



REPUBLIC OF THE PHILIPPINES  
**Senate**  
Pasay City

# Journal

**SESSION NO. 42**  
Tuesday, December 13, 2011

**FIFTEENTH CONGRESS**  
**SECOND REGULAR SESSION**

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Tuesday, December 13, 2011

**CALL TO ORDER**

At 3:32 p.m., the Senate President, Hon. Juan Ponce Enrile, called the session to order.

**PRAYER**

Sen. Ramon "Bong" Revilla Jr. led the prayer, to wit:

As we gather in this august Chamber, we thank You for choosing us to make a difference.

May the spirit of Christmas be instilled in the very hearts of every Filipino and be united in faith, hope and love as You enable us to carry out things for Your glory.

As we approach another year, may we be expectant of greater things that are yet to come. Fill us with Your presence that we may find grace and favor as we serve You. Let us not falter in our mission to bring forth change, justice, hope and most especially love to this country.

May You give us a faithful and committed heart to serve; wisdom and discernment in every decision that we make; and strength and fortitude to always bind us to do the right thing without compromise.

We thank You, Lord, for everything.

Amen.

**REMARKS OF THE CHAIR**

On behalf of the Senate, Senate President Enrile commended and congratulated Senator Miriam Defensor Santiago for the honor she brought to the country in light of her election as a member of the International Criminal Court (ICC).

**POINT OF INFORMATION  
OF SENATOR DEFENSOR SANTIAGO**

Preliminarily, Senator Defensor Santiago confirmed that indeed, she has been elected as a judge of the International Criminal Court, the first Filipino and first Asian from a developing country to earn such an honor.

She disclosed that the election of a judge to an international tribunal is mainly the work of the Department of Foreign Affairs. Thus, she believed that the tribute should be given to Pres. Benigno Aquino III for nominating her; to Foreign Affairs Sec. Albert del Rosario who travelled all over the world to visit the country's missions and embassies to urge the ambassadors to coordinate their efforts with the local governments; to Undersecretary Rafael Seguis, who acted as the campaign manager; and to Amb. Libran Cabactulan, who had to network with all the other ambassadors in the UN system.

She stated that the election is called a "political process" because basically, the candidates were chosen not only on the basis of competence, merit

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and fitness but also on the basis of the ability of the Philippine ambassador to the U.N., a master in the art of negotiation, to exchange favors or votes with other ambassadors to the U.N. In fact, she disclosed that the Philippines was number one in the first round of voting, although there would be other rounds.

Further, Senator Defensor Santiago clarified that while she would be taking her oath of office in March 2012, together with the new judges, she would not be called to The Hague immediately since there is a rule in the ICC that an incumbent judge who has already participated in the trial of a case cannot leave until after the trial of said case shall have been finished. Thus, she said, it is possible she might be staying for six months, a year or even longer because it depends on when the ICC would call her.

She said that in all probability she would be able to participate in the impeachment trial of the Chief Justice and the ongoing debates on the Reproductive Health bill. She added that her term as ICC judge is nine years.

#### ROLL CALL

Upon direction of the Chair, the Secretary of the Senate, Atty. Emma Lirio-Reyes, called the roll, to which the following senators responded:

|                       |                     |
|-----------------------|---------------------|
| Angara, E. J.         | Lacson, P. M.       |
| Arroyo, J. P.         | Lapid, M. L. M.     |
| Cayetano, P. S.       | Legarda, L.         |
| Defensor Santiago, M. | Osmeña III, S. R.   |
| Drilon, F. M.         | Pimentel III, A. L. |
| Ejercito Estrada, J.  | Recto, R. G.        |
| Enrile, J. P.         | Revilla Jr., R. B.  |
| Escudero, F. J. G.    | Sotto III, V. C.    |
| Guingona III, T. L.   | Trillanes IV, A. F. |
| Honasan, G. B.        |                     |

With 19 senators present, the Chair declared the presence of a quorum.

Senator Pangilinan arrived after the roll call.

Senator Marcos was on sick leave; Senator Cayetano (A) was on a medical check-up; and Senator Villar was with his family, friends and constituents on the occasion of his birthday.

#### BIRTHDAY GREETINGS

On behalf of the Body, Senator Sotto greeted Senators Osmeña and Villar who were celebrating their birthday that day.

#### SUSPENSION OF SESSION

With the permission of the Body, the Chair suspended the session.

*It was 3:39 p.m.*

#### RESUMPTION OF SESSION

At 3:40 p.m., the session was resumed with Senate President Pro Tempore Ejercito Estrada presiding.

#### ANNOUNCEMENT OF SENATOR SOTTO

Senator Sotto announced that there would be an all-senators caucus in the Senators' lounge immediately after the Reference of Business.

#### APPROVAL OF THE JOURNAL

Upon motion of Senator Sotto, there being no objection, the Body dispensed with the reading of the Journal of Session No. 41 (December 12, 2011) and considered it approved.

#### ACKNOWLEDGMENT OF THE PRESENCE OF GUESTS

At this juncture, Senator Sotto acknowledged the presence in the gallery of the following guests:

- Guests of the Committee on Foreign Relations;
- Officials of the Department of Foreign Affairs headed by Amb. Victoriano Licaros and Undersecretary Jose Brillantes;
- Officers of the Commission on Human Rights headed by Budit Carlos and Atty. Byron Bucar;
- Members of the International Committee of the Red Cross headed by Ms. Graziella Piccolo;
- Members of the United Against Torture Coalition;

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- Representative of the Amnesty International; and
- Representative of the Philippine Alliance of Human Rights Advocates.

The Senate President Pro Tempore welcomed the guests to the Senate.

## REFERENCE OF BUSINESS

The Secretary of the Senate read the following matters and the Chair made the corresponding referrals:

### BILLS ON FIRST READING

Senate Bill No. 3086, entitled

AN ACT TO AUTHORIZE THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO MAKE GRANTS TO ASSIST BARANGAYS IN COMPLYING WITH ENVIRONMENTAL REQUIREMENTS, AND TO AUTHORIZE THE USE OF PENALTY AMOUNT COLLECTED UNDER LAWS TO FINANCE THE GRANTS

Introduced by Senator Defensor Santiago

**To the Committees on Environment and Natural Resources; and Local Government**

Senate Bill No. 3087, entitled

AN ACT INSTITUTING A PHILIPPINE POLLUTANT RELEASE AND "TRANSFER REGISTRY"

Introduced by Senator Defensor Santiago

**To the Committees on Environment and Natural Resources; Health and Demography; and Finance**

### RESOLUTIONS

Proposed Senate Resolution No. 665, entitled

RESOLUTION CONGRATULATING AND COMMENDING FILIPINO BOXER

BRIAN "THE HAWAIIAN PUNCH" VILORIA FOR SUCCESSFULLY DEFENDING HIS WORLD BOXING ORGANIZATION FLYWEIGHT TITLE VIA TECHNICAL KNOCKOUT AGAINST MEXICAN BOXER GIOVANI SEGURA ON 11 DECEMBER 2011 AT THE YNARES SPORTS ARENA IN PASIG CITY, THE PHILIPPINES

Introduced by Senator Lapid

**To the Committee on Rules**

Proposed Senate Resolution No. 666, entitled

RESOLUTION COMMENDING THE GRAND WINNERS OF THE 2011 NATIONAL SEARCH FOR SUSTAINABLE AND ECO-FRIENDLY SCHOOLS

Introduced by Senator Legarda

**To the Committee on Rules**

### COMMITTEE REPORTS

Committee Report No. 91, prepared and submitted by the Committee on Foreign Relations, on Proposed Senate Resolution No. 663, entitled

RESOLUTION CONCURRING IN THE RATIFICATION OF THE PROTOCOL ADDITIONAL TO THE GENEVA CONVENTION OF 12 AUGUST 1949, AND RELATING TO THE PROTECTION OF VICTIMS OF INTERNATIONAL ARMED CONFLICTS (PROTOCOL 1),

recommending its approval without amendment.

