a number admitted unwillingness to admit what they knew for fear of retaliation and punishment. The other responses and stories in the study were more

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[9] *Manggagawang Kababaihang Mithi ay Paglaya* (MAKALAYA), Friedrich-Ebert-Stiftung (FES) and Labor Education and Research Network (LEARN), " The Anti-Sexual Harassment Law in Retrospect, Advancing or Retarding Women's Status?," Manila, Philippines, November 2000.
[10] Luzon, Visayas and Mindanao are the three major island groupings of the Philippines.
[11] Social Weather Stations, "A Survey on Sexual Harassment: A Very Serious Problem," Social Weather Bulletin 95-4, February 1995.

revealing than the numbers. Some respondents considered sexual harassment as "a way of life in the jail and must be expected for being a woman offender."[12]

III. A Critical Look at Republic Act No. 7877

Republic Act No. 7877 is a landmark special legislation that, for the first time in Philippine legal history, names, defines and penalizes the crime of sexual harassment in workplaces and educational or training institutions in the public and private sectors.[13] The enactment of this law is, by itself, a positive development for Filipino women who had long advocated for the recognition of sexual harassment as a serious problem and the adoption of legal and other measures to address it.

Republic Act No. 7877 also defines the obligations of employers, head of office or educational institutions in addressing sexual harassment.[14] It provides that every employer or head of office must undertake steps to prevent sexual harassment and promulgate rules and regulations defining the procedure for the investigation, prosecution and resolution of sexual harassment cases and the administrative sanctions therefor.[15] In addition, every employer or head of office must create a committee on decorum and investigation (hereinafter "CDI") that will investigate and resolve sexual harassment cases as well as conduct initiatives to increase understanding and prevent incidents of sexual harassment. In the workplace, the CDI shall be composed of at least one representative each from the management, the union (if any), the employees of supervisory rank, and the rank and file employees. In educational or training institutions, the CDI shall be composed of at least one representative each from the administration, the trainers, teachers, instructors, professors or coaches, and students or trainees.[16]

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[12] Department of Interior and Local Government Planning Service, "The Women Offenders in Selected Rehabilitation Centers in the National Capital Region and Region IV As Object of Exploratory Study in Sexual Harassment," January 1997

[13] Section 3.

[14] Section 4.

[15] *Id.*

[16] *Id.* The character of the Committee on Decorum and Investigation is an issue insofar as its power to resolve cases of sexual harassment is concerned. Does it have the power to make final decisions? Or is it only an investigatory body that recommends action to a higher authority?

Republic Act No. 7877 is silent on this issue. The law simply provides that the committee on decorum and investigation "shall conduct the investigation of alleged cases constituting sexual harassment" and "shall conduct meetings, as the case may be, with officers and employees, teachers, instructors, professors, coaches, trainors and students or trainees to increase understanding and prevent incidents of sexual harassment." (Section 4[b])

This issue the Court of Appeals addressed in the case of *Rayala vs. Laguesma, et al.*, CA-G.R. SP No. 52303 (1999). The case involved a petition for certiorari with prayer for the issuance of a temporary restraining order and a writ of preliminary injunction filed by the former Chairperson of the National Labor Relations Commission, Rogelio I. Rayala, who was charged of sexual harassment. The Court of Appeals held:

The law also makes the employer or the head of the office or institution liable, under certain conditions, for failing to take immediate action after being informed by victims of the acts of sexual harassment.[17] This is called solidary liability.

It is important to note that Republic Act No. 7877 provides for three kinds of remedies for every case of sexual harassment. These are: (1) filing a criminal complaint for sexual harassment, following the criminal procedure; (2) filing an administrative complaint for sexual harassment within the workplace, school or training institution, specifically with the committee on decorum and investigation; and (3) filing a civil case for damages to enforce the solidary liability of the employer or head of office or institution, where it applies. At the same time, the law does not preclude the victim of sexual harassment from "instituting a separate and independent action for damages and other affirmative relief."[18]

Thus, other remedies available under Philippine law may be pursued by a victim of sexual harassment, in addition to what is provided under Republic Act No. 7877. A victim of sexual harassment may also file a criminal complaint for acts of lasciviousness, or rape, or such other appropriate criminal charge under the Revised Penal Code for the same acts, in addition to a criminal complaint for sexual harassment under Republic Act No. 7877. A civil case for damages may also filed using Articles 19, 20 and 21 of the

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> "While Supreme Court Administrative Circular No. 04-94 [which requires a certification of non-forum shopping] extends its application to the lower courts and administrative agencies, this refers to administrative agencies which are quasi-judicial in nature. The Investigation Committee of the DOLE under Administrative Order No. 280 as its name implies is an investigatory body. After it has done its duty to investigate it submits its recommendation/report to the public respondent. The latter shall then forward his recommendation to the Office of the President who may or may not adapt the recommendation. There is no evidence that the Investigation Committee would disregard the cardinal rules of due process in the course of investigation."

The Civil Service Commission had occasion to rule in one case that a CDI's findings are only recommendatory and not binding, and located the power to decide on the findings in a higher authority (the body with the power to hire and fire the respondent). It ruled that the CDI is confined to the investigation of the case and the submission of its report and recommendation. It has even no authority to dismiss a case filed before it. (CSC Res. 992262 [1999])

This rule should apply as well to private agencies and institutions. In private agencies, the final decision should be lodged with the person (e.g., the chief executive officer) or body (e.g., board of directors or trustees) with the power to hire and fire (and thus discipline) the person charged of sexual harassment. It is required however that the final decision or finding must be supported by substantial evidence presented at the hearing, or at least contained in the records or disclosed to the parties affected. (*Ang Tibay vs. The Court of Industrial Relations,* G.R. No. 46496, Feb. 27, 1940; *Air Manila, Inc. vs. Balatbat,* G.R. No. L-29064, April 29, 1971.)

[17] Section 5.

[18] Section 6.

Civil Code.[19] Article 135 of the Labor Code, which prohibits and penalizes discrimination against women employees, may also be used when it is applicable.[20]

The penalty provided by Republic Act No. 7877 for the crime of sexual harassment is imprisonment for not less than one month but not more than six months, or a fine of at least 10,000 pesos but not more than 20,000 pesos, or both fine and imprisonment at the discretion of the court. This penalty of imprisonment is significantly lower than that provided for acts of lasciviousness (which often applies to sexual harassment acts), which generally carries the penalty of imprisonment for at least six months and one day up to six years. Any person convicted of the crime of sexual harassment or acts of lasciviousness may apply for probation if qualified.

The following are the major issues and problems related to the provisions of Republic Act No. 7877:

1. Sexual harassment under the law must be work, education or training-related. Republic Act No. 7877 addresses only sexual harassment that is work, education or training-related. Other violations are thus excluded from the coverage of the law. Moreover, while the crime of sexual harassment defined by the law may occur in *any* workplace, the administrative mechanism it provides for addressing sexual harassment in the workplace (i.e., the CDI) is oriented towards a formal work setting. The creation of a CDI may be difficult, if not impossible, in informal work settings, such as those of home-based workers, because of the absence of a clear employer-employee relationship.

2. There is debate on whether criminal intent must be present in the crime of sexual harassment. Under Republic Act No. 7877, sexual harassment is a crime. There is debate, however, on whether the crime of sexual harassment is *malum in se,* where intent to commit the crime (or intent to cause injury) is required, or *malum prohibitum,* where criminal intent is not required. If the crime of sexual harassment is *malum in se,*

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[19] Article 19, Civil Code of the Philippines: "Every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith."
Article 20, Civil Code: "Every person who, contrary to law, willfully or negligently causes damage to another, shall indemnify the latter for the same."
Article 21, Civil Code: "Any person who willfully causes loss or injury to another in a manner that is contrary to morals, good customs or public policy shall compensate the latter for the damages."
[20] Article 135 of the Labor Code, as amended, provides in part:

> "It shall be unlawful for any employer to discriminate against any woman employee with respect to terms and conditions of employment solely on account of her sex.
> The following are acts of discrimination:
> (a) Payment of a lesser compensation, including wage, salary or other form of remuneration and fringe benefits, to a female employee as against a male employee, for work of equal value; and
> (b) Favoring a male employee over a female employee with respect to promotion, training opportunities, study and scholarship grants solely on account of their sexes."

lascivious intent (which is the specific criminal intent) must be present for there to be a crime of sexual harassment.[21]

It must be noted that Republic Act No. 7877 is a special law. As a rule, when a crime is punished by a special law, intent to commit the crime is not necessary. It is sufficient that the person *had the intent to perpetrate the act* prohibited by the special law or that he did it freely and consciously – i.e., that the act did not happen *by accident.* It is not required that he intended to commit the crime. The act itself is the crime. Following the general rule, it is submitted that sexual harassment is a crime *malum prohibitum.* In such a case, the absence of criminal intent and good faith is not a defense in a criminal charge of sexual harassment.[22]

In the deliberations in the Congress, the authors of the House bill specifically clarified that the acts of sexual harassment defined in the proposed law are *mala prohibita.*[23] The intent of the Senate was the same. This intent was further affirmed by one Senator in the Bicameral Conference Committee on the conflicting provisions of the Senate and House bills.[24]

The problem however is that acts that are *inherently immoral,* or those "*so serious in their effects on society as to call for almost unanimous condemnation of its members*" are considered *mala in se* despite that they are punished by special laws.[25] On the other hand, acts *mala prohibita* have been described as acts not inherently immoral but become immoral only because the law expressly forbids their commission.[26] It has been held that laws defining acts *mala prohibita* condemn behavior directed against public order, not particular individuals. The violation is deemed a wrong against society as a whole and is generally unattended with any particular harm to a definite person. The rules are for convenience designed to secure a more orderly regulation of the affairs of society.[27]

To say that sexual harassment is not inherently immoral or that its effects on society are not so serious is to do injustice to the victims, most of them women. The grave harm that sexual harassment does to its victims, to families, to institutions and communities, and to society in general cannot be underscored enough. It is a harm that

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[21] In other sexual offenses, for instance, rape and acts of lasciviousness, criminal intent or intent to commit injury – and specifically lewd design or lascivious intent – must be present. Criminal intent is, of course, presumed from the commission of the acts which the law punishes.

[22] Luis B. Reyes, The Revised Penal Code, p. 52-53 (1998)

[23] Record of the Proceedings of the House of Representatives, July 28, 1993, p. 89. Certain answers from one legislator to questions during the period of interpellation and debate appear to contradict this intent. But the legislator (Rep. Luwalhati R. Antonino) appeared to have answered the questions without an understanding of the concept of "felony" compared with "unlawful" which is used in the bill.

[24] Transcript of Conference Meeting, Bicameral Conference Committee on the Disagreeing Provisions of S.B. No. 1632 and H.B. No. 9425, November 16, 1994, p. 38.

