
**POSITION PAPER ON HOUSE BILLS AMENDING AND
EXPANDING THE ANTI-VIOLENCE AGAINST WOMEN AND
THEIR CHILDREN ACT OF 2004
(HOUSE BILL NOS. 1471, 2592, 2664, 2850, 5153, & 5584)**

The Commission on Human Rights (hereinafter the 'Commission'), as the country's national human rights institution and the Gender and Development Ombud, is committed to ensure the primacy of all human rights and to their protection, promotion and fulfillment on the basis of equality and non-discrimination, in particular for those who are marginalized and vulnerable, such as women and children.

Cognizant of the obstacles and challenges in the implementation of existing laws, particularly for women in the marginalized sectors, and the clamor for laws that will address forms of violence that are not explicitly covered by existing laws,¹ the Commission strongly supports legislative proposals that remedy these gaps and promotes international standards for the protection of women's rights. Notwithstanding, it recommends the need for careful review of proposals keeping in mind women's access to justice, experiences of women with respect to violence against women, and the special needs of the most vulnerable and marginalized.

Pursuant to the request of the 17th Congress of the House of Representatives' Committee on Women and Gender Equality (hereinafter the 'Committee'), and exercising its constitutional mandate to recommend to Congress effective measures to promote human rights,² the Commission respectfully submits this position paper on the following bills which aim to amend, complement, or expand Republic Act No. (RA) 9262 or the "Anti-Violence Against Women and Their Children Act of 2004":

- **House Bill No. (HB) 1471**, entitled "AN ACT TO ESTABLISH THE ADDRESS CONFIDENTIALITY PROGRAM FOR VICTIMS OF

VIOLENCE AGAINST WOMEN AND THEIR CHILDREN, PROVIDING PENALTIES FOR VIOLATION THEREOF, APPROPRIATING FUNDS THEREFOR, AND FOR OTHER PURPOSES," introduced by Representative Harlin Neil J. Abayon III;

- **HB 2592**, entitled "AN ACT DEFINING ELECTRONIC VIOLENCE AGAINST WOMEN AND THEIR CHILDREN, PROVIDING PROTECTIVE MEASURES, AND PRESCRIBING PENALTIES, AMENDING FOR THE PURPOSE REPUBLIC ACT NO. 9262 OTHERWISE KNOWN AS THE ANTI-VIOLENCE AGAINST WOMEN AND THEIR CHILDREN ACT OF 2004," introduced by Representative Linabelle Ruth R. Villarica;
- **HB 2664**, entitled "AN ACT AMENDING REPUBLIC ACT NO. 9262, DEFINING ELECTRONIC VIOLENCE AGAINST WOMEN OR E-VAW, PROVIDING PROTECTIVE MEASURES AND PRESCRIBING PENALTIES THEREFOR, AND FOR OTHER PURPOSES," introduced by Representatives Emmi A. De Jesus and Arlene D. Brosas;
- **HB 2850**, entitled "AN ACT ESTABLISHING A TASK FORCE TO RECOMMEND A UNIFORM STRATEGY TO PROTECT WOMEN AGAINST VIOLENT CRIME," introduced by Representative Luisa Lloren Cuaresma;
- **HB 5153**, entitled "AN ACT AMENDING REPUBLIC ACT NO. 9262 OTHERWISE KNOWN AS THE ANTI-VIOLENCE AGAINST WOMEN AND THEIR CHILDREN ACT OF 2004, DEFINING ELECTRONIC VIOLENCE AGAINST WOMEN (E-VAW), PROVIDING PROTECTIVE MEASURES AND PRESCRIBING PENALTIES THEREFOR, AND FOR OTHER PURPOSES," introduced by Representative Gus S. Tambunting; and
- **HB 5584**, entitled "AN ACT DEFINING DOMESTIC VIOLENCE AGAINST INDIVIDUALS INCLUDING MEMBERS OF THE LGBT COMMUNITY OTHER THAN WOMEN AND CHILDREN AND PROVIDING FOR PROTECTIVE MEASURES FOR VICTIMS, PRESCRIBING PENALTIES THEREFOR, AND FOR OTHER PURPOSES," introduced by Representative Federico S. Sandoval II.

Introduction:

The 1987 Constitution of the Philippines guarantees the primacy of human rights. It is a declared State policy to value the dignity of every human person and to guarantee full respect for human rights³ Further, the

liberty, and security of person. Additionally, the same international instruments protect every person from cruel, inhuman or degrading treatments.⁴

Specific to women, the Constitution recognizes the role of women in nation-building and ensures the fundamental equality before the law of men and women.⁵ In pursuance of protecting and promoting their rights, the State became a State-Party to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Convention on the Rights of the Child (CRC) under Article 19 of which is the obligation for State-Parties to implement measures that would ensure the protection of children, stating:

“States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.”

Using the aforementioned as bases, domestic legislations on violence against women were enacted, including the Anti-Sexual Harassment Act of 2005, the Anti-Rape Act of 1997, the Magna Carta of Women Act of 2009, and the Anti-Violence Against Women and Their Children Act of 2004.