Sponsor: Senator Legarda

**To the Calendar for Ordinary Business**

Committee Report No. 92, prepared and submitted by the Committee on Foreign Relations, on Proposed Senate Resolution No. 664, entitled

RESOLUTION CONCURRING IN THE ACCESSION TO THE OPTIONAL PROTOCOL TO THE CONVENTION

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AGAINST TORTURE AND OTHER  
CRUEL, INHUMAN OR DEGRADING  
TREATMENT OR PUNISHMENT,

recommending its approval without amendment.

Sponsor: Senator Legarda

**To the Calendar for Ordinary Business**

**ADDITIONAL REFERENCE OF BUSINESS**

**MESSAGE FROM THE HOUSE  
OF REPRESENTATIVES**

Letter from the House of Representatives, dated 12 December 2011, transmitting to the Senate the Verified Complaint for Impeachment of Renato C. Corona as Chief Justice of the Supreme Court of the Philippines by Representatives Tupas, Abaya, Tafiada, Umali (R), Bag-ao, *et al.*, pursuant to Section 3, Paragraph 4, Article XI of the Constitution of the Republic of the Philippines and Section 13, Rule IV of the Rules of Procedure in Impeachment Proceedings of the House of Representatives.

**To the Committee on Rules**

**PRESIDENTIAL CERTIFICATION**

Upon direction of the Chair, Secretary Reyes read the President's certification as to the necessity of the immediate enactment of Senate Joint Resolution No. 13, to wit:

**MALACAÑAN PALACE  
MANILA**

08 December 2011

HON. JUAN PONCE ENRILE  
Senate President  
Philippine Senate  
Pasay City

Dear Senate President Enrile:

Pursuant to the provisions of Article VI, Section 26 (2) of the 1987 Constitution, I hereby certify to the necessity of the immediate enactment of House Joint Resolution No. 21 and Senate Joint Resolution No. 13, both entitled:

**JOINT RESOLUTION INCREASING THE FY 2011  
CORPORATE OPERATING BUDGET OF**

**THE NATIONAL POWER CORPORATION  
(NPC) FROM SEVEN BILLION FIVE  
HUNDRED SEVENTY FIVE MILLION ONE  
HUNDRED EIGHTY-THREE THOUSAND  
NINE HUNDRED THIRTY SEVEN PESOS  
(PhP7,575,183,937.00) TO FOURTEEN  
BILLION NINE HUNDRED SIXTY-EIGHT  
MILLION SEVEN HUNDRED NINETY  
THOUSAND FIVE HUNDRED TWENTY-  
EIGHT PESOS (PhP14,968,790,528.00),**

to address the urgent need for continued and reliable power supply in small islands in accordance with its mandate under EPIRA. Specifically, the amount will cover additional CAPEX and OPEX requirements for 2011 including provision for payment of short-term facility for settlement this year.

Best regards.

Very truly yours,

(Sgd.) BENIGNO S. AQUINO III

Cf: Hon. Feliciano R. Belmonte, Jr.  
Speaker, House of Representatives  
Quezon City

**APPROVAL OF SENATE JOINT  
RESOLUTION NO. 13 ON THIRD READING**

In view of the presidential certification, upon motion of Senator Sotto, there being no objection, the *Body considered, on Third Reading, Senate Joint Resolution No. 13.*

Pursuant to Section 67, Rule XXIII of the Rules of the Senate, upon motion of Senator Sotto, there being no objection, Secretary Reyes read only the title of the resolution, to wit:

**JOINT RESOLUTION INCREASING THE  
FY 2011 CORPORATE OPERATING  
BUDGET OF THE NATIONAL POWER  
CORPORATION (NPC) FROM SEVEN  
BILLION FIVE HUNDRED SEVENTY  
FIVE MILLION ONE HUNDRED  
EIGHTY-FOUR THOUSAND PESOS  
(PhP7,575,184,000.00) TO THIRTEEN  
BILLION NINE HUNDRED SIXTY-  
EIGHT MILLION SIX HUNDRED  
TWO THOUSAND PESOS  
(PhP13,968,602,000.00).**

Secretary Reyes called the roll for nominal voting.

**RESULT OF THE VOTING**

The result of the voting was as follows:

*In favor*

|                   |            |
|-------------------|------------|
| Angara            | Lacson     |
| Arroyo            | Lapid      |
| Cayetano (P)      | Legarda    |
| Defensor Santiago | Osmeña     |
| Drilon            | Pangilinan |
| Ejercito Estrada  | Pimentel   |
| Enrile            | Recto      |
| Escudero          | Revilla    |
| Guingona          | Sotto      |
| Honasan           | Trillanes  |

*Against*

None

*Abstention*

None

With 20 senators voting in favor, none against, and no abstention, the Chair declared Senate Joint Resolution No. 13 approved on Third Reading.

**SPECIAL ORDER**

Upon motion of Senator Sotto, there being no objection, the Body approved the transfer of Committee Report No. 92 on Proposed Senate Resolution No. 664 from the Calendar for Ordinary Business to the Calendar for Special Orders.

**COMMITTEE REPORT NO. 92 ON PROPOSED SENATE RESOLUTION NO. 664**

Upon motion of Senator Sotto, there being no objection, the Body considered, on Second Reading, Proposed Senate Resolution No. 664 (Committee Report No. 92), entitled

**RESOLUTION CONCURRING IN THE ACCESSION TO THE OPTIONAL PROTOCOL TO THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT.**

Pursuant to Section 67, Rule XXIII of the Rules of the Senate, with the permission of the Body, upon

motion of Senator Sotto, only the title of the resolution was read without prejudice to the insertion of its full text into the Record of the Senate.

Thereupon, the Chair recognized Senator Legarda, to sponsor the measure.

**SUSPENSION OF SESSION**

Upon motion of Senator Sotto, the session was suspended.

*It was 3:50 p.m.*

**RESUMPTION OF SESSION**

At 3:53 p.m., the session was resumed.

**SPONSORSHIP SPEECH OF SENATOR LEGARDA**

Senator Legarda presented and sought the approval of Proposed Senate Resolution No. 664, entitled "Resolution Concurring in the Accession to the Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment" prepared and submitted by the Committee on Foreign Relations on December 12, 2011, per its Committee Report No. 92.

*The full text of Senator Legarda's sponsorship speech follows:*

Torture is a violation of human rights and human dignity. Article 5 of the Universal Declaration of Human Rights states that, "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment." The Philippine government's position on torture is very clear. We condemn its use as a matter of fundamental principle. The Philippine government is committed to the protection and promotion of human rights under the 1987 Constitution.

As a founding member of the United Nations and a member of the Human Rights Council, the Philippines reiterates its deep commitment to actively support, protect and promote human rights as enshrined in the Universal Declaration of Human Rights, the core human rights treaties and other international instruments to which it is a state party.

It is propitious that I stand here today – three days after the commemoration of the International Human Rights Day and five days

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before the ninth anniversary of the adoption of the Optional Protocol to the Convention Against Torture by the United Nations – to report out the Committee on Foreign Relations' endorsement of the Optional Protocol to the Convention Against Torture or the OPCAT.

### *Chronology of Events*

The Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment or CAT was adopted by the UN General Assembly by Resolution 39/46 on December 10, 1984, and was ratified by the Philippines on June 18, 1986.

CAT is a primary international anti-torture mechanism.

The Optional Protocol to the Convention Against Torture (OPCAT) is a subsidiary instrument of the Convention Against Torture.

The OPCAT was adopted by the UN General Assembly on December 18, 2002, at the 57<sup>th</sup> session of the United Nations General Assembly (UNGA) by resolution A/RES/57/199 and entered into force on June 22, 2006.

Today, I ask that we give flesh to our human rights declarations. I strongly recommend that the Instrument of Accession for OPCAT be concurred in and assigned this august Body.

### *Main Features of the Treaty and Obligations Upon Accession*

What does this instrument seek to achieve?

The OPCAT seeks to prevent torture and other forms of ill-treatment through an international mechanism that will conduct regular visits to places of detention within state parties. This mandate is carried out by the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

It is a treaty obligation for state parties to the OPCAT to accept visits from the Subcommittee and grant it access to all places of detention within its jurisdiction.