[25] Luis B. Reyes, The Revised Penal Code, pp. 54-55 (1998)

[26] Nitafan, "The Malum Prohibitum Doctrine in Philippine Criminal Law," 223 SCRA 606, 607 (1993).

[27] People of the Philippines vs. Doria, 301 SCRA 668, 696 (1999)

has both individual and social dimensions; it harms particular persons and society in general and must necessarily be addressed for the public good and public order. However, sexual harassment is not generally recognized as *inherently immoral;* in fact, many deny its character as a "wrong," as well as it prevalence and gravity, and trivialize its effects. It was not even known to many as "sexual harassment" until Republic Act No. 7877 named it as such. To date, even with a law penalizing it, it has not met general condemnation. To this extent, sexual harassment straddles both concepts of *malum in se* and *malum prohibitum.*

If we judge the nature of the crime of sexual harassment based on the intent of the legislature, then it must be declared *malum prohibitum.*

However, regardless of the nature of sexual harassment as a crime, it is indisputable that as far as the administrative offense of sexual harassment is concerned, criminal intent is not an issue. Neither should motive be a factor. Of course the acts must be unwelcome.[28]

In several administrative cases decided by the Civil Service Commission, the respondents admitted commission of the acts charged or some modification of it but claimed that they were done "in jest" or "without malice"[29] or without "malicious intent"[30] (meaning without lascivious intent) or was "accidental"[31] These defenses were ignored by the Commission. The defense of "accidental touching" was not given credence in one case because of the detailed and straightforward testimony of the complainant. The defense was considered "self-serving." In that case, the allegation was that the respondent "mashed" the complainant's breast five times.[32] Surely, it could not have happened by pure accident. In another case, the Commission ruled that under Memoradum Circular No. 19-94,[33] a touch on the person coupled with an attempt to kiss, *even if jokingly made*, if unwelcome, is intimidating, causes discomfort or humiliation and therefore constitutes sexual harassment.[34] This ruling is good law and can serve as springboard for further consideration.

3. There are conflicting views on whether the element of authority, influence or moral ascendancy may be dropped and whether the definition of sexual harassment may be expanded. Available data on sexual harassment in the workplace shows that

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[28] See CSC Res. 960356 (1996)
[29] CSC Res. 956052 (1995)
[30] CSC Res. 000033 (2000)
[31] CSC Res. 980521 (1998); CSC Res. 000033 (2000)
[32] CSC Res. 980521 (1998)
[33] The Civil Service Commission promulgated this Circular in 1994 prior to the enactment of Republic Act No. 7877. The Circular defines sexual harassment and characterizes it as an administrative offense of either grave misconduct, conduct prejudicial to the best interest of the service, or simple misconduct.
[34] CSC Res. 956052 (1995)

perpetrators either occupy a higher rank than or are peers of the victims.[35] But despite this, Section 3 of Republic Act No. 7877 requires authority, influence or moral ascendancy as an essential element in every *crime* of sexual harassment.[36]

The problem is whether this is also a necessary element of the *administrative offense* of sexual harassment, which every agency must define in its rules and regulations.

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[35] Eleanor R. Dionisio, Sexual Harassment: The Personal is Political, Sexual Harassment in the Workplace, Conference Proceedings No. 6, Center for Social Policy and Public Affairs, Ateneo de Manila University, 1990.

[36] SEC. 3. *Work, Education or Training-related Harassment Defined.* – Work, education or training-related sexual harassment is committed by an employer, employee, manager, supervisor, agent of the employer, teacher, instructor, professor, coach, trainor, or any person who, *having authority, influence or moral ascendancy over another* in a work or training or education environment, *demands, requests or otherwise requires any sexual favor* from the other, *regardless of whether the demand, request or requirement for submission is accepted by the object of said act.*

> (a) In a work-related or employment environment, sexual harassment is committed when:
>
> (1) The *sexual favor* is made as a condition in the hiring or in the employment, re-employment or continued employment of said individual, or in granting said individual favorable compensation, terms, conditions, promotions or privileges; or the refusal to grant the sexual favor result in limiting, segregating or classifying the employee which in any way would discriminate, deprive or diminish employment opportunities or otherwise adversely affect said employee;
>
> (2) The *above acts* would impair the employee's rights or privileges under existing labor laws; or
>
> (3) The *above acts* would result in an intimidating, hostile, or offensive environment for the employee.
>
> (b) In an education or training environment, sexual harassment is committed:
>
> (1) Against one who is under the care, custody or supervision of the offender;
>
> (2) Against one whose education, training, apprenticeship or tutorship is entrusted to the offender;
>
> (3) When the *sexual favor* is made a condition to the giving of a passing grade, or the granting of honors and scholarships or the payment of a stipend, allowance or other benefits, privileges or considerations; or
>
> (4) When the *sexual advances* result in an intimidating, hostile or offensive environment for the student, trainee or apprentice.
>
> Any person who directs or induces another to commit any act of sexual harassment as herein defined, or who cooperates in the commission thereof by another without which it would not have been committed shall also be held liable under this Act."

Some agencies have resolved this issue in favor of dropping the requirement of authority, influence and moral ascendancy. Others have taken the position that Republic Act No. 7877 provides the minimum standard and the requirement of authority, influence or moral ascendancy may not be dropped as an element of the administrative offense of sexual harassment without a legislative amendment first.

A related issue is whether an expanded definition of sexual harassment as an administrative offense, beyond that defined in Section 3 of Republic Act No. 7877, is valid at all. Some have taken the view that the power of public and private agencies to define rules and regulations on sexual harassment is limited to *procedural matters,* citing Section 4 of the law.[37]

Private schools and employers should not have this problem. There is a clear legal basis for them to expand the definition of sexual harassment beyond the acts covered by Section 3 of Republic Act No. 7877, and without requiring as a constituent element authority, influence and moral ascendancy on the part of perpetrators. Private schools and companies have general authority to promulgate rules and regulations to regulate conduct within the school or company[38] and thus may discipline persons for acts that they deem to be unacceptable behavior or conduct.

But a different situation confronts public or government agencies or institutions. Conduct of its officials and employees is governed by legislation, such as the Administrative Code of 1987 and Republic Act No. 6713,[39] and civil service rules and regulations.

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[37] "SEC. 4. *Duty of the Employer or Head of Office in a Work-related, Education or Training Environment.* – It shall be the duty of the employer or the head of the work-related, educational or training environment or institution to prevent or deter the commission of acts of sexual harassment and to provide the procedures for the *resolution, settlement or prosecution* of acts of sexual harassment. Towards this end, the employer or head of office shall:

(a) Promulgate appropriate rules and regulations in consultation with and jointly approved by the employees or students or trainees, through their duly designated representatives, *prescribing the procedures for the investigation of sexual harassment cases and the administrative sanctions therefor.*"

x x x

The said rules and regulations issued pursuant to this subsection (a) shall include, among others, *guidelines on proper decorum in the workplace and educational or training institutions.* (Emphasis supplied.)

[38] See Batas Pambansa Blg. 232, otherwise known as the "Education Act of 1982," approved on 11 September 1982. It is a fundamental rule that "Except as limited by special laws, an employer is free to regulate, according to his own discretion and judgment, all aspects of employment, including hiring, work assignments, working methods, time, place and manner of work, tools to be used, processes to be followed, supervision of workers, working regulations, transfer of employees, work supervision, lay-off of workers and the discipline, dismissal and recall of work...." (NLU vs. Insular La Yebana Co., 2 SCRA 924; Republic Savings Bank vs. CIR, 21 SCRA 226, 235).

[39] Otherwise known as the "Code of Conduct of Ethical Standards for Public Officials and Employees," approved on 20 February 1989.

It can be argued that the Civil Service Commission, in the exercise of its broad mandate under the law, may define broadly sexual harassment as an administrative offense. A good example of this is Memorandum Circular No. 19, containing Resolution No. 94-2854, defining acts of sexual harassment and characterizing the same as either grave misconduct, conduct prejudicial to the best interest of the service or simple misconduct.[40] It was promulgated by the Commission prior to the enactment of Republic Act No. 7877 by virtue of its broad mandate under Section 4 of Republic Act No. 6713,[41] a 1989 law, and under Section 1, Chapter I, Title (A), Book V of the Administrative Code of 1987.[42] The definition of sexual harassment in Memorandum Circular No. 19 is broader than Section 3 of Republic Act No. 7877.[43] It does not require authority, influence or moral ascendancy as an element.

*4. **The element of "demand, request or requirement of a sexual favor" raises questions on the acts covered.*** Republic Act No. 7877 states that the person must demand, request or otherwise require any *sexual* favor from the other person, regardless of whether the demand, request or requirement for submission is accepted by the object of the said act (i.e., the other person). The interpretation of the element of "demand, request or requirement of a sexual favor" had been an issue in several cases of sexual harassment.

There are lawyers who argue that when a person is charged with having performed a physical or other act – such as kissing, fondling, or making a sexually suggestive remark to another person – without making a prior verbal statement "demanding, requesting or requiring" the other person to participate in, accept, or give in to the conduct, the element of "demand, request or requirement" is absent. In fact, it has been argued in one case that the person doing the act is the one giving (not receiving) the favor. In this argument, the element of "demand, request or requirement" is interpreted as presupposing a "prior preliminary conduct" before the "sexual favor" itself.

It is submitted that it is erroneous to interpret "demand, request or requirement" as necessarily "verbal" (i.e., words must be uttered) and "preliminary" to another act (presumably considered the "primary" or "main" act). "Demand, request or requirement" can come in the form of the physical (or other) conduct itself -- supposedly the "main" conduct – complained of. The physical or other conduct is sufficiently eloquent of the demand.

*5. **The provision of the law on the solidary liability of employers or head of offices raises a number of legal problems.*** Section 5 of Republic Act No. 7877 provides

[40] These are administrative offenses under Section 46(b), Chapter 6, Title I (A), Book V of the Administrative Code of 1987.
[41] Otherwise known as the "Code of Conduct of Ethical Standards for Public Officials and Employees," approved on 20 February 1989.
[42] Executive Order No. 292.
[43] See Sec. 3, MC Circular No. 19.

that "The employer or head of office, educational or training institution shall be solidarily liable for damages arising from the acts of sexual harassment committed in the employment, education or training environment if the employer or head of office, educational or training institution is informed of such acts by the offended party and no immediate action is taken thereon."

The following problems arise from this provision:[44]

a. Where the employer is a corporation, does the head of office incur solidary liability?

b. Where the educational or training institution is a corporation, does the corporation incur any solidary liability?

c. Given that educational or training institutions are employers at the same time, who are liable? Is the corporation as employer liable together with the head of the institution?

d. Who is the head of the office or educational or training institution? Is it the chief executive officer? Do managers of departments in a large institution incur solidary liability? Is the Board of Trustees/Directors, in cases where the chief executive officer is charged of sexual harassment, the head of office?

e. Does solidary liability attach when there was "mere information" without a formal complaint?