The OPCAT forwards the idea that through a system of regular jail visits by independent international and local monitors, torture and other forms of ill-treatment can be prevented in jails and that jail conditions can be improved. Visitorial powers are very important in the observance of human rights because the sheer process of observation will naturally change what is being observed.

State parties to the OPCAT have to create or designate National Preventive Mechanisms (NPMs)

which will work with the UN Subcommittee to conduct regular visits to all places of detention and make recommendations on the establishment of effective measures to prevent torture and ill-treatment and to improve the conditions of detention of all persons deprived of liberty.

The OPCAT also enables state parties to benefit from advisory, technical and financial assistance.

### *Statement of Deferment*

In endorsing the OPCAT, the Department of Foreign Affairs, under Article 24 thereof, informed the Committee on Foreign Relations that it will request the Subcommittee on the Prevention of Torture for a deferment of the implementation of the obligations in Part III of the OPCAT to allow for completion of the government's reform programs for jails and detention facilities.

I support this request for such a deferment.

The deferment gives the Philippines three years to improve prison, detention and custodial facilities before the Subcommittee can perform visits. This declaration is an integral part of the Instrument of Accession signed by the President on December 9, 2010.

I wish to emphasize that the deferment refers only to requests for visits by the Subcommittee and not to the establishment of the National Preventive Mechanism which is required by the OPCAT to be established within one year after accession.

Despite the declaration, torture and ill-treatment can immediately be prevented because of the establishment of a national body that can undertake visits to prisons and other detention and custodial facilities.

This is not an exceptional request for even the United Kingdom had delayed its notification for the establishment of a National Preventive Mechanism, a requirement under the OPCAT.

The bases for the request for a Philippine deferment of implementation after the accession of the OPCAT are three main realities in the country's current penal system, namely: (1) overcrowding primarily traced to slow processing of cases, (2) outbreaks of diseases, and (3) the need for better jail environments that allow the rehabilitation and eventual reintegration of detainees.

The Bureau of Jail Management and Penology (BJMP), with its limited resources, has been struggling to meet the standard minimum

rules for treatment of prisoners set forth by the United Nations.

Rule 10, Part 1 of the UN Standard Minimum Rules for the Treatment of Prisoners states that:

All accommodations provided for the use of prisoners and in particular all sleeping accommodation shall meet all requirements of health, due regard being paid to climatic conditions and particularly to cubic content of air, minimum floor space, lighting, heating and ventilation.

In that light, the BJMP has set an accommodation space of three square meters for each inmate.

With total cell area of its jails at 56,982 square meters, the BJMP would be able to accommodate only 18,944 inmates. As of August 2009, BJMP facilities hold a total of 57,007 inmates nationwide, translating into a 201% congestion level.

From January to August of 2009, a monthly average of 3,411 inmates were committed as compared to 3,309 released for a net monthly addition of 102 inmates.

The Philippines has a ratio of about one guard to every 48 prisoners, while the international standard is one guard for every seven prisoners.

As for allowance for an inmate meals, the government provides P50 per inmate each day. The budget for medicines is a meager P3 per inmate per day.

Similar problems also exist in our provincial jails which, pursuant to RA 6975, are under the direction, supervision and control of the provincial governors. As of August 2009, there were 75 provincial jails and 27 subprovincial jails nationwide housing 26,618 inmates. These inmates are under the custody of 2,999 provincial guards which results in a custodial ratio of one jail officer to nine inmates.

On the part of the Philippine National Police, many police stations, mostly small and cramped, still do not have separate cells for male and female detainees. Likewise, police stations lack the necessary holding rooms for children in conflict with the law who are awaiting transfer to the DSWD or to responsible persons and institutions involved in the diversion program as provided for by the Juvenile Justice and Welfare Act.

Article 2 of OPCAT provides that the Subcommittee shall carry out its work within the framework of, *inter alia*, norms of the United

Nations concerning the treatment of people deprived of liberty, including norms for women and children. It is imperative that all Philippine prisons, detention and custodial facilities must meet UN norms and standards. Thus, the need for us to declare a deferment in the implementation of the OPCAT to allow us to upgrade our custodial facilities to UN levels.

There is a basis for the National Preventive Mechanism under our present laws. The Commission on Human Rights undertakes, as a regular function, jail visits and assistance to detainees. In fact, last June 23, 2009, a Memorandum of Undertaking was signed between the CHR and the PNP upholding the former's visitatorial powers over all police lock-up cells and jails.

Internal inspections of jails also continue to be carried out by the DOJ and the DILG. There are also judicial inspections made by judges and court officials.

The Law on Custodial Investigation likewise allows visits by certain accredited civil society organizations, such as the Balay Rehabilitation Center, the Medical Action Group, and other NGOs within the Philippine Network Against Torture. The International Committee on the Red Cross (ICRC) has its own regular visits and even shares with government the results of their work and recommends measures to improve conditions of our facilities.

To date, there are 61 state parties, and 22 additional state signatories to the instrument. Thirty-seven states have designated their National Preventive Mechanisms.

The country's accession to the OPCAT has the support of relevant government agencies. In the hearing conducted by the Senate Committee on Foreign Relations, the following agencies endorsed the country's accession to the OPCAT, namely, DFA, DOJ, DILG, PHRC, CHR, AFP, PNP, BJMP, NBI and the PDEA.

As a state party to all eight core UN Human Rights Treaties, and as an internationally recognized champion of human rights in the region, it naturally follows that we acceded to OPCAT. Our accession will help put into action our commitment to human rights and to the government's constitutionally mandated obligation to ensure that the rights of our citizens are upheld and protected.

OPCAT cuts across several international human rights instruments to which the Philippines is a party due to specific or related provision on torture such as the Convention on the

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Rights of the Child, the International Covenant on Civil and Political Rights, the Convention on the Rights of Migrant Workers and their Families, the Convention on the Elimination of All forms of Racial Discrimination.

I, therefore, ask for the Senate's concurrence in the country's accession to the OPCAT, confident that this will strongly assist in keeping in check acts of torture, as well as cruel, inhuman and degrading treatment or punishment of detainees. We are hopeful that by our accession to this instrument, our jail conditions will finally be improved, making them conducive to promote the rehabilitation of its residents.

For these reasons, I humbly recommend that the Senate approve Resolution No. 664, entitled "Resolution Concurring in the Accession to the Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment."

By this recommendation, I also endorse the Declaration, integral to the Instrument of Accession signed by the President, requesting deferment of the implementation of the obligations in Part III of the OPCAT to allow for completion of the government's reform programs for jails and detention facilities before the subcommittee can perform visits.

#### **SUSPENSION OF CONSIDERATION OF PROPOSED SENATE RESOLUTION NO. 664**

Upon motion of Senator Sotto, there being no objection, the Body suspended consideration of the resolution.

#### **SUSPENSION OF SESSION**

Upon motion of Senator Sotto, the session was suspended for an all-senators caucus.

*It was 4:06 p.m.*

#### **RESUMPTION OF SESSION**

At 5:29 p.m., the session was resumed.

#### **SPECIAL ORDER**

Upon motion of Senator Sotto, there being no objection, the Body approved the transfer of Committee Report No. 91 on Proposed Senate Resolution No. 663 from the Calendar for Ordinary Business to the Calendar for Special Orders.

#### **COMMITTEE REPORT NO. 91 ON PROPOSED SENATE RESOLUTION NO. 663**

Upon motion of Senator Sotto, there being no objection, the Body considered Proposed Senate Resolution No. 663 (Committee Report No. 91), entitled

#### **RESOLUTION CONCURRING IN THE RATIFICATION OF THE PROTOCOL ADDITIONAL TO THE GENEVA CONVENTION OF 12 AUGUST 1949, AND RELATING TO THE PROTEC- TION OF VICTIMS OF INTER- NATIONAL ARMED CONFLICTS (PROTOCOL I).**

Pursuant to Section 67, Rule XXIII of the Rules of the Senate, with the permission of the Body, upon motion of Senator Sotto, only the title of the resolution was read without prejudice to the insertion of its full text into the Record of the Senate.

Thereupon, the Chair recognized Senator Legarda for the sponsorship.

#### **SPONSORSHIP SPEECH OF SENATOR LEGARDA**

Senator Legarda presented and sought the approval of Proposed Senate Resolution No. 663, entitled "Resolution Concurring in the Ratification of the Protocol Additional to the Geneva Convention of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I)" prepared and submitted by the Committee on Foreign Relations on 12 December 2011 per its Committee Report No. 91.

*The full text of Senator Legarda's sponsorship speech follows:*

Yesterday, the country marked the 34<sup>th</sup> year of the signing of both the First and the Second Protocol Additional to the Geneva Conventions. The Philippines ratified Protocol II on December 11, 1986, but to this day, we have yet to ratify Protocol I.

No other country in the world has ratified Protocol II without also ratifying Protocol I, except for the Philippines.

*HP JB*

It is time that we ratified Protocol I to strengthen the protection of victims of international armed conflicts and place limits on the way wars are fought. With eight million Filipinos overseas, some of them responding to international call of duty, we cannot continue to overlook the significance of this international instrument to our national interest.

### ***The Geneva Conventions of 1949***

The Geneva Conventions of 1949 and their Additional Protocols constitute the fundamental treaties of international humanitarian law.

International humanitarian law (IHL) is a branch of public international law applicable in time of armed conflict, whether international or non-international.

The Geneva Conventions are considered to be the cornerstone of contemporary international humanitarian law. They contain the essential rules protecting persons who are not or no longer taking a direct part in hostilities.

These treaties are among the most widely accepted international legal instruments. All states are party to the Geneva Conventions; 170 states are party to Additional Protocol I; and 165 are party to Additional Protocol II.

The Philippines ratified the Geneva Conventions of 12 August 1949 on October 6, 1952.

### ***1977 Additional Protocol to the Geneva Convention***

The adoption of the Protocols in 1977 constituted a very important stage in the reaffirmation and development of international humanitarian law as they completed the provisions of the Geneva Conventions, while adapting humanitarian standards to present-day realities.

These Protocols strengthen the protection of victims of international (Protocol I) and non-international (Protocol II) armed conflicts and place limits on the way wars are fought.

The Protocols introduced essential rules relating to the conduct of hostilities and the methods and means of warfare, the aim of which was to strengthen protection for civilians.

In particular, the Protocols provide distinction between civilians and combatants and between civilian objects and military objectives.

The Additional Protocols provided a timely reaffirmation of the respect due to a disarmed enemy and to persons taking no part in the hostilities.

They secured better protection for the individual in armed conflicts by taking into

account new realities on the battlefield, in particular the emergence of guerrilla warfare and technical advances in weapon's technology, without affecting the right of each state to defend itself by all legitimate means.

The Additional Protocols also gave those who come to the assistance of victims a more effective basis for their action.

Another merit of the instrument lies in their multicultural nature. All the world's major powers took part in drafting the texts. They thus constitute an essential element of the modern international humanitarian law.

### ***Additional Protocol I***

Additional Protocol I is applicable in international armed conflicts, that is, in all cases of declared war or of any other armed conflict that may arise between two or more state parties.

The objective of Protocol I is to extend greater protection to civilians without affecting the right of each state to defend itself by all legitimate means. It provides rules applicable to the conduct of hostilities, as well as the means and methods of warfare.

Protocol I provides the following, among others:

- Prohibits indiscriminate attacks and attacks of reprisals directed against civilian populations, civilian objects, and objects indispensable to the survival of the civilian population;
- Protects cultural objects and places of worship, works and installations containing dangerous forces as well as the natural environment;
- It reiterates the obligation to search for missing persons, protects the activities of civil defense organizations;
- Specifies measures that must be taken by states to implement International Humanitarian Law;
- Provides a reminder that the right of the parties to a conflict to choose methods and means of warfare is not limited and that it is prohibited to employ weapons, projectiles, materials or tactics or a nature to cause superfluous injury or unnecessary suffering.

### ***Relevance to the Philippines and Conclusion***

The ratification of Protocol I would allow for better protection of Filipino soldiers in case they are deployed abroad for peacekeeping and other military operations in the course of an international armed conflict.

The Philippines will ensure that its soldiers are better protected in the event they are wounded, sick, shipwrecked, captured, missing or killed. Medical units and medical transportation of the armed forces will likewise be entitled to reinforced protection.

It is noteworthy to consider that the principles of International Humanitarian Law enshrined in Additional Protocol I are already part of the Philippines' domestic law, in particular Republic Act 9851 or the "Philippine Act on Crimes Against International Humanitarian Law, Genocide, and Other Crimes Against Humanity" which was adopted in 2009.

#### **Conclusion**

Ratification of the Additional Protocol I will ensure that the treaty rules are applicable and enforceable towards all other States parties to Additional Protocol I.

The ratification of Additional Protocol I by the Philippines would not change the applicable legal framework to the internal armed conflicts that are, or could be, taking place within the country.

Finally, the ratification of Protocol I would be an important signal to the international community and to the region on the commitment of the Philippines to promote and support International Humanitarian Law.

It is on this score that I call on your support for the ratification of Additional Protocol I to the Geneva Conventions.

#### **SUSPENSION OF CONSIDERATION OF PROPOSED SENATE RESOLUTION NO. 663**

Upon motion of Senator Sotto, there being no objection, the Body suspended consideration of the resolution.

#### **SECOND ADDITIONAL REFERENCE OF BUSINESS**

The Deputy Secretary for Legislation, Atty. Edwin B. Bellen, read the following resolutions which the Chair referred to the Committee on Rules:

Proposed Senate Resolution No. 667, entitled

RESOLUTION COMMENDING SENATOR MIRIAM DEFENSOR SANTIAGO FOR HAVING BEEN ELECTED AND TOPPING THE ELECTION AS

#### **JUDGE IN THE HIGHLY POWERFUL INTERNATIONAL CRIMINAL COURT**

Introduced by Senator Ejercito Estrada

Proposed Resolution No. 668, entitled

RESOLUTION CONGRATULATING AND COMMENDING SENATOR MIRIAM PALMA DEFENSOR-SANTIAGO FOR BEING ELECTED JUDGE OF THE *COUR PENALE INTERNATIONALE* OR THE INTERNATIONAL CRIMINAL COURT (ICC) DURING THE TENTH SESSION OF THE ASSEMBLY OF STATE PARTIES HELD AT THE UNITED NATIONS HEADQUARTERS IN NEW YORK CITY, UNITED STATES OF AMERICA ON 12 DECEMBER 2011

Introduced by Senator Lapid

Proposed Senate Resolution No. 669, entitled

RESOLUTION CONGRATULATING AND COMMENDING SENATOR MIRIAM DEFENSOR-SANTIAGO FOR BEING ELECTED AS A JUDGE OF THE INTERNATIONAL CRIMINAL COURT AT THE HAGUE, NETHERLANDS

Introduced by Senator Cayetano (P.)

#### **PROPOSED SENATE RESOLUTION NO. 667**

Upon motion of Senator Sotto, there being no objection, the Body considered Proposed Senate Resolution No. 667, entitled

RESOLUTION COMMENDING SENATOR MIRIAM DEFENSOR SANTIAGO FOR HAVING BEEN ELECTED AND TOPPING THE ELECTION AS JUDGE IN THE HIGHLY POWERFUL INTERNATIONAL CRIMINAL COURT,

taking into consideration Proposed Senate Resolution Nos. 668 and 669.

With the permission of the Body, only the title of the resolution was read without prejudice to the insertion of its text into the Record of the Senate.

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## MANIFESTATION OF SENATOR SOTTO

Senator Sotto informed the Body that Senator Angara would be sponsoring the resolution on behalf of Senators Ejercito Estrada, Cayetano (P) and Lapid, as well as the other Members of the Body.

## SPONSORSHIP REMARKS OF SENATOR ANGARA

Echoing the remarks of U.S. Senator Williams, Senator Angara lauded Senator Defensor Santiago for being the first Asian to have been elected to such a prestigious position and that it was a great credit to the Filipino race.