6. The law does not provide protection from retaliatory action, particularly against employees with no security of tenure and students. Republic Act No. 7877 does not provide safeguards for complainants against retaliatory action that may result from filing a sexual harassment charge. The need for safeguards is crucial in cases involving groups particularly vulnerable to reprisal, such as students (especially when complaining against professors or University officials) and employees, particularly those with no security of tenure. The fear of reprisal, particularly fear of losing employment in the case of workers, is a major factor in decisions to withdraw the complaint or to keep quiet about the violation.[45] There is no reason why the rules and regulations of an agency should not provide for safeguards against reprisal.

Of course, there are other factors that prevent sexual harassment victims from making a complaint or push them to withdraw the complaint they had filed. Among these are lack of support from peers and superiors and the institution itself, lack of witnesses and the fear or suspicion of official cover-up or bias.

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[44] A case pending in the Regional Trial Court of Manila has raised these questions. See Jeannie V. Torres and Ma. Elmyra R. Pe Benito vs. Philippine Christian University, et al., Civil Case No. 99-95315, pending before the Regional Trial Court of Manila, Branch 32.

[45] The MAKALAYA Survey lists this as one of the primary reasons why victims do not report or pursue their complaints.

Indeed, the existence of rules and regulations on sexual harassment alone cannot significantly address sexual harassment. Rules and regulations can only be effective in an environment that facilitates disclosure and filing of complaints and empowerment to victims.

IV. Implementing and Enforcing the Law: Problems, Gaps and Weaknesses.

Some of the problems, gaps and weaknesses identified in the implementation and enforcement of the law against sexual harassment are:

1. Sexual harassment is trivialized. Among the issues and problems attendant to the efforts to address sexual harassment, the primordial problem appears to be the *trivialization of sexual harassment* as an issue or problem within the public and the private sectors. The PPGD recognizes this problem when it states that sexual harassment "in any form is usually trivialized. Even labor unions do not seriously consider SH [sexual harassment] as a violation of workers' rights."[46]

In some cases, the trivialization is not subtle at all. It is expressed with the conviction of its "rightness." For example, the Mindanao point person (a man) of a labor center and a trade union federation who was interviewed for this paper believes that the education of union members on sexual harassment is not a priority. More than that, he believes there is not much need for gender education modules in their education programs because the federations are almost 100% male. He even claims that seminars on basic gender sensitivity will be met with resistance by union members and funders because gender education is not a perceived need.

According to this labor rights advocate, sexual harassment happens only in an office setting but not in factories. He explained that most unions categorize office workers, even when they are rank and file, as management. Since most women are employed in office settings, they are the ones most likely to experience sexual harassment.

A regional director of the Department of Labor and Employment admitted in an interview that a case of sexual harassment involving its employees was considered by his predecessor (the previous regional director) as "minor" and was accordingly resolved by mutual agreement of the parties. It was the first formal complaint of sexual harassment in any government agency after Republic Act No. 7877 took effect. The same director also believes there is no need to put up committees on decorum and investigation in enterprises. According to him, mechanisms are in place that function to resolve all labor-management conflict and these can handle sexual harassment cases as well. Should conflict resolution prove impossible, resort to courts can be made.

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[46] While this is widely recognized to be true, there is no specific study showing this reality.

The trivialization of sexual harassment is directly rooted in the lack of understanding of the problem itself, particularly its nature, magnitude and impact on its victims. The various other problems can be said to be the direct consequences of this – from the failure to disseminate information about the legislation criminalizing sexual harassment, to the failure to comply with its mandate to promulgate rules and regulations and create administrative mechanisms to address cases within agencies and businesses, to the almost deliberate refusal to apply it even in clear cases falling within the scope of the legislation or its implementing rules.

Women trade union leaders had long identified the major problems in addressing sexual harassment: it is not recognized as a problem; many do not know what sexual harassment really means; it is considered by most union leaders as very hard to prove; complaints by women are not taken seriously.[47] The MAKALAYA survey cites as among the problems in the implementation of the law the refusal of victims to report the violations and the fear of embarrassment or of being talked about. But it is not easily recognized that these problems related to the victims' reluctance to report or pursue a complaint are underpinned by the trivialization of sexual harassment that prevails in the workplace. Trivialization of sexual harassment aggravates the reluctance of the workers to report the sexual harassment for fear of losing their jobs.

2. There is very low compliance by public and private agencies and institutions with Republic Act No. 7877. Indicators of the low level of compliance with the law by the public and private sectors abound. In government, the National Commission on the Role of Filipino Women surveyed, in July 1998, 71 government entities on the status of their implementation of the Anti-Sexual Harassment Act. Of the 35 agencies that responded, only 13 have rules and regulations. Twenty (20) agencies had drafted or were still planning to draft their rules and regulations. Curiously, there were more agencies (14) that have established a committee on decorum and investigation (CDI) than the number of agencies with rules and regulations (13). Two agencies reported that in the absence of a CDI, sexual harassment cases are being handled by their legal division and the grievance machinery. It is noteworthy that the Department of Justice, National Bureau of Investigation and Department of Health are not included in the 35 agencies that responded to the survey.

A survey conducted in August to mid-September 1998 by the Employers' Confederation of the Philippines (ECOP)[48] shows that of 119 companies which responded to the survey (366 establishments were sent questionnaires), only 61 (51%) have a sexual harassment policy. Of this, 24 have a separate sexual harassment policy

[47] Mina Malabed, *supra.*
[48] ECOP is the "officially recognized organization of employers in the Philippines dealing with the government on labor and socio-economic policies, affairs and issues." It has 15 charter members, 40 regular members (i.e., chambers of commerce and industry associations), 7 affiliate members, 1 chapter member, 200 sustaining members and 400 associate members.

while 37 have a sexual harassment policy which is incorporated in the company's Code of Discipline/Code of Conduct/Corporate Culture.

The Davao City Chamber of Commerce and Industry, Inc. (DCCCII), which has 221 corporate members, 68 individual members and 10 affiliate members based in Mindanao (the second biggest island grouping in the Philippines), does not have a policy on sexual harassment[49] and has never had a project or program addressing sexual harassment. It has not received any information on any sexual harassment case involving any of its member companies. In mid-2000, one of its female staff verbally complained that she was sexually harassed by one of the DCCCII officers. This verbal complaint was never investigated because some members of the DCCCII spoke to the staff who became eventually convinced that the acts were not malicious but were "fatherly" signs of affection. The Regional Office of the Department of Labor and Employment in Region XI (in Mindanao) admitted that it is not aware of any company based in Region XI that has established a Committee on Decorum and Investigation. The DAW Coalition Project led by the Trade Union Congress of the Philippines issued a resolution on 22 February 2000 claiming "very low compliance and weak enforcement of the law, especially on the provision on Committee on Decorum and Investigation (CODI)." It also claims that the creation of committees on decorum and investigation is not a priority with companies and government agencies.

The MAKALAYA survey found that only 70, or 21% of the total 334, establishments have implementing guidelines on sexual harassment. According to the survey, "a typical establishment with implementing guidelines on anti-sexual harassment [sic] is non-unionized, comes from the financing, real estate, insurance, and business services industry, owned by Filipinos, large in size of employment, registered as a private corporation, and located in Metro Manila." Interestingly, the ECOP survey shows that, in 38 of the 61 companies which have adopted a policy on sexual harassment, only the employers were involved in the drafting. In 20 companies, the union was involved. In three others, workers were also involved. It would be interesting to find out if the 38 companies fit MAKALAYA's profile of a typical establishment with rules on sexual harassment.

The reasons cited in the MAKALAYA survey for the absence of implementing rules on sexual harassment in the 264 establishments are:

(a) The nature and culture of the company, specifically that the company is new or small; that there were no or few male workers, or that male and female employees are in separate departments; that most workers were family members or relatives; that workers are professionals and believed not to engage in sexual harassment; that "core values" are instilled by the firms in their workers or that the institution is a

[49] The DCCCII Secretariat has nine employees, headed by a Secretary General.

Christian or Catholic organization; that most employees are contractual or temporary.

(b) There were no complaints or incidents of sexual harassment in the company.

(c) There is lack of awareness by the company and its workers of the law.

(d) The company does not consider developing anti-sexual harassment guidelines a priority.

(e) The existing law is sufficient to protect women in the workplace.

ECOP's survey supports some of the findings of the MAKALAYA survey. Thirty eight respondents in ECOP's survey adopted a policy on sexual harassment because of Republic Act No. 7877; 16 said they did so on their own initiative, and 11 said the incidence of sexual harassment in their company caused them to adopt a policy. Four respondents did not feel the need for a policy; five said no policy is needed because they have never encountered any sexual harassment case in their workplace; three did not adopt a policy for lack of information; two said adopting a policy is not a priority; and one respondent feared adopting a policy on sexual harassment might cause a commotion among employees. Surprisingly, 95 of the 119 respondents said they are aware of the liability of companies or employers under Republic Act No. 7877. Yet, only 61 of the 119 have adopted a policy on sexual harassment. It seems that for the 34 companies, the possibility of their being held liable under the law is not enough reason to comply with the law.

In the MAKALAYA survey, 32% of the respondents rated poor the implementation of the law; the other 68% rated positively at varying levels the implementation of the law (13% said "fair," 25% said "satisfactory," 17% said "very satisfactory," and 12% said "outstanding"). However, some of the reasons given for the positive rating were unrelated to the implementation of the law. For instance, 42% of those who gave a positive rating cited as reasons the "culture of justice" in the workplace, the maturity and education of the employees, the harmonious working relationship, and the merit-based system of promotion and grant of benefits. Twenty six percent (26%), on the other hand, credited the good implementation to the pre-employment orientation given by employers about sexual harassment and the procedure for acting on sexual harassment incidents, and the priority given by management to the resolution of sexual harassment cases. Twenty one percent (21%) credited the good implementation to workers' awareness as a result of information dissemination about the law, the distribution of educational materials and the conduct of continuing studies to inform workers about the implications of the law.

In contrast, those who said that implementation is poor or fair cited as reasons lack of awareness or information drive about the issue, lack of guidelines or the guidelines are unclear or strict, officers' bias, lack of interest on management's part in sexual harassment, refusal of victims to cooperate because of embarrassment, dismissal

of cases due to insufficiency of evidence, amicable settlement of complaints, and intimidation of complainants by persons charged of sexual harassment, the lack of seriousness about the rules against sexual harassment, the rampant sharing of sexually explicit jokes about women despite the law, the lack of sincerity on government's part in implementing the law.

For those companies or employers who have complied with the law, the level and quality of compliance should be reviewed. According to the ECOP survey, 61 establishments have adopted a policy on sexual harassment. But whether the company policies are sufficient in substance, or are simply general statements of policy, is not clear in the survey. The law requires the adoption of rules and regulations, not simply a statement of policy. Morever, only 44 of the 61 companies have formed a CDI.