He noted that Senator Defensor Santiago belonged to a highly talented group of alumni from the University of the Philippines and was a close friend of Senator Drilon who was also her rival in gaining academic honors. He recalled that Senator Defensor Santiago had the twin honor of not only having been the editor of the *Philippine Collegian* but also the president of the UP Student Council.

He thanked Senator Ejercito Estrada for having filed the resolution of commendation. He also expressed his pleasure at having sponsored it on behalf of Senator Ejercito Estrada and the other senators.

## REMARKS

At this juncture, Senator Drilon clarified that he never competed with Senator Defensor Santiago insofar as honors are concerned, as she was unquestionably the top student in their law class.

## ADOPTION OF PROPOSED SENATE RESOLUTION NO. 667

Upon motion of Senator Sotto, there being no objection, Proposed Senate Resolution Nos. 667, taking into consideration Proposed Senate Resolution Nos. 668 and 669, was adopted by the Body, subject to style.

## COMMITTEE REPORT NO. 30 ON SENATE BILL NO. 2796

(Continuation)

Upon motion of Senator Sotto, there being no objection, the Body resumed consideration, on Second Reading, of Senate Bill No. 2796 (Committee Report No. 30), entitled

## AN ACT DEFINING CYBERCRIME, PROVIDING FOR PREVENTION, INVESTIGATION AND IMPOSITION OF PENALTIES THEREFOR AND FOR OTHER PURPOSES.

Senator Sotto stated that the parliamentary status was still the period of interpellations.

Thereupon, the Chair recognized Senator Angara, Sponsor of the measure, and Senate President Enrile for his interpellation.

## INTERPELLATION OF SENATE PRESIDENT ENRILE

At the outset, Senate President Enrile stated that he was supportive of the measure but that he was concerned over how the various crimes were defined in the bill.

Adverting to Section 4(1) (*Illegal Access*), he stated that it would be very difficult to prove an intentional access to computer data since every access is assumed to have been made deliberately. To prevent the difficulty of establishing malicious intent, he suggested that at the proper time, the word "intentional" be deleted so that the phrase would simply read "access without justifiable reason to the whole or any part of a computer system without right." As reworded, he said that would be easier for the prosecutors to file a case against violators.

*At this juncture, Senate President Pro Tempore Ejercito Estrada relinquished the Chair to Senator Legarda.*

As regards Section 4(2) (*Illegal Interception*), Senate President Enrile asked how one could prove the intentional or non-intentional interception of transmission of computer data considering that the very act of interception has a presumption of intent. He believed that the phrase "interception without justifiable reason" would be a better definition of the crime.

Senate President Enrile also noted that the "intentional or reckless alteration of computer data" contained in Section 4(3) (*Data interference*) would be a very difficult definition of the crime because the intent for doing so would need to be proved particularly since the offender could give the excuse that the alternation was made accidentally. Moreover,

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he pointed out that the degree of recklessness should also be qualified. For this purpose, he suggested that the crime be defined as "alteration without justifiable reason of computer data" in case the culprit was unable to explain why he altered the data.

Moreover, he pointed out the phrase "intentional or reckless hindering" used in Section 4(4) (System Interference) and he believed that the definitions are very abstract that it would be difficult to prove them, which is vital in the prosecution of a case. He said that proving intent is one of the most difficult thing that a prosecutor can do based on his experience in criminal law.

Senator Angara explained that the Committee copied the terms from the Budapest Convention on Cybercrime. However, he acknowledged that it would have been better if such provisions were adopted to suit the Philippine legal system.

Asked whether the enforcement of the provisions in the Budapest convention had been successful, Senator Angara replied that he was not aware how things had turned out.

On the definition of "computer-related offenses," Senate President Enrile pointed out that the use of the word "intentional" as a modifier in crime is very difficult to prove in court, the reason many offenders get away with it because the prosecutors have difficulty proving the element of intent. He suggested that said crimes be made *mala prohibita* rather than *mala in se* in order to make the mere act a punishable crime by itself.

Senator Angara accepted the suggestion, acknowledging that intent is one of the hardest things to prove in a criminal case.

#### **TERMINATION OF THE PERIOD OF INTERPELLATIONS**

There being no other interpellation, upon motion of Senator Sotto, there being no objection, the Body closed the period of interpellations.

#### **SUSPENSION OF CONSIDERATION OF SENATE BILL NO. 2796**

Upon motion of Senator Sotto, there being no objection, the Body suspended consideration of the bill.

#### **COMMITTEE REPORT NO. 49 ON SENATE BILL NO. 2865 (Continuation)**

Upon motion of Senator Sotto, there being no objection, the Body resumed consideration, on Second Reading, of Senate Bill No. 2865 (Committee Report No. 49), entitled

#### **AN ACT PROVIDING FOR A NATIONAL POLICY ON REPRODUCTIVE HEALTH AND POPULATION AND DEVELOPMENT.**

Senator Sotto stated that the parliamentary status was still the period of interpellations.

Thereupon, the Chair recognized Senator Cayetano (P), Sponsor of the measure, and Senator Legarda, for her interpellation.

#### **SUSPENSION OF SESSION**

Upon motion of Senator Sotto, the session was suspended.

*It was 5:52 p.m.*

#### **RESUMPTION OF SESSION**

At 5:54 p.m., the session was resumed with Senator Drilon presiding.

#### **INTERPELLATION OF SENATOR LEGARDA**

At the outset, Senator Legarda laid down some premises on the desired fertility rate against actual fertility rate in the poorest segment of the population as revealed by a three-year old National Demographic and Health Survey by the NSO which showed that among the population wealth quintiles, the poorest 20% of Filipino women have two or more children than they prefer or they can afford to feed and educate adequately; women prefer to have fewer children for reasons of health and their limited resources with which to raise and educate their children; couples seldom reach their desired number of children due to poor access to information on reproductive health services. She said that according to the study, providing couples with access to information on reproductive health empowers them to bear and raise only the number of children they are capable of feeding well and educating adequately

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thereby raising their human capital and enabling them to seek remunerative employment; in the long run, their improved productivity helps their family escape the poverty trap and break the cycle of inter-generational poverty.

Asked how the differences in fertility rates among the population wealth quintiles could be accounted for, Senator Cayetano (P) admitted that there is a proportional ratio between educated women and those who are better situated economically and the number of children they have compared to women in the poor segment of society. She cited statistics that revealed that those in the middle class have 0.5 more children than they want while those in the upper middle class have leveled off at zero, meaning they are already happy with the number of children they have. The reasons for the disparity, she explained, are that women who are educated or couples who have the means to determine family size have access to information and professional advice or counseling from doctors; they have access to family planning devices, for instance, in case they decide not to have any more children, the woman can undergo ligation and the man, vasectomy. On the other hand, she pointed out poor couples have no access at all to information or have no funds to avail of reproductive health services like ligation which costs P5,000 at least. She lamented that even for others who are availing of RH services, for example, the use of the pill, if they lack proper information on how to go about it, the process becomes useless.

Asked what a Filipino woman in the lowest quintile could do to meet the desired fertility rate, Senator Cayetano (P) replied that she must have access to information and to devices, adding that the DOH programs must be disseminated down to the grassroots level in all LGUs. The bill, she said, specifies the roles each sector must play in the process, like in national planning, program implementation, funding requirement and the use of professionals who can provide proper information. She stated that volunteers who are knowledgeable in family planning are needed like midwives, nurses, barangay health workers (BHWs) and doctors who can perform operations. She added that proper training is also needed by BHWs so that they can perform certain tasks.

Asked whether reproductive health services and information are not being made available to a significant number of the poorest Filipinos, Senator

Cayetano (P) explained that the two quintiles representing the poorest and the second to the poorest are the women who definitely do not have access to RH services owing to poverty and their geographical location, most of them living in 4<sup>th</sup> or 5<sup>th</sup> class municipalities where health services are limited and compromised. She surmised though that women in the poorest segment who live in first-class cities were also being denied access to RH services due to overpopulation, lack of facilities, the limited budget and personnel to assist them. She cited the City of Manila which has the largest number of poor people who do not have access to family planning. She said that the situation was not helped by the former mayor, a staunch advocate of natural family planning.