Violations of the clear legal mandate of Republic Act No. 7877 are also evident in the ECOP survey. Thirty eight respondents said that only the employers were involved in the drafting of the policy or rules and regulations on sexual harassment. This clearly ignores the requirement of Republic Act No. 7877 that employees, both supervisory and rank and file, must be consulted, and they must also approve, through their representatives, the rules. The same survey shows that in at least nine establishments, the requirement of the law that the Committee on Decorum and Investigation must be composed of representatives of the different units in the workplace was not met. In five of the nine establishments, only the employer composes the CDI; in four, the company lawyer is the CDI. It is also unclear in the survey whether the CDIs in the other establishments were properly constituted according to the manner prescribed by law. Twenty nine respondents said the members were appointed, but as to who appointed these members is not shown in the survey. The law requires representation of the different units in the CDI, and if the CDI members were appointed by management, it would be in violation of the rule of representation. The valid composition of the CDI is essential, otherwise its decisions may be questioned for being void.

Technical assistance appears to be badly needed in the proper implementation and enforcement of the law. Thirty four respondents in the ECOP survey expressed this need. In fact, it is not only administrative agencies that need technical assistance as a number of prosecutors and judges have also reportedly expressed lack of technical proficiency in enforcing the law against sexual harassment.

Despite the low compliance with the law by agencies, awareness about the law by women is high according to the MAKALAYA survey. Sixty nine percent (69%) of the women respondents in the MAKALAYA survey said they are aware of the law, although their level of knowledge and understanding of its provisions varies. On the other hand, the head of a big employers' organization in the country confessed in an interview that while he is aware that there is a law against sexual harassment, he has no idea about its content.

3. There is no adequate and effective monitoring of compliance with the law by private and public agencies. The lack of a specific mandate for a particular government agency to monitor the implementation and enforcement of Republic Act No. 7877 aggravates the problem. However, it is clear that the Civil Service Commission (CSC), the Department of Labor and Employment (DOLE), the Department of Education, Culture Sports (DECS) and the Commission on Higher Education (CHED) have the general mandate to monitor compliance with Republic Act No. 7877 within the public and private sectors.[50] This general mandate is enough basis for these agencies to monitor

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[50] Under the Administrative Code of 1997, the Civil Service Commission has the general mandate to "adopt measures to promote morale, efficiency, integrity, responsiveness, and courtesy in the civil service, strengthen the merit and rewards system, integrate all human resources development programs for all levels and ranks, and institutionalize a management climate conducive to public accountability." It has the specific power to (1) prescribe, amend and enforce rules and regulations for carrying into effect the provisions of the Civil Service Law and other pertinent laws; and (2) promulgate policies, standards and guidelines for the Civil Service and adopt plans and programs to promote economical, efficient and effective personnel administration in the government.

The Department of Labor and Employment is given the primary responsibility for (1) "the promotion of gainful employment opportunities and the optimization of the development and utilization of the country's manpower resources;" (2) "the advancement of workers' welfare by providing for just and humane working conditions and terms of employment;" and (3) "the maintenance of industrial peace by promoting harmonious, equitable, and stable employment relations that assure equal protection for the rights of all concerned parties." It has the specific power to (1) enforce social and labor legislation to protect the working class and regulate the relations between the worker and his employer; (2) provide for safe, decent, humane and improved working conditions and environment for all workers, particularly women and young workers; (3) provide and ensure the fair and expeditious settlement and disposition of labor and industrial disputes through collective bargaining, grievance machinery, conciliation, mediation, voluntary arbitration, compulsory arbitration as may be provided by law, and other modes that may be voluntarily agreed upon by the parties concerned."

The Department of Education, Culture and Sports is "primarily responsible for the formulation, planning, implementation and coordination of the policies, plans, programs and projects in the areas of formal and non-formal education at all levels" and supervises "all educational institutions, public and private. (Sections 2, 3, Title VI, Chapter I, Book IV, Executive Order No. 292 [1987])

The Commission on Higher Education (CHED) has authority over public and private institutions of higher education as well as degree-granting programs in all post-secondary educational institutions, public and private. Section 8 of Republic Act No. 7722 (1994) provides:

> "The Commission [on Higher Education] shall have the following powers and functions:
> a) formulate and recommend development plans, policies, priorities, and programs on higher education and research;
> x x x
> d) set minimum standards for programs and institutions of higher learning recommended by panels of experts in the field and subject to public hearing, and enforce the same;
> e) monitor and evaluate the performance of programs and institutions of higher learning for appropriate incentives as well as the imposition of sanctions such as, but not limited to, diminution or withdrawal of subsidy, recommendation on the downgrading or withdrawal of accreditation, program termination or school closure;
> x x x
> n) promulgate such rules and regulations and exercise such other powers and functions as may be necessary to carry out effectively the purpose and objectives of this Act; and

the compliance with Republic Act No. 7877 within their respective spheres of responsibility.

4. The mechanisms for investigating and resolving sexual harassment cases at the enterprise level differ. The law clearly requires every public and private agency to create a committee on decorum and investigation that will investigate and resolve sexual harassment cases as well as conduct initiatives to increase understanding and prevent incidents of sexual harassment. The law also prescribes the composition of the CDI. Yet, despite this clear directive, some companies which have policies against sexual harassment use a different mechanism to investigate and resolve cases of sexual harassment. In the MAKALAYA survey, for instance, the investigation and resolution of sexual harassment cases is done by the following bodies: ad hoc task forces or committees, the committee on decorum and investigation, the company's legal department, the human resource department, the labor-management committee, or the Grievance Committee in unionized establishments.[51]

5. Resort to administrative mechanisms is preferred over the courts. The Subcommittee on Oversight, Committee on Women of the House of Representatives noted in its 14 September 1999 Report that there were more administrative cases of sexual harassment filed with agencies/offices than in courts.[52] Where criminal cases are filed, these involve only charges of acts of lasciviousness. This observation was based on reports submitted to the Subcommittee by a number of government agencies. The fact that the Supreme Court have had no occasion yet to rule on a *criminal case of sexual harassment* filed under Republic Act No. 7877 seems to support this observation. So far, the decisions of the Court have been on administrative cases brought to it from administrative agencies.

Some prosecutors openly admit that they prefer to file cases of acts of lasciviousness (or such other appropriate crime under the Revised Penal Code) where the penalty is higher rather than file sexual harassment charges.

The flaw in this practice is that Philippine law allows the filing of criminal charges of both sexual harassment *and* acts of lasciviousness or such other appropriate crime under the Revised Penal Code or some other penal law. In fact, one victim of

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o) perform such other functions as may be necessary for its effective operations and for the continued enhancement, growth or development of higher education."

[51] MAKALAYA, The Anti-Sexual Harassment Law in Retrospect, Advancing or Retarding Women's Status? (200), p. 45.

[52] Memorandum dated 14 September 1999 addressed to the Speaker of the House of Representatives entitled, "Spot Report on the Meeting of the Subcommittee on Oversight, Committee on Women, Held on September 14, 1999, 1:00 P.M. at the North Lounge Conference Room, Batasan Pambansa Complex, Quezon City.

sexual harassment was able to have criminal charges of both sexual harassment under Republic Act No. 7877 and acts of lasciviousness under the Revised Penal Code filed with the Sandiganbayan.[53]

Perhaps one reason that resort to administrative mechanisms is preferred over the courts is that administrative cases are usually resolved faster than court cases and the stake involved, i.e., employment, is high for both the victim and the harasser.

6. The treatment of sexual harassment in administrative rules and regulations varies. When one examines the various rules and regulations on sexual harassment promulgated pursuant to Republic Act No. 7877, the definitions of sexual harassment are varied, although all include non-physical forms of sexual harassment. What constitutes sexual harassment in one agency may not be sexual harassment in another under the operating rules and regulations of the agency concerned. There is no uniformity either in the procedure for investigation of and administrative sanctions for sexual harassment.

The reason for this is Republic Act No. 7877 itself. It mandates *every* workplace and educational or training institution in the public and private sectors to promulgate on its own rules and regulations on sexual harassment to govern within the workplace or institution. It leaves the *content* of the rules and regulations to the agency or institution concerned. The law only requires that the rules and regulations must be promulgated in consultation with and jointly approved by the employees or students or trainees through their duly designated representatives.[54]

In practice, approaches to the definition of sexual harassment differ. Some agencies have simply adopted in their rules the definition of the crime of sexual harassment in Republic Act No. 7877. Others have specified further the acts constituting sexual harassment. Many categorize acts of sexual harassment in their rules as *grave, less grave* or *slight*. The determination of the *gravity* of the offense is very much culturally-based. The agency's appreciation of the degree of *offensiveness* and *harm* underpins its categorization of the gravity of the acts. The problem is that often, what is offensive and harmful seems to be defined differently on opposite sides of the gender divide. The *culture of the agency or institution* is also a factor in the definition of what is sexual harassment.

In the 1999 MAKALAYA survey,[55] the top five more frequently mentioned acts constituting sexual harassment in the implementing guidelines of 70 establishments are:

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[53] See People of the Philippines vs. Hermin E. Arceo, Crim. Case Nos. 24198-99, two criminal cases for sexual harassment and acts of lasciviousness against a dismissed judge pending before the Sandiganbayan, a special court with jurisdiction over certain offenses committed by public officials and employees.
[54] Section 4.
[55] MAKALAYA, The Anti-Sexual Harassment Law in Retrospect, Advancing or Retarding Women's Status (2000), p. 41

(1) proposing intimate dates or favors in exchange for a job, favorable working conditions or assignments, or use of one's position, power or authority to convince a subordinate to have sexual relations; (2) touching a co-worker in sensitive parts of his/her body, threats of sexual of a sexual nature and actual sexual assault; (3) making offensive hand or body gestures at a co-worker; (4) pinching, unnecessarily brushing up against a co-worker's body; (5) persistently telling smutty jokes to a co-worker who has indicated that he/she find these offensive. The findings of the survey also show that sexual harassment acts are considered light offenses when these involve "smutty jokes" (with the condition that it is persistent and made to a co-worker who had already indicated that it is offensive), or "taunting with constant talk of sexual innuendos," or displaying offensive pictures or materials. The acts are considered more grave or "grave" when these involve physical contact or economic prejudice to the worker. The penalties prescribed ranged from reprimand to termination.

A review of other rules and regulations promulgated by public and private agencies also shows that where physical contact or economic prejudice is involved, the acts are considered more serious or grave.

7. Despite the clear mandate of the law for every agency to promulgate rules and regulations on sexual harassment, the CSC Memorandum Circular No. 19 is still being applied to government agencies. The Civil Service Commission has two administrative issuances specifically addressing sexual harassment. The first, Resolution No. 94-2854, contained in Memorandum Circular No. 19, was promulgated on May 31, 1994, prior to the enactment of Republic Act No. 7877. It is based on the broad mandate given by Republic Act No. 6713[56] and Executive Order No. 292[57] to the Civil Service Commission to adopt positive measures to promote the observance of the standards of personal conduct of officials and employees in the civil service,[58] and to "adopt measures to promote morale, efficiency, integrity, responsiveness, and courtesy in the civil service."[59] .

The Circular defines the acts of sexual harassment and characterizes the same as an offense of either grave misconduct, conduct prejudicial to the best interest of the service or simple misconduct which are administrative offenses under the Administrative Code of 1987. The Circular applies to all government officials and employees in the career or non-career service, holding positions under permanent or temporary status in the national or local government, including government-owned or controlled corporations, with original charters, state colleges and universities.

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[56] Otherwise known as the "Code of Conduct and Ethical Standards for Public Officials and Employees" approved on 20 February 1989.
[57] Otherwise known as the "Administrative Code of 1987."
[58] Section 4 (B), Rep. Act No. 6713 (1989)
[59] Book V, Title I, Subtitle A, Chapter I, sec. 1, Executive Order No. 292 (1987)

CSC Resolution No. 95-6161, on the other hand, was promulgated on 10 October 1995 pursuant to the mandate of Republic Act No. 7877. It applies only to sexual harassment committed by and against officials and employees of the Civil Service Commission, including the Career Executive Service Board (CESB), regional and field offices, whether in the career or non-career service and holding positions under permanent or temporary status. It defines sexual harassment as a form of misconduct. The procedure for disposition is through a CDI, using the Uniform Rules of Procedure in the Conduct of Administrative Investigations.

MC No. 19 and Res. 95-6161 define sexual harassment differently.[60]

To date, five years after the enactment of Republic Act No. 7877, the Commission continues to apply MC No. 19 to sexual harassment cases involving government employees other than those employed in the Civil Service Commission itself (the latter are now governed by CSC Resolution No. 95-6161). This is understandable given that the most government agencies or entities have yet to promulgate their own rules and regulations on sexual harassment. But technically, MC No. 19 should have ceased to apply after the enactment of Republic Act No. 7877. This is because Republic Act No. 7877 requires every government agency to have its own rules and regulations on sexual harassment.

8. What is "sexual" dominates the discourse in actual cases. There seems to be a consensus among agencies with rules and regulations on sexual harassment that the acts must be "sexual" in nature to constitute sexual harassment. Based on the existing rules, what are considered clearly "sexual" are those acts related to sexual relating or sexual intimacy – kissing on the lips, fondling of breasts, and physical contact with the penis or vagina.

The characterization of the act as "sexual" or "non-sexual" often arises as an issue when the acts involved are what many consider "ambivalent" acts – placing an arm around another's shoulders, a look or stare ("dirty" or "malicious"?), comments about a person's looks or body (a "compliment" or "lewd"?) or about sex (simply a "joke" or "lewd"?), queries about a person's love life ("a simple conversation" or "forcing intimacy"?) It has been argued, for instance, that in such cases, there can *only* be sexual

[60] Under MC No. 19, authority, influence or moral ascendancy is not a constituent element of sexual harassment. Res. 95-6161, on the other hand, seemingly requires it as an essential element, although as previously stated, there is some vagueness about this. It also adopts, with some modification, the definition of sexual harassment in MC 19, and added under a different section titled "Specific Acts Constituting Sexual Harassment" the definition, with some modifications, in Section 3 of Republic Act No. 7877. In addition, sexual harassment under MC No. 19 does not prescribe as an administrative offense. In Res. 95-6161, sexual harassment prescribes in three years, following the prescriptive period provided under Republic Act No. 7877.

harassment when the recipient of the act, after she/he has checked with the doer his/her intent and has told him/her not to repeat it, continued to receive the same conduct or behavior from the doer. This argument is dangerous because then, many sexual harassment cases would fail simply because the victim did not check, or did not tell the doer to stop, after the first time it happened.

When we come right to its essence, what makes conduct "sexual harassment" should not be so much dependent on the part of the body touched, or whether physical contact was made or not. The key is the *character* of the conduct. Conduct is "sexual harassment" when the sex (e.g., being a female, or being a woman) and sexuality of the person and everything culturally related to it -- from her/his body, to her/his manner of dress, to her/his intimate relations -- is made the object or target of the conduct, as something desired to be obtained, or appropriated, or trivialized with, whether through physical, verbal and other forms of conduct. In sexual harassment, the person is not treated as a person – whether co-employee, subordinate or student -- worthy of respect, but is reduced to her/his "sexual identity;" the sexual harasser does not relate with the other person in the manner that one ought to in a professional or work relationship; he/she relates with the latter as if the latter is a "sex object" to be played or trivialized with.

Moreover, it is not the intent to harm (as many sexual harassers believe they are entitled to do what they do, or what they do is normal and acceptable) but the effect of the acts, either actual or constructive, that makes it sexual harassment; when the person relates with the other in a manner described above, harm is necessarily present.

The need to surface that defining element of sexual harassment which has nothing to do with sex has led some to emphasize that the motivation in sexual harassment may not be primarily sexual (when, in fact, it is never sexual). Thus, one woman wrote:

> "Particularly when the incidents involve management personnel harassing female workers, the main motivation is often domination.
>
> The garments factory supervisor who undoes assemblyline workers' brassieres during inspection; the canning factory supervisor who kisses workers falling asleep on the night shiftl the manager who lifts a female union leader's skirt to embarrass her in front of fellow-workers; the management goons who molest female strikers as they break up a picketline – these derive a satisfaction that has less to do with sex than with a sense of power over others.
>
> Similarly, male workers may harass female workers because they feel their own jobs are threatened by female labor, or because their work so dehumanizes them that they resort to one of the few exercises of power still available to them. Thus the male image of women as legitimate

objects of lust interacts with management imperatives, oppressive work conditions, and the personal need for power to create an informal system of control – no less potent for its invisibility – that keeps female workers docile and obedient. Seen in this light, sexual harassment assumes distinctly political dimensions."[61]

If sexual harassment were appreciated as a phenomenon that has nothing to do with sex, investigations of complaints would not be conducted in a "fragmented" manner. For there is a tendency in investigations on sexual harassment to look at events or acts in isolation, broken down into fragments or pieces of elements disconnected from each other and from previous and subsequent incidents also involving the doer. When this approach is used, some acts of sexual harassment are denied their actual meaning in the context of the commission and in the totality of events.

9. In specific cases, the standards applied often discriminate against complainants or perpetuate stereotypes. Resolving cases of sexual harassment is often a tricky business. The problem of determining what is "sexual" makes resolution of cases difficult. Moreover, sexual harassment claims are usually uncorroborated. In many cases, investigating bodies have only the testimonies of the complainant and the respondent as evidence of conflicting claims.

There are few judicial standards at this point that can guide lower courts and administrative agencies in resolving cases of sexual harassment because the Supreme Court has had few occasions to decide cases of sexual harassment.[62] Thus, administrative agencies such as the Civil Service Commission have resorted to using Supreme Court doctrines in rape cases in deciding sexual harassment cases. But Supreme Court decisions involving rape and other sexual abuses do not at all touch on the new areas carved by the law on sexual harassment and the issues spawned by this new legislation.

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[61] Eleanor R. Dionisio, Sexual Harassment: The Personal is Political, Sexual Harassment in the Workplace, Conference Proceedings No. 6, Center for Social Policy and Public Affairs, Ateneo de Manila University, 1990.

[62] The few cases involving acts of sexual harassment decided by the Supreme Court after the enactment of Republic Act No. 7877 include: Talens-Dabon vs. Arceo, Adm. Matter No. RTJ-96-1336 (July 25, 1996); Dawa vs. De Asa, Adm. Matter No. MTJ-98-1144 (July 22, 1998); Vedaña vs. Valencia, Adm. Matter No. RTJ-96-1351 (Sept. 3, 1998) and Aeolus Automotive vs. National Labor Relations Commission, G.R. No. 124617 (April 28, 2000). None of these cases, however, involved a review of the application of Republic Act No. 7877. A case filed with the Supreme Court in June 2000 – Rogelio I. Rayala vs, Office of the President, Ronaldo B. Zamora, et al., G.R. No. 143358 -- directly putting at issue the interpretation of the provisions of Republic Act No. 7877, was dismissed for "disregarding the hierarchy of courts." The Supreme Court held that the petition should have been filed with the Court of Appeals, which has jurisdiction over decisions of the Office of the President rendered in the exercise of its quasi-judicial functions. The case is now pending before the Court of Appeals.

For instance, it is a cause for concern that the Civil Service Commission applied in an administrative case of sexual harassment involving rape the *old* standard of resistance in rape cases to determine lack of consent. The Commission ruled that it was incumbent upon the complainant to shout for help, during or after the act, and that there must be on her part the utmost reluctance and resistance to the best of her ability and strength.[63] In another case of sexual harassment that did not involve rape, the Commission applied the Supreme Court doctrine in rape cases that "in view of the intrinsic nature of the crime of rape where two persons are usually involved, the testimony of the complainant must be scrutinized with extreme caution."[64] The Commission dismissed the complaint. But in another case involving children ages 12 to 14, the Commission held that the children's failure to shout, scream and effectively struggle against the assault and immediately tell their parents did not diminish their credibility. The Commission reasoned out that since they are children, they were easily cowed and intimidated, and were naturally shy and embarrassed about matters of sexuality. Moreover, the respondent, a district supervisor, was someone "respected" and trusted by them.

This reliance on Supreme Court doctrines in rape cases may be appropriate given that sexual harassment is a form of *sexual abuse* as rape is. But if we accept that sexual harassment is *malum prohibitum* – where criminal intent is not necessary – and given that the quantum of proof required in administrative cases is only substantial evidence,[65] not proof beyond reasonable doubt, the standards set in rape cases are not appropriate.

The "Filipina of decent repute" doctrine. It must also be borne in mind that Supreme Court decisions in sexual abuse cases also perpetuate stereotypes of victims and offenders.

Consider the *"Filipina of decent repute"* doctrine in rape cases, cited by the Civil Service Commission in several administrative cases of sexual harassment it decided. It reasoned, using the criminal doctrine in rape cases, that "no young and decent Filipina would publicly admit that she was ravished and her honor tainted unless such was true, for it would be instinctive for her to protect her honor"[66] and that "considering the inbred modesty and the consequent revulsion of a Filipina against airing in public things that

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[63] CSC Res. 980573 (1998)
[64] CSC Res. 966213 (1996)
[65] Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Ang Tibay vs. The Court of Industrial Relations, supra.*
[66] CSC Res. 973277 (1997), CSC Res. 953599 (1995); CSC Res. No. 000033 (2000). A similar doctrine was cited in another case (CSC Res. 991134 [1999]) that "in crimes against chastity, it is hard to believe that a young girl would publicly disclose that she had been raped or sexually abused, and hence undergo the expense, trouble and inconvenience of a public investigation or trial, not to mention the scandal, embarrassment and humiliation such action inevitably invites, as well as allow the examination of her private parts, if her motive were not to bring to justice the person who had sexually abused her." The case involved rape of students by a teacher.

affect her honor, it is hard to conceive that complainant would reveal and admit the ignominy she had undergone if it were not true."[67]

There seems to be no question that the *general* attitude of Filipino women is that disclosure of experiences of sexual abuse is embarrassing. It may seem an irony that it is the victim who feels shame in the aftermath of the experience and about its disclosure, not the perpetrator. But this is largely due to the socialization of women and the social expectation that they must remain unsullied – meaning that those who experienced sexual abuse or molestation are "tainted," their dignity and honor transgressed. This societal view is embodied in the "*Filipina of decent repute*" doctrine. Decisions of the Civil Service Commission reiterate this. In one case it was said that disclosure of sexual abuse is "humiliating to herself and her family;"[68] in another case prosecuting cases of this nature was described as a "situation of embarrassment and public ridicule."[69] In still another case, the experiences of women who courageously report abuse were aptly describe as an invitation to public mockery, on top of the sleepless nights and mental anguish that they suffer.[70]

To this extent, the "*Filipina of decent repute*" doctrine reflects women's experiences.