Asked whether natural family planning is part of the RH bill and what provision in the bill states that the implementing agency shall actually prioritize family planning if the LGU or the family so desires, Senator Cayetano (P) cited Section 4(m) "*Modern Methods of Family Planning*—refers to safe, effective and legal methods, whether natural or artificial"; and Section 7 which states that, "all accredited public and private health facilities shall provide a full range of modern family planning methods...."

Senator Legarda proposed that during the period of amendments, provisions be included in the bill 1) giving people a choice between natural and artificial family planning methods; 2) expounding on subsection (m) on modern methods of family planning; 3) putting emphasis that there would be no coercion on the part of the LGU; and 4) when the individual arrives at a choice, it shall be consistent with his/her conviction.

In answer, Senator Cayetano (P) recalled that in her sponsorship speech, she emphasized that "the right to make free and informed decisions, which is central to the exercise of any right, shall not be subjected to any form of coercion and must be fully guaranteed by the State, like the right itself." She said that the import and objective is to allow every Filipino to make a decision based on his/her personal views, moral values and on the advice of his/her doctor. She welcomed any statement to that effect, noting that it has been the subject of many misinformation campaigns. She stressed that no one is being coerced to use any particular form of family planning, which is really dependent on one's religious and moral views or medical reasons.



Senator Cayetano (P) stated that the restrictions would depend on a person's health or genetic makeup. As the use reproductive health devices is a personal choice, she clarified that requiring the national and local government to support the program also meant that the health workers or counselors ought to present the people with all the possible choices and explain the advantages and disadvantages of each method so that they are properly guided on the use of each one. For instance, she noted that some dermatologists recommend the use of birth control pills for healthy skin such that it is now seem as more of dermatological product than a reproductive health device.

Senator Legarda asked whether the lack of information regarding reproductive health methods and devices was due to the fact that there was no national policy that can address the problem. Moreover, she asked whether other laws and executive orders such as the Magna Carta of Women, the Child and Youth Welfare Code, and the National Health Insurance Act which directed the enrolment of 2.5 million indigent families to address the need for maternal health care and reproductive health are ineffective although many of their objectives are actually contained in the bill. Senator Cayetano (P) replied in the affirmative. She pointed out that the Magna Carta of Women is basically a policy guideline containing provisions which require implementing programs while the Reproductive Health bill would ensure the longevity of these programs as well as the government's capacity to keep them in the long-term. She explained that an administrative order (AO) does not have the strength of a law and as such, could be easily overturned by another AO or department order. This, she stressed, was the reason why a new law ought to be put in place.

Moreover, she pointed out that general or specific laws like the Magna Carta of Women would not include other situations or conditions which are covered by the Reproductive Health Bill. For instance, she mentioned the reproductive health section in the Magna Carta of Women which does not have a holistic approach to general population because it does not address other reproductive health problems particularly those encountered by men or children. In cases where women contract sexually transmittable diseases through their partners, she said that Magna Carta only provides services for women.

She explained that the Reproductive Health bill seeks to provide funding for policy measures because

various laws that tackle reproductive health needs, have gone unfunded. Compared to other laws on reproductive health, she said that the RH bill provides specific requirements which ensure that national programs would be linked to the local government such as the provision for all hospitals to offer reproductive health services.

She lamented that despite the enactment of the Magna Carta of Women, a number of national programs involving reproductive health issues such as maternal health and HIV-AIDS had been rejected and totally sidelined in LGUs where the local chief executive was not supportive of alternative reproductive health methods which was actually a violation of the law. She also stressed the importance of having the national leadership support reproductive health measures, as she recalled that the non-implementation of such programs took place during the term of former President Macapagal-Arroyo who was not supportive of reproductive health.

Senator Legarda cited portions of Section 17 of the Republic Act No. 9710 (Magna Carta of Women) which specifies the services that would be offered to women including the following:

- (1) Maternal care to include pre- and post-natal services to address pregnancy and infant health and nutrition;
- (2) Promotion of breastfeeding;
- (3) Responsible, ethical, legal, safe, and effective methods of family planning;
- (4) Family and State collaboration in youth sexuality education and health services without prejudice to the primary right and duty of parents to educate their children;
- (5) Prevention and management of reproductive tract infections, including sexually transmitted diseases, HIV, and AIDS;
- (6) Prevention and management of reproductive tract cancers like breast and cervical cancers, and other gynecological conditions and disorders;
- (7) Prevention of abortion and management of pregnancy-related complications;
- (8) Comprehensive health services in cases of violence against women and children, women and children victims and survivors ;
- (9) Care of the elderly women beyond their child-bearing years; and

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(10) Management, treatment, and intervention of mental health problems of women and girls.

Asked whether male responsibility and involvement and men's reproductive health was the only provision not contained in the Magna Carta of Women, Senator Cayetano (P) replied that there were several others as well. She believed that the lack of reproductive health guidelines – a law in itself – is a discriminatory act towards women. She explained that the Magna Carta of Women is only a policy guideline, a general law which provides for a policy but requires an enacting law which will provide more extensive details.

She said that one provision in the RH bill that is not found in the Magna Carta of Women is Section 5 (Hiring of Skilled Health Professionals for Maternal Health Care and Skilled Birth Attendance) which specifies the exact number of midwives (1:150 live births/year) to ensure safe deliveries for women which is not provided in the Magna Carta of Women.

Senator Legarda asked whether such a provision could have been made operational and effective through a provision in the Magna Carta. Senator Cayetano (P) lamented that the Senate has passed many laws which ought not to have been enacted in the first place, and experience and time have shown that without a specific measure, people are left to interpret or ignore existing laws, policies or administrative orders as they please. She believed that Senate Bill No. 2865 ought to be passed by Congress so that it would receive the funding needed for its effective implementation.

Asked if the DOH has failed in implementing the Magna Carta provision to provide free and post-natal services to address pregnancy and infant health and nutrition, Senator Cayetano (P) replied in the affirmative. She explained that even after the passage of the Magna Carta two years ago, the DOH did not receive the government support needed for its implementation. In the past decade, she noted that the country has had a systematic national health information program which did not, however, include reproductive health since certain sectors, such as the Catholic Church and its supporters, are not comfortable with it. Nevertheless, she stressed that she respected all views regarding the measure, saying that while anyone, regardless of their physical appearance or religious preferences, could avail of the program, no one was willing to make that decision.

Senator Cayetano (P) pointed out that the objective of the bill is to allow every Filipino access to reproductive health, without which is tantamount to a denial of one's basic right to health care. She revealed that except for natural family planning, Cebu and Manila would not promote any other reproductive health programs.

On whether information on family planning or the purchase of such devices are banned in Cebu and Manila, Senator Cayetano (P) stated that there are LGUs that would not allot funds for reproductive health programs other than natural family planning. She opined that refusing to allot funds in support of RH is denying women of their basic right to health care; and limiting access of women to only natural family planning is depriving them of choices.

Senator Cayetano (P) disclosed that she had heard a politician say that those who want reproductive health should live elsewhere but, she insisted, it is not fair for people to move somewhere else just because they do not adhere to natural family planning being espoused by local leaders.

On whether it was possible that Cebu and Manila did not prioritize these programs for lack of budget and that they did not ban any information on them outright, Senator Cayetano (P) stated that it would be unfair for her to make assumptions since she did not have the full details. However, she said that other than Cebu and Manila, Surigao del Norte, Northern Samar, Laguna and Bulacan do not allocate funds for any reproductive health care. She clarified that although the governor of Cebu does not support the RH program, maternal health care clinics are among her priorities. She stressed that maternal care is only one component of reproductive health, the other being access to information.

Moreover, Senator Cayetano (P) asserted that a woman's access to information helps her plan her family and makes her a better parent. Noting that the City of Manila only allows natural family planning, she questioned the city's policy to keep information on other methods away from the people. She stated that she would rather separate the reproductive health issue from the Magna Carta that covers a lot of concerns.