But while it is sensitive to the realities of abuse and the consequences of reporting, the "*Filipina of decent repute*" doctrine creates a stereotype: that only those of decent repute are credible, or, stated differently, only those of decent repute can possibly be sexually abused. This is truly discriminating against those who do not fit society's standards of a Filipina of decent repute. It also renders cases of sexual abuse, including sexual harassment, vulnerable to claims of ill repute or loose morals of complainants and, thus, of a character prone to fabricate claims of abuse or harassment. In the end, protection and redress are extended only to those who fit the stereotype of a "Filipina of decent repute." A pronouncement of the Civil Service Commission in one case reflects this danger. It held that "mashing one's breast in the presence of onlookers or even privately manifests disrespect to and abuse against any decent women *unless she is one of ill repute*"[71]

Curiously, the Commission applied a similar, albeit modified, doctrine to a male victim. It held that no male student would expose himself twice to humiliation and public ridicule for having been sexually assaulted or harassed by another male who happens to be his instructor, unless he is truly wronged and deeply motivated by a strong desire to seek justice and redress.[72] Significantly, the Commission did not say "man of decent

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[67] CSC Res. No. 000033 (2000)
[68] CSC Res. 991377 (1999)
[69] CSC Res. 990835 (1999)
[70] CSC Res. 953599 (1995)
[71] CSC Res. 990436 (1999) (Emphasis supplied)
[72] CSC Res. 992262 (1999)

repute." This is not surprising, for in Philippine law, as in Filipino culture, prototypes of "decent man" and "man of ill repute" do not exist. It also applied a similar but modified doctrine to a public school teacher when it held in one case that it is hard to believe that a public school teacher "would risk the ignominy of any expose of such a humiliating incident."[73]

Individualization of reactions vs. the "normal reaction" standard. Some progressive pronouncements of the Supreme Court very well apply to the evaluation of evidence in sexual harassment cases. One is the oft-repeated pronouncement of the Court that there is no standard behavior for persons confronted with a shocking incident and that the workings of the human mind when placed under emotional stress are unpredictable and cause different reactions to people.[74] Despite this, the Civil Service Commission in one case[75] used the "normal reaction" standard. It found the complainant's behavior after the alleged incident – that of signing her name on the attendance logbook and acting as if nothing happened – as contrary to the normal reaction of a person who had just been sexually harassed. The Commission opined that a person who had been sexually assaulted would not be concerned with anything else but securing her safety. In another case,[76] the Commission found the complaint's contemporaneous and subsequent conduct "as not in accord with the ordinary reaction of an assaulted person, nor with human experience." The complainant claimed that she was sexually harassed by the driver during the ride in the course of an official trip. But she stayed with him throughout the ride, when, according to the Commission, she could have ditched him. She claimed she was frightened of the respondent yet she returned to the same seat (in the vehicle) beside him five times. She even ate lunch with him and paid for his meal after *the alleged assault.*

In other cases, the Civil Service Commission considered "straightforward, spontaneous, detailed, convincing,"[77] and "natural"[78] testimony as indicia of truthfulness.

It is reasonable, in fact necessary, to examine the contemporaneous and subsequent conduct of complainants and respondents as indicia of truthfulness of claims. But the "*normal reaction*" or "*consistent with human nature and the ordinary course of things*" standard is questionable. By whose standards are these measured? From whose standpoint is the conduct viewed? In reality, the view is very much different from the standpoint of those who *actually* experienced the sexual abuse or harassment, during and after the occurrence of the incident. Viewed from the standpoint of the victims, many of society's assumptions about what constitutes "*normal reaction*" or what is "*consistent*

[73] CSC Res. 973277 (1997)
[74] People vs. Layagum, 261 SCRA 339 [1996]; People vs. Talaboc, 256 SCRA 441 [1996]; People vs. Miranda, 262 SCRA 351 [1996].
[75] CSC Res. 983068 (1998)
[76] CSC Res. 973687 (1997)
[77] CSC Res. 990835 (1999); CSC Res. 973277 (1997)
[78] CSC Res. 990835 (1999)

with human nature and the ordinary course of things" are simply erroneous, at times even ridiculous.

In one case, the Civil Service Commission did not consider as fatal the complainant's delay in reporting, the reasons for which were given,[79] although in two cases, it considered reporting[80] either to the police authorities or the agency head and family members as evidence of truthfulness.

The issue of delayed reporting was addressed by the Supreme Court in the recent case of *Philippine Aeolus Automotive United Corporation vs. National Labor Relations Commission and Rosalinda Cortez,*[81] where the victim complained about the sexual harassment acts after four years of enduring them, and only after she was terminated. The Court, speaking through Justice Josue N. Bellosillo, held that "any employee, male or female, may rightfully cry "foul" provided the claim is substantiated" and that:

> "Strictly speaking, there is no time period within which he or she is expected to complain through proper channels. The time to do so may vary, depending upon the needs, circumstances, and more importantly, the emotional threshold of the employee."[82]

The Court did not apply Republic Act No. 7877 in *Philippine Aeolus* because the acts involved were committed before the enactment of the law in 1995. However, it does set a standard for determining whether delay in reporting affects credibility of a sexual harassment claim by examining the *needs, circumstances and emotional threshold of the employee*. The Court held:

> "Private respondent admittedly allowed four (4) years to pass before finally coming out with her employer's sexual impositions. Not many women, especially in this country, are made of the stuff that can endure the agony and trauma of a public, even corporate scandal. If petitioner corporation had not issued the third memorandum that terminated the services of private respondent [the victim], we could only speculate how much longer she would keep her silence. Moreover, few persons are privileged indeed to transfer from one employer to another. The dearth of quality employment has become a daily `monster' roaming the streets that one may not be expected to give up one's employment easily but to hang on to it, so to speak, by all tolerable means. Perhaps, to private respondent's mind, for as long as she could outwit her employer's ploys she would continue on her job and consider them as mere occupational hazards. This uneasiness in her place of work thrived in an

[79] CSC Res. 973277 (1997)
[80] CSC Res. 990436 (1999), CSC Res. 966213 (1996)
[81] G.R. No. 124617 (April 28, 2000).
[82] Decision, p. 10.

> atmosphere of tolerance for four (4) years, and one could only imagine the prevailing anxiety and resentment, if not bitterness, that beset her all that time. But William Chua faced reality soon enough. Since he had no place in private respondent's heart, so must she have no place in his office. So, her provoked her, harassed her, and finally dislodged her; and for finally venting her pent-up anger for years, he "found" the perfect reason to terminate her."[83]

One consistent attack against the law proscribing sexual harassment is that it runs counter to Filipino culture, specifically our love for fun and jokes. The tendency is to put down sexual harassment to a case of a "bad joke." (Not surprisingly, we often joke about rape.) This seems to be the case in one sexual harassment charge, when the DECS ruled that "Granting, however, for the sake of argument, that respondent did ask for a kiss, we see nothing lascivious as there was no kissing that actually took place and if this was uttered in the presence of other students, [it] could have been a bad joke."[84] But when we consider that the case involved a student as victim and a Citizens' Army Training Commandant as offender in a public school, the DECS set such a poor standard of conduct for our educators who are entrusted with the duty of molding the minds of the youth.

In another case,[85] the Civil Service Commission justified the modification of the sanction imposed from dismissal to six months suspension by saying that "the act committed and the words uttered by the appellant were not so depraved and exceedingly vicious to constitute Grave Misconduct. At most, appellant committed acts of indiscretion amounting to Simple Misconduct." In this case, the respondent was a professor in a state college and the victim his student. The student claimed that the professor made indecent proposals, i.e., proposed to her to become his mistress and live with him, and, in exchange, he would finance her schooling. He also asked her if he could touch any part of her body. The respondent claimed that he uttered what he did "jokingly."

The issue boils down to the standard of behavior that must be set for workplaces and educational institutions and beyond. What differentiates a "solicitation" from execution of the act involved in the solicitation? Both are part of the continuum of sexually aggressive behavior that must be proscribed. To trivialize or ignore one gives license to the commission of the other.

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[83] Decision, pp. 10-11. The victim (referred as private respondent) in this case was disciplined and eventually dismissed for several reasons, among them her act of throwing a stapler at and uttering invectives against the person who sexually harassed her, who was the company's plant manager and her superior. Her acts occurred in an argument that followed the transfer without her knowledge of her table, which was equipped with telephone and intercom units and containing her personal belongings, to a place with no telephone and intercom.

[84] CSC Res. 971783 (1997)

[85] CSC Res. 973890 (1997)

Clear and convincing proof of actual use of authority, influence or moral ascendancy vs. the "inherent inequality" standard. In one case,[86] the Civil Service Commission interpreted the element of authority, influence or moral ascendancy.[87] The Commission ruled that while the respondent occupied a higher position than complainant, the same did not "peremptorily create the air of authority, influence or moral ascendancy" over the latter. It found no substantial proof that a superior-subordinate relationship existed between the complainant and the respondent which would have established the existence of authority, influence or moral ascendancy of the latter over the former. The Commission declared that for there to be sexual harassment, there must be clear and convincing proof that the respondent used his authority or moral ascendancy to facilitate the commission of the acts.

Several points may be said of this ruling. The Commission was technically correct in stating that there must be proof that the respondent used his authority, influence or moral ascendancy to facilitate the commission of the sexual harassment because the rules and regulations of the agency concerned did require the same. However, it appears that the Commission made a *strict construction* of the requirement of authority, influence or moral ascendancy when it ruled that a higher rank on respondent's part *per se* is not proof of authority, influence or moral ascendancy over the complainant. It set the standard of "*clear and convincing proof*" that respondent used his rank to facilitate commission of the crime.

This strict construction may be justified in criminal cases. But in administrative cases, a different standard ought to be set. When the character of sexual harassment is taken into account – it is about power relations, usually involves the exercise by men of their social power over women regardless of the former's rank, and, when it happens in the workplace, is facilitated by the added vulnerability of those in lower rank – this strict construction *excludes* many legitimate experiences of sexual harassment.

Moreover, when the Commission ruled that a higher rank on respondent's part *per se* is not proof of authority, influence or moral ascendancy over the complainant, it did not consider that in the workplace – particularly in government -- rank *per se* is itself authority to those of lower rank and commands obedience from the latter. The dominant culture especially in public organizations and agencies is hierarchical: even just one rank higher gives "authority" or power over the other.

It would have been reasonable if the Commission instead created a disputable presumption that respondent used his rank to facilitate the commission of the acts when these are proved. Instead of applying a stricter standard on complainants, the interest of

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[86] CSC Res. 000563 (2000)

[87] In this case, the agency involved – the Department of Labor and Employment – has rules and regulations on sexual harassment (DOLE Administrative Order No. 250) promulgated on 21 June 1995. The same requires as an element of sexual harassment authority, influence or moral ascendancy on the part of the respondent.

the civil service would have been promoted by applying the stricter standard on respondents. The *"inherent inequality"* doctrine laid down by the Commission in a case[88] involving a University instructor and student – where the Commission held that there is inherent inequality between an instructor and a student and concluded that the respondent had actual authority, influence or moral ascendancy over the complainant *despite that the latter was not respondent's student ever* -- very well applies in a work setting, in a relationship between a person of higher rank and another of subordinate rank.

At any rate, the problem appears to be rooted in the viewing in Republic Act No. 7877 that sexual harassment is a function solely of class (i.e., the use of power arising from a formal position of power such as rank) rather than a function of both class and gender (or the social hierarchy of women and men in society). But as the experiences of many women (and a number of men) show, sexual harassment is a frequent occurrence between peers or those of equal rank. In fact, in some cases, men use sexual harassment as a tool to undermine the authority of women of a rank higher than them.

10. Other Observations. The bottomline question in the implementation and enforcement of Republic Act No. 7877 is whether it has promoted the rights and welfare of workers, particularly of women.

The data available on this is interesting.

According to the ECOP survey, 51 companies claimed that the adoption of a policy on sexual harassment has had no effect on the incidence of sexual harassment in the workplace. Nine said there was a decrease while one said there was in increase in the incidence of sexual harassment. Yet an overwhelming majority of those which have a policy on sexual harassment – 60 – said the existing policy is a deterrent. Only one respondent claimed otherwise.

In the MAKALAYA survey, 78% of the respondents believed that the law is advancing the status of women in the workplace, despite that there is low compliance with the law. The reasons given were: the law gives more protection against abusive employers and provides safety and security for women; enhances the moral well-being of, results in more respect for, and uplifts the dignity of, women; helps workers to become more aware of women's rights; encourages women to speak and fight for their rights/diminishes fear among them; provides more opportunities to succeed and be more effective, or fosters equality and levels the playing field for women and men in the workplace; provides both men and women protection against all forms of abuse and harassment in the workplace; lessens discrimination against female workers; decreases acts of harassment in the workplace/instills fear among harassers. Those who said that the law retards the status of women in the workplace (3%) cited as reasons the following:

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[88] CSC Res. 000604 (2000)

very few comply with the law/many cases are unresolved; the law shows the weakness of women because they still need laws to protect them/giving protection to women against men means "no equality;" the law affects male-female relationships because it makes people fear being accused of sexual harassment; women are overprotected; the law could be used by women to destroy others; the heads would not follow the law; the law gives an over-all perception of machismo in the workplace, defeats the purpose of co-existence of women and men, and have "no synergistic effects."

V. Initiatives by government agencies, employers, trade unions and other organizations

1. Government

a. Civil Service Commission. The Civil Service Commission is the central personnel agency of the government. It is presently implementing a project entitled "Support to Gender and Development Mainstreaming and Institutionalization in the Civil Service Commission, Phase 2," with the support of the Canadian International Development Agency (CIDA). This project has a component which aims to enhance the efforts of the entire government bureaucracy in addressing sexual harassment in the workplace. This project is scheduled to end in April 2001.

The outputs of this project can address some of the issues and problems identified above.

Under the project, the CSC conducted consultations in the regions to identify issues, problems and gaps in addressing sexual harassment. An issue paper prepared by a consultant aided this process. The consultations also provided inputs for a manual on sexual harassment that the CSC is developing to guide government agencies in handling sexual harassment cases. Another output of the project is a compendium of cases of sexual harassment decided by the CSC, the Court of Appeals and the Supreme Court.

One project output that can significantly impact on the efforts of the entire government bureaucracy in addressing sexual harassment is a resolution that the CSC intends to issue prescribing the minimum content of the rules and regulations on sexual harassment that every government agency must promulgate. This output was not part of the originally intended outputs of the project. The issuance of a resolution was decided after the CSC recognized the legal and practical problems that abound with the lack of uniformity of the rules and regulations promulgated by government agencies, on top of the sorry state of compliance with the law within the government bureaucracy.

b. Bureau of Women and Young Workers, Department of Labor and Employment. The Bureau of Women and Young Workers (BWYW) is the primary agency of the Department of Labor and Employment (DOLE) in charge of the

development and implementation of policies, standards, plans and programs affecting working women and young workers. The BWYW is not specifically mandated to ensure the implementation and enforcement of Republic Act No. 7877, but its Director believes that it is the primary agency that should do so.

The agency's efforts against sexual harassment are limited because of lack of funds. The Director and her representatives act as resource persons in fora on sexual harassment organized by private companies. The BWYW accommodates an average of two speaking engagements on sexual harassment a month. The latest was with the Occupational Health Nurses Association of the Philippines (OHNAP).

The agency does not conduct any investigation of sexual harassment cases.

Shortly after the Republic Act No. 7877 was passed, the agency, with the support of the International Labour Organization, undertook various initiatives to address sexual harassment and contribute to the implementation and enforcement of the law. (See Annex, "Elimination of Sexual Harassment in the Workplace," *DOLE's Effort in Elimination Workplace Sexual Harassment*) In 1996 and 1997, the agency conducted, with external partners,[89] a series of five-day training for members of the Committee on Decorum and Investigation and para-counselors of selected private companies, colleges and universities, representatives of workers' organizations, trade unions and labor centers. The training focused on the implementation of Republic Act No. 7877 and the provision of psycho-social services to victims of sexual harassment in workplaces and educational or training institutions. This project involved about 20 private companies, colleges and universities. Many were Metro Manila-based but several were companies with branches all over the Philippines.

The Director of the BWYW believes that the agency will be able to contribute significantly to the drive against sexual harassment through: (a) reforming the inspection checklist used by the DOLE labor inspectors when inspecting working conditions of private companies, to include questions on compliance with the law against sexual harassment; the BWYW is presently working on amending the inspection checklist to include questions that will determine whether rules and regulations on sexual harassment have been adopted, whether a Committee on Decorum and Investigation has been created, and whether the law and the rules have been disseminated; and (b) advocating for the amendment of Republic Act No. 7877 to give the BWYW the mandate to investigate and resolve cases of sexual harassment which private companies have failed to act on; this mandate is without prejudice to the any liability that companies may incur under Republic Act No. 7877.

[89] For the training, the BWYW hired the services of two institutions: the Women's Legal Bureau, Inc., a legal resource women's NGO based in Quezon City, and the Center for Women's Studies of the University of the Philippines, Diliman, Quezon City.

c. Congress. Several bills are pending in the Senate and House of Representatives seeking to amend Republic Act No. 7877 by, among others, expanding the definition of sexual harassment and the coverage of the law and increasing the penalty for sexual harassment. (Upon the end of the Eleventh Congress in May 2001, when congressional elections will be conducted, all the bills not passed into law will be archived. They have to be filed again upon the opening of the Twelfth Congress in June 2001.)

On 14 September 1999, the Subcommittee on Oversight, Committee on Women of the House of Representatives held a meeting to assess the implementation and enforcement of Republic Act No. 7877. The Subcommittee cited the following observations on the implementation and enforcement of Republic Act No. 7877:

"• no agency was tasked to monitor the implementation of the law;
- sexual harassment was not clearly defined in the existing law;
- some agencies changed members of the committee on decorum and investigation (CDI) for every different sexual harassment case handled;
- culture, low level of awareness of the existing law on sexual harassment and technical difficulty in filing of case, resulted in a small number of reported cases;
- penal provision for the commission of sexual harassment is "cheap" or light, hence, people would rather file a case of acts of lasciviousness in court against the accused for a stiffer punishment;
- the general IRR [implementing rules and regulations] on sexual harassment was silent in the inclusion of presidential appointees, elected officials, doctor-patient and peer relationships;
- no mention of sexual harassment was made in the administrative code."[90]

It also gave the following recommendations:

"• provide stiffer penalty;
- include restaurants, hospitals, etc. as the area of environment or a place of commission of the offense;
- require the different government and private agencies to comply with the law and assign a monitoring agency to check on their compliance;
- include the Department of Justice, among others in the implementation;
- give more and stronger teeth in the law, as implementation and monitoring should be in place;

[90] Memorandum dated 14 September 1999 addressed to the Speaker of the House of Representatives entitled, "Spot Report on the Meeting of the Subcommittee on Oversight, Committee on Women, Held on September 14, 1999, 1:00 P.M. at the North Lounge Conference Room, Batasan Pambansa Complex, Quezon City.

- provide safeguard and protection to victims of sexual harassment while the litigation of the case is still in progress, as well as the victims of frame-ups/blackmail using sexual harassment to extort money;
- conduct information-dissemination like seminars and distribution of materials on sexual harassment to improve and maximize the people's level of awareness of the law;
- the DILG to structure their IRR to include elected and appointed officials."[91]

The Subcommittee also created an Ad Hoc Committee in charge of informing the Subcommittee on Oversight of the agencies' compliance with the law. The Ad Hoc Committee is composed of the Department of Labor and Employment, Department of Interior and Local Government, Department of Education, Culture and Sports, Commission on Higher Education, Civil Service Commission and the National Commission on the Role of Filipino Women (NCRFW) as the lead agency tasked to convene the body.

d. Other Government Agencies. Other government agencies also reported initiatives against sexual harassment. During the 14 September 1999 meeting of the Subcommittee on Oversight, Committee on Women, of the House of Representatives, a Director of the Commission on Higher Education (CHED) reported that the agency "sent a Memorandum Circular to more or less 1,800 colleges and universities nationwide, instructing them to come up with their own IRRs [implementing rules and regulations]. Since then, cases of sexual harassment were brought to their office."[92] The agency, however, has no report on the compliance by the colleges and universities with the directive. A number of agencies had reported to the National Commission on the Role of Filipino Women about their initiatives against sexual harassment such as education and training activities, research, development of an anti-sexual harassment action plan and circulation of educational materials.