Senator Legarda believed that the DOH can operationalize and make effective its reproductive health program if only it can implement the provisions

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of the Magna Carta. But she noted that according to the Sponsor, what contributed to the lack of access of women to information is the lack of cooperation of the part of some local executives, and the unfunded reproductive and maternal health care programs.

Senator Cayetano (P) clarified that the lack of support of then President Arroyo made it impossible for the RH bill to be enacted into law. Aside from that, she said that there are local executives who are not necessarily against the RH bill but are pressured by religious groups who are against it. She believed that if the RH bill is enacted into law, there is reason for the LGUs to give people their due in terms of counseling and information. She believed that with the RH Act in place, there would be more information and options for people to avail of in planning their family.

#### COMMENTS OF SENATOR SOTTO

Senator Sotto stated that much has been said about the Catholic Church's stand against the RH bill. But he emphasized that not only the Catholic Church opposes it but also other religious groups like Pastor Quiboloy's Kingdom of God while others have withdrawn their support for it.

As regards cities and provinces that oppose reproductive health, Senator Sotto stated that they have not prohibited it; and people still have the option to choose which method to use in planning their families.

Further, Senator Sotto asserted that it was inaccurate to say that contraceptives, condoms and other forms of family planning are modern methods since even during the time of the Roman Empire, people have been using goat's skin as condoms or herbs to prevent pregnancy. He pointed out that the Billings method, a natural method of family planning, was discovered 50 years ago and it is more modern than contraceptives and condoms.

Responding thereto, Senator Cayetano (P) clarified that Section 7 of the bill defines modern methods of family planning as "safe, effective and legal methods whether natural or artificial." She said that the State does not distinguish between natural method and artificial methods of family planning; and the State would not give outdated methods of family planning that are not FDA-approved. She clarified that "modern methods" is a general term.

As to the various groups opposing the bill, Senator Cayetano (P) underscored that there was no intent to give the impression that only the Catholic Church is against the bill. She explained that the Church has been mentioned during the debates because the CBCP and other organizations affiliated with it were always present during the committee hearings.

Senator Cayetano (P) further disagreed to the statement of Senator Sotto that LGUs that do not support the RH bill have not prohibited people from using other methods. She asserted that the fact that certain individuals or sectors do not support the freedom of information and access to the full range of reproductive health rights is already limiting and denying the people of their right to choose. She lamented that contraceptives sold in drug stores are only accessible to the rich. She said that through the years, she worked on similar legislations, i.e. to make other essential medicines accessible to people, but she believed that in this case, government has to step in to provide for the reproductive health of the poorest of the poor, especially the poorest of the poor women.

Senator Sotto posited that the DOH should be blamed for not making its family health program accessible to people even if the LGU does not support the program. He noted that the DOH always has a budget for its reproductive health programs and it is responsible for making the same available to the poor. In fact, he pointed out that the P7.7 billion budget of the DOH for family health and reproductive program is intact. He stressed that it is not the fault of the LGU that the programs are not being implemented, but the DOH.

Senator Cayetano (P) stated that among the reasons why the reproductive health programs of the DOH were not carried out is that at the level of the LGUs, there is a decentralized system whereby only the local government can dictate how its budget should be spent. She maintained that not many cities can afford to have a maternal clinic separate from a general health care unit, unlike Davao City, among other LGUs, which has a maternal clinic or lying-in clinic for birthing, laboratory testing for sexually transmitted infections and a budget for medicines. She believed that despite budget constraints, cities and municipalities should have a separate maternal health clinic regardless of whether it is just a small room.

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## INTERPELLATION OF SENATOR LEGARDA (Continuation)

On the same matter, Senator Legarda stated that every local government, family and woman must have freedom of choice and every LGU must be enlightened to provide for its constituents, especially the indigent Filipino woman, information on reproductive health. She asked how the RH Act could be more successful as she noted that there was failure to implement the Magna Carta provision on maternal health care because of lack of funds and non-cooperation of some LGUs. She noted that both the RH bill and the existing law have almost the same statement on maternal health care and nutrition which includes breastfeeding. She surmised that if the DOH was serious in implementing the existing law, hiring skilled health care professionals for maternal care, the problem with maternal health care would be less. She also asked the Committee how the law could enlighten the LGUs on the need to implement the Magna Carta.

Senator Legarda observed that since the Magna Carta of Women has not succeeded in convincing local officials that there is a need to look after the maternal health care of the poor Filipina, she doubted if government can be convinced either to provide funds for the reproductive health program when the DOH's own program has been ineffective and local government's support for it is inadequate or insufficient.

Senator Cayetano (P) stated that by the time one becomes an adult, he/she already has personal beliefs and opinions on different things. Precisely, she said that the Constitution requires a government official, elected or appointed, to detach his/her religious views from his/her official functions. She said that national or local officials cannot deny people of their right to proper information because of their personal views. She emphasized that to push litigation as the only form of family planning, for instance, would deprive women of their right to explore natural family planning or other forms of contraception that may be suitable for them and that they may choose to practice and use.

Senator Cayetano (P) pointed out that government needs to pass the RH bill as it outlines the various obligations that one must have with regard to maternal health care and reproductive health.

As to what would happen should local governments and local officials refuse to cooperate because

of personal convictions to implement the RH Act and how it would ensure the cooperation of LGUs, Senator Cayetano (P) replied that reproductive health should not be singled out in this case. She noted that there had been many other instances when LGUs were non-cooperative with respect to implementing certain laws. She pointed out that precisely, the Revised Penal Code, the Administrative Code and the Local Government Code are there to address the situation should the LGUs fail to carry out their obligations under the law.

On whether the RH Act penalized local governments for failing to implement the law, Senator Cayetano (P) stated that there are already penal provisions in the Revised Penal Code and the Administrative Code that will take local government officials to task for failure to implement the laws. She explained that the penal provisions were put in the RH bill to outline the requirements on the part of the LGUs and as a means to ensure its implementation. She bared that Senator Recto had expressed his concern about requiring LGUs to do certain things but she was open to listen to any of his proposals. She asserted that it is not the intention of the bill to make life difficult for the LGUs or to penalize them, rather, the goal is to help them understand why they must accept the measure and to ensure that everyone is properly informed and have the right choices.

As to whether she was firm in her position that the bill must include penal provisions for non-implementation of the law by the LGUs, Senator Cayetano (P) replied that she would be happy to hear the concerns and suggestions of her colleagues on how to ensure compliance with the law. She said that as she had pointed out earlier, there are other laws in place to ensure that laws are complied with. However, she explained that what she did not want is for the law to be interpreted as a lame law because of lack of coercive powers. She lamented that sometimes, some still need to be threatened before they follow the law.

## INQUIRY OF SENATOR LACSON

At this point, Senator Lacson asked on the country's compliance with the Magna Carta of Women, and what the State does with LGUs that fail to comply with the requirement under said law that there should be at least one public or private hospital for every 500,000 population. Senator Cayetano (P) bared that when she was chair of the Committee on

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Environment and Natural Resources, she was confronted with a similar situation as regards the implementation of the Solid Waste Management Law. She recalled that there was a very strong movement that filed cases against LGUs which were noncompliant with the requirement to put up solid waste management facilities but they raised lack of funds as their defense. She stated that one solution to the problem is to increase the IRA of local government. However, she acknowledged that it is difficult to impose certain percentage requirements — whether it is in health care, in general or reproductive health, in particular — because the LGUs' budgets are already allocated and earmarked for other activities. She said that she would consider increasing the IRA of LGUs if only to stress the need for health care, including RH, so that LGUs can dedicate a certain percentage of their allotments to these issues and concerns.

Senator Lacson explained that the response to his question on compliance would provide a big push to the RH bill. Senator Cayetano (P) said that another possible solution is to propose collaboration between the legislators and the DOH to ensure that any support given to the former would be used to come up with a counterpart program. She said that LGUs should also be required to put up a counterpart program because there is a bigger chance the law will be fulfilled and implemented when stakeholders come together. She stated that the Committee would provide Senator Lacson the statistics and figures that he had requested at a later time. She reiterated that the bill needs full support from top to bottom, as she underscored that it cannot be overlooked that it has the support of President Aquino which already makes a big difference.