2. *Private Companies and Employers' Organizations*

According to the Employers' Confederation of the Philippines (ECOP), it integrated the topic of sexual harassment in seminars on gender and development it conducted in the past. It also produced a campaign poster, "Stop Sexual Harassment," with the support of the International Labour Organization. Before the passage of Republic Act No. 7877, ECOP conducted consultations and discussions on the proposed legislation.

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[91] *Id.*

[92] Minutes of the Meeting of the Subcommittee on Oversight, Committee on Women, Held on September 14, 1999 at 1:00 P.M., at the North Lounge Conference Room, House of Representatives, Quezon City.

One noteworthy approach in preventing sexual harassment is that adopted by the Friendly Care Foundation, Inc., a private corporation whose mission is to deliver affordable quality family and reproductive health services in a compassionate manner to low income groups. FCFI's goal is to be recognized in the Philippines as the effective private sector model in the delivery of family and reproductive health services and products. FCFI is mandated to establish clinics all over the country. At present, it opens two clinics a month.

FCFI's efforts in addressing and preventing sexual harassment are noteworthy because it has integrated in its 30-day pre-deployment training program a one-day orientation specifically on its rules and regulations on sexual harassment, in addition to sessions on gender, violence against women, reproductive health and sexuality. The 30-day pre-deployment training is required for all its new personnel.

FCFCI prides itself with its efforts against sexual harassment. While there was some resistance (which its Human Resource Director considers "minimal") to the adoption of its rules and regulations (mostly from its male personnel), this was neutralized when its personnel realized the importance of the rules after a newly-recruited nurse complained of sexual harassment against a top FCFI official. The complaint was appropriately investigated and the official was dismissed.

3. *Trade Unions and Labor Organizations/Centers*

In 1988, a trade union leader asserted that "Philippine trade unions dutifully mention it [sexual harassment] in the standard list of women workers' problems, but keep no statistics and take little action."[93] Even today, with a law against sexual harassment, few trade unions address, if at all, the issue of sexual harassment. For this reason, documentation of sexual harassment cases by trade unions is almost non-existent. Many factors can account for this, among them, and perhaps the most obvious, is the worsening economic situation in the Philippines and the multitude of labor issues and problems generated by this that confronts trade unions, labor federations and labor centers. For many in the trade union movement, the economic issues confronting workers are the "hard" and "real" issues and, thus, should be given priority. More than trade unions and labor centers, it is women's groups that have consistently exposed, through its various education, campaign and advocacy activities, sexual harassment as a major problem confronting women in workplaces and other milieus.

Still, before 1995, several trade unions and labor organizations were active in addressing sexual harassment. Their initiatives included awareness raising, organizing and campaigning for the passage of an anti-sexual harassment law. The enactment of Republic Act No. 7877 was a result of these initiatives. Several trade unions and

[93] Eleanor R. Dionisio, Sexual Harassment: The Personal is Political, *supra*.

organizations were also successful in pushing for the adoption of policies on sexual harassment at the enterprise level even before the passage of Republic Act No. 7877.[94]

Presently, several trade unions and labor organizations have initiatives addressing sexual harassment. One of them is the *Manggagawang Kababaihang Mithi ay Paglaya* (MAKALAYA). MAKALAYA is an organization of about 3,000 women workers from the formal and informal labor sectors that organizes, educates, mobilizes and advocates for gender equality and social justice. One of its aims is "to challenge trade unions in adjusting its objectives and strategies to be responsive to the needs of the women workers." MAKALAYA implemented a research project on sexual harassment in 1999. The project produced three materials: a book containing survey findings on sexual harassment, a primer on sexual harassment and a poster entitled "Stop Sexual Harassment Now." MAKALAYA plans to launch a campaign against sexual harassment in March 2001 using the materials it has produced and the findings of its research.

The Trade Union Congress of the Philippines (TUCP), which claims to be the biggest confederation of labor unions in the country, representing 1.2 million workers, is presently implementing the DAW (Delivery of Justice to Disadvantaged Women) Coalition Project. The project has developed, as a project implementing mechanism, a coalition of organizations to address four violence against women issues: domestic violence, sexual harassment, job discrimination and abuse of women migrant labor. The project operates on a grant provided by the USAID, supported by the American Center for International Labor Solidarity. The project was launched in 1997 and was scheduled to be completed in April 2000. However, the project life was extended to Septermber 2001.

The project has conducted seminars on sexual harassment in different parts of the country and its partners have lobbied for the promulgation of rules and regulations on sexual harassment and the creation of committees on decorum and investigation in establishments. The project's January 2001 newsletter reports that during the last quarter of 2000, "a total of thirty four (34) CODIs [Committees on Decorum and Investigation] were formed and/or Sexual Harassment Implementing Rules and Regulations were formulated [sic]" as a result of the efforts of the project partners with the collaboration of government agencies and private enterprises.

That TUCP is implementing a project on sexual harassment may be significant by itself considering that one woman trade union leader claimed, in a paper written in 1988, that TUCP's President, Democrito Mendoza, considers sexual harassment "'more of a personal problem' (albeit 'morally offensive'), unless it reaches extreme proportions, such as rape."[95]

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[94] MAKALAYA, The Anti-Sexual Harassment Law in Retrospect, Advancing or Retarding Women's Status? (2000), pp. 13-19.
[95] Eleanor R. Dionisio, Sexual Harassment: The Personal is Political, *supra*.

VI. Conclusion and Recommendations

From the foregoing discussion, it appears that while the Philippines has taken a significant step by legislating against sexual harassment, the implementation and enforcement of the law is very weak. The legislation itself has significant flaws that impact adversely on its implementation and enforcement. In some cases, the manner of compliance by agencies with the law is irregular or in violation of its mandate. On the whole, there is no adequate and effective monitoring of compliance with the law by public and private agencies.

Beyond legislation, there are other efforts by some government agencies as well as some employers' and workers' organizations to address the problem of sexual harassment in the workplace, but these are very limited and sporadic. One government agency, the Bureau of Women and Young Workers of the Department of Labor and Employment, which could make strategic or significant initiatives has no funds to undertake work against sexual harassment.

The issues and problems related to addressing sexual harassment in the workplace exist in the context of the Filipino culture that generally trivializes and even condones sexual harassment in particular and violence against women in general. Ignorance, or the lack of appropriate appreciation, of the nature, the resulting harm and the social cost of sexual harassment is a large part of the problem. The specific cases of sexual harassment particularly illustrate the prevalent discriminatory attitudes and beliefs about women and their sexuality. What aggravates the entire situation is the lack of national data on the phenomenon of sexual harassment that could be used in efforts to increase public awareness and promote action about the problem.

The following recommendations are offered to address the issues and problems discussed above and improve existing efforts to address sexual harassment.

1. Republic Act No. 7877 must be amended to address some of the issues raised above. Legislative amendment along the following areas can help in facilitating the prosecution and prevention of sexual harassment:

1.1. The current definition of sexual harassment, and all the issues attendant to it relating to its elements, must be reviewed and addressed.

1.2. Sexual harassment committed by persons without apparent authority, influence or moral ascendancy over the complainant should also be addressed.

There is every reason to also address sexual harassment occurring between peers, or committed by those without apparent authority, influence or moral ascendancy over their victims. This kind of sexual harassment is also prevalent in work, education and training environments.

1.3. The law must be expanded to cover other situations or milieus of occurrence of sexual harassment. The Senate version of the proposed Anti-Sexual Harassment Act brought to the Bicameral Conference Committee to be reconciled with the House version included sexual harassment occurring in other situations or milieus, in addition to work, education and training-related sexual harassment. It included sexual harassment between professionals and clients and those committed by priests, ministers and pastors against parishioners or members of their church. However, these were deleted in the final bill which later became Republic Act No. 7877.

1.4. The Civil Service Commission (CSC), Department of Labor and Employment (DOLE), Department of Education, Culture and Sports (DECS) and Commission on Higher Education (CHED) should be specifically mandated to either promulgate uniform rules and regulations to govern workplaces and schools within the public and private sectors, or provide minimum standards in the promulgation of rules and regulations within the public and private sectors.

With the unevenness in the standards set by public and private agencies, it would serve the interest of effectively addressing sexual harassment if the CSC, DOLE, DECS and CHED were empowered to promulgate uniform rules and regulations for public and private employers and educational and training institutions. At the minimum, these agencies may be empowered to promulgate the minimum guidelines for the promulgation of rules and regulations by agencies and institutions in the public and private sectors.

Through the uniform rules or minimum standards, issues raised in this paper regarding definition, procedure, and protection of complainants against retaliatory action can be addressed.

1.5. The rule on solidary liability must be clarified.

1.6. The penalty for the crime of sexual harassment must be increased.

2. Agencies like the Civil Service Commission (CSC), Department of Labor and Employment (DOLE), Department of Education, Culture and Sports (DECS) and Commission on Higher Education (CHED) should integrate in their mainstream work monitoring of compliance with Republic Act No. 7877.

This does not need any amendment of Republic Act No. 7877. In addition, other agencies with general powers of supervision or administration over other agencies should strive for similar integration.

3. The Civil Service Commission should clarify the application of Memorandum Circular No. 19. With the continued application of Memorandum Circular No. 19 to government agencies, there appears to be no compulsion on the part of government agencies to promulgate their own rules and regulations on sexual harassment, address

violations seriously and prevent their occurrence. The Civil Service Commission should clarify the application of MC No. 19 and direct government agencies to immediately comply with the mandate of Republic Act No. 7877. The CSC's plan to issue a resolution prescribing the minimum rules and regulations to be adopted by administrative agencies is a positive development and can address many of the problems related to the implementation and enforcement of the law within the government bureaucracy.

4. Appropriate standards must be defined. The appropriateness of standards applied in sexual harassment cases, such as those discussed above, should be reviewed by agencies concerned, including the Civil Service Commission. There should be a conscious effort on the part of the agencies and the courts to understand sexual harassment as a phenomenon and define standards appropriate to its nature or character and the experiences of victims.

5. Systematic documentation of cases and research on the phenomenon of sexual harassment must be undertaken. The dearth of national data on sexual harassment hampers efforts at addressing sexual harassment and leads to insensitive and inappropriate responses.

6. Efforts should be made for agencies and institutions to achieve greater and deeper understanding of sexual harassment, and for them to better implement and enforce the law. The objective should be to create a social environment that is intolerant of sexual harassment and takes violations against women and girl-children, and against men, seriously.

7. Massive public education about sexual harassment and the law must be conducted by all strategic institutions and groups, particularly by the government, employers' organizations, trade unions, colleges and universities. Partnerships with the various media must be established to make this possible.

The law against sexual harassment can only be effective in a culture that recognizes its standards and does not tolerate sexual harassment. Only in such an environment can we foster genuine compliance with the law and prevent the occurrence of violations. Only in such environment can victims, particularly women, be encouraged to report violations. It is for this reason that the culture that breeds sexual harassment and tolerates it, as well as the economic marginalization of women that aggravates their vulnerability to sexual harassment, must be targeted. ☻

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