#### **INTERPELLATION OF SENATOR LEGARDA** (Continuation)

With respect to the requirement that LGUs perform certain acts as provided for in the RH bill, Senator Cayetano (A) explained that the reason why the bill is so important is that despite the Magna Carta, there were seven barangays in Balanga, Bataan, for instance, that already passed ordinance banning the sale of contraceptives. She also cited Barangay Ayala Alabang which also passed a similar ordinance limiting the sale of contraceptives in the area but the strong opposition of its residents led by former Health Secretary Cabral and singer Lea Salonga, prompted the mayor not to sign it.

Senator Cayetano (P) surmised that the residents of the seven barangays in Balanga may not even be familiar with the depth of the RH issues that have to be researched. She said that if the people are denied the basic reproductive health care programs because of the personal views of their barangay captains and barangay councilors, then it would be a denial of one's reproductive rights, recognized as a human right, which underscored the need for the RH bill.

To the observation of Senator Legarda that there is a provision in the RH bill that repeals existing laws, AO, EO or ordinance that are contrary to the measure, Senator Cayetano (P) said that even without the repealing clause in the bill, it is a basic doctrine in law that an ordinance cannot rise above a law.

Going back to the query of Senator Lacson, Senator Cayetano (P) stated that in Cebu, it has been the policy of the governor to increase the maternal health clinics which she imagined are mostly BEMONCs. She said that the DOH has identified how many BEMONCs and CEMONCs are required per locality. She bared that currently, there are approximately about 50% — for BEMONCs and CEMONCs in a LGU. Relative thereto, she thanked the senators for passing the DOH budget which included health care programs, including the RH care programs. However, she revealed that DOH Secretary Ona has admitted to her that the budget would only cover 50% of the reproductive health needs of the poorest fifth quintile of the population.

Asked if an increase in the allocation for reproductive health care, maternal health care, mother and infant nutrition and breastfeeding programs and all of the components of the Magna Carta of Women for the DOH would already fulfill the mandate of the RH bill, Senator Cayetano (P) replied in the negative. She explained that the provisions of the Magna Carta of Women would not suffice. She said that without the RH bill, more barangays or LGUs may come up with anti-RH ordinances. She disclosed that of the roughly 1,500 municipalities only 15 have enacted pro-RH measures, an indicator that only 15 are very positive or well-informed enough to feel that RH is a priority for their municipalities.

Senator Cayetano (P) noted that while other important issues like the environment, solid waste management and education are supported through the passage of ordinances, only 15 municipalities

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passed reproductive health-related ordinances. She pointed out that if the RH bill would become a law, LGUs are no longer required to pass ordinances because the law would already provide proper guidance. She noted, however, that when a particularly significant law is passed, such as the Tobacco Regulation Law, there is a trend towards passing ordinances such as designating some places as “no smoking areas.”

Affirming Senator Legarda’s observation, Senator Cayetano (P) said that when the RH law is in place, awareness will be increased, especially when supported by the budget and programs of the DOH. Likewise, she said that during speaking engagements of legislators before LGU officials, the latter would get some ideas highlighted in speeches that encourage them to pass related ordinances.

Senator Cayetano (P) stated that another RH bill provision which cannot be found in the Magna Carta for Women is Section 6, on Emergency Obstetrics and New Born Care, providing for one (1) public or private hospital for CEMONC and four (4) public or private health facilities for BEMONC for every 500,000 population. She said that it is a more detailed provision as compared to the one-liner enumeration in the Magna Carta.

Expressing support for the provision on CEMONC and BEMONC, Senator Legarda, however, expressed concern about its funding. She said that whether or not the RH bill is enacted into law, the LGUs must be supported to create CEMONC and BEMONC. Senator Cayetano (P) agreed, as she stated that the objective in including the provision was for LGUs to be required to provide such services instead of considering it only as a policy of the DOH.

Likewise expressing support for Section 5 on the hiring of skilled health professionals such as maternal health care and skilled birth attendants, and Section 6 on BEMONC and CEMONC, Senator Legarda pointed out that these should be required by the DOH even without the enactment of the RH bill and she hoped that such programs would be funded.

Still on the RH bill provisions not included in the Magna Carta of Women, Senator Cayetano (P) underscored the importance of Section 8 on the Maternal Death Review (MDR), especially given the fact that in most cases, maternal deaths are recorded as pulmonary failure or cardiac arrest and not as to

the primary cause. Without such a provision, she said that it would be very difficult to monitor maternal deaths.

Senator Legarda stated that the decline in maternal mortality ratio is quite slow which makes it unlikely for the country to meet the 2015 MDG target. Citing the causes of maternal mortality as post-partum hemorrhage, hypertension complicating pregnancy and child birth, and post-partum complications arising from abortion, she asked what the DOH is doing to decrease maternal deaths. Senator Cayetano (P) replied that the DOH has created a program to consider every birth as an at-risk birth. She explained that it would compel the LGUs to have qualified personnel — a midwife at the very least — and the basic facilities to attend to the deliveries. She said that the DOH has been able to make some progress, however, specialized personnel and facilities are insufficient. Such a well-rounded program, she admitted, would take time to achieve.

In reply to further queries, Senator Cayetano (P) stated that the DOH has very clear programs in place to further decrease of maternal death or maternal mortality. As to its implementation, she said that there is a limit to the ability of DOH to fully implement its programs because it is to a large extent the LGUs pursuant to the Local Government Code.

Asked how the bill would significantly contribute to the reduction of maternal deaths, Senator Cayetano (P) reiterated the importance of the provisions on emergency obstetric and new born care, the hiring of skilled personnel, and the inclusion of family planning programs. She also cited access to family planning supports, including essential medicines, in Section 9, which is not found in any other law. The measure, she explained, included the provision on essential medicines to ensure that they are made available especially to women whose dilemma is how to support a family without compromising a baby.

Asked if the Committee is willing to accept an amendment which would state that “the annual maternal death review shall ultimately result in an evidence-based programming and budgeting process that would contribute to the promotion of women’s health and safe motherhood,” Senator Cayetano (P) expressed willingness to consider the amendment at the proper time.

Senator Cayetano (P) said that she has a list of the differences between the RH bill and the Magna Carta of Women, however, due to time constraints, she would end on Section 6 for the time being. She summarized that the pending questions are, first, the provisions in the RH bill not found in the Magna Carta of Women, and second, how the provisions would address maternal deaths.

Senator Legarda said that she would also like to be clarified in Section 7 on Access to Family Planning, Section 9 on Family Planning Supplies as Essential Medicines, and Section 10 on the Procurement and Distribution of Family Planning Supplies. She said she would also like to know what the DOH is presently doing which does not address the issues that necessitate the enactment of a new law to fulfil the need of the poorest Filipinos.

In closing, Senator Legarda stated that the RH bill is of great interest to her being one of the authors of the Magna Carta of Women, the reason why she has been following the discussions and debates on the measure. She stated that she would temporarily suspend her interpellation to a later date to be further enlightened on the differences between the Magna Carta of Women and the proposed measure, as well as the implementation by the DOH of certain family planning programs and policies.

#### **SUSPENSION OF CONSIDERATION OF SENATE BILL NO. 2865**

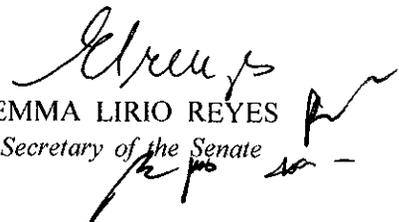
Upon motion of Senator Sotto, there being no objection, the Body suspended consideration of the bill.

#### **ADJOURNMENT OF SESSION**

Upon motion of Senator Sotto, there being no objection, the Chair declared the session adjourned until three o'clock in the afternoon of the following day.

*It was 7:25 p.m.*

I hereby certify to the correctness of the foregoing.

  
EMMA LIRIO REYES  
Secretary of the Senate

Approved on December 13, 2011