RA 9710, otherwise known as the Magna Carta of Women, which promotes the empowerment of women, defines Violence Against Women as *“any act of gender-based violence that results in, or is likely to result in, physical, sexual, or psychological harm or suffering to women, including threats of such acts, coercion, or arbitrary deprivation of liberty, whether occurring in public or in private life”*.⁶

The Magna Carta of Women explicitly states that acts defined in RA 9262 are acts of violence against women.⁷ The Magna Carta of Women further establishes the duty of the State to guarantee the protection of women from all forms of violence as provided for in existing laws.⁸

Over the years, there is a notable increase in the number of reported cases of violations of RA 9262 from 2008 (3,599 cases), 2009 (5,285 cases), 2010 (10,000 cases), 2011 (9,021 cases), 2012 (11,531 cases), 2013 (16,517 cases), and 2014 (31,937 cases).⁹ The increase, while not indicative of

increase in number of actual incidents, both reported and not reported, is a testament to the need to strengthen, if not expand, the protective mechanisms under RA 9262.


DEFINING ELECTRONIC VAWC AS A PROHIBITED ACT

HB 2664, 2592, and 5153 acknowledge the legal gaps in protecting women and children from abusive actions through or with the aid of technology by people with whom they had intimate relations with. These three bills seek to amend RA 9262 by: including a definition of "electronic violence" or "electronic VAWC" (in HB 2664) or "ICT-related violence" (in HB 2592); explicitly providing that to cause or to threaten to cause E-VAWC shall constitute a crime; and providing a specific form of relief for victims of E-VAWC.

The Commission acknowledges the reality of abuse perpetrated against women and their children using information and communications technology. It is the duty of the Government to provide protection for such abusive actions that besmirches reputation and is a grave affront to the dignity and safety of victims and a violation of their right to privacy and security of person. The Commission fully supports the expansion of RA 9262 to cover such acts as proposed in HB 2664, 2592, and 5153. It is high time that a legal measure be put in place that would prohibit and punish perpetrators who use technology to inflict violence against women and children.

The Commission notes that, while a separate measure is pending in the Senate for a broader legislation addressing ICT-related violence, the explicit recognition and inclusion of ICT-related VAWC as part of VAWC would be helpful to women who continue to become victims of many forms of electronic violence but cannot find the proper recourse under the law. While the acts of using ICT as a means to perpetuate violence can arguably be considered as a form of psychological violence, it has been the experience of women that prosecuting psychological violence has been very challenging. An amendment that makes clear that acts of E-VAWC is a form of VAWC under RA 9262 will indeed limit the ways that the defense can argue on behalf of the accused.

Furthermore, this is also congruent with the CEDAW Concluding Observation recommending the expansion of the definition of sexual harassment to include cyber harassment.¹⁰ In the same manner, the GR 19 Consultation of the Commission has fully recommended the need to address ICT-related VAWC.



The Commission also submits the following comments, questions, and points of clarification with respect to the provisions of HB 2664, 2592, and 5153 for the Committee's consideration:

1. The Commission recommends the consolidation of the three bills which will include proposed amendments, especially the following: inclusion of a definition of E-VAWC in Section 3 of RA 9262 (Section 2 of all three bills); inclusion of the acts of causing or threatening to cause E-VAWC as a crime provided in Section 5 of RA 9262 (Section 3 of all three bills); provision of a prison sentence as punishment for the crime in Section 6 of RA 9262 (Section 4 of all three bills); inclusion of an additional option of relief through a Protection Order specific to victims of E-VAWC in Section 8 of RA 9262 (Section 5 of HB 2664 and 5153, Section 6 of HB 2592); and the inclusion of the Department of Information and Communications Technology (Section 8 of HB 5153) in the Inter-Agency Council on VAWC created by Section 39 of RA 9262;
2. On the definition of E-VAWC, the Commission notes that an essential element is the lack of authority on the part of the perpetrator, as per the use of the word "unauthorized" in most provisions, but authority from whom? While it may be obvious that the authority should emanate from the victim, the lack of an express provision saying so might be used to twist the words of the law to evade criminal sanctions.
3. In an Expert Group Meeting on good practices in legislation on violence against women in 2008 at the United Nations Office in Austria, it was noted that a major limitation in the implementation of RA 9262 is "the lack of specific appropriation in the law for training of the police, social workers, prosecutors, and other government personnel" notwithstanding the GAD budget which is five percent (5%) of the total budget of the concerned government agency and which "have to compete for funds for other training programs that the implementing agencies have to do" and thus, the lack of systematic and comprehensive training on the Anti-VAWC Act.¹¹ Considering this and the very nature of criminal actions involving ICT, which by itself, a novel pursuit for authorities of the criminal justice system, the Commission recommends that funding for training as part of a continuing capacity-building program for multi-stakeholders be included in the amendatory bills. The inclusion of this provision is but apt considering the speed of technological evolution that the police, social workers, prosecutors and other key government personnel need to keep up with.




4. In the same Expert Paper¹² cited above, it was noted that “perhaps the greatest challenge” to RA 9262 was the Supreme Court case¹³ asserting the law’s unconstitutionality because it purportedly violates the equal protection clause by protecting the rights of women only, among others. The Supreme Court upheld the constitutionality of RA 9262 stating that the law rests on substantial distinctions since “women are more likely than men to be victims of violence; and the widespread gender bias and prejudice against women all make for real differences justifying the classification under the law.”¹⁴ While the 2013 ruling exonerated RA 9262 from accusations of unconstitutionality, the same does not automatically extend to the proposed E-VAWC since the same arguably operates in a quite different setting where the physical vulnerability of women and their children may be challenged. It is therefore recommended that the issue on whether or not E-VAWC provides unequal protection of the law be discussed in the deliberations and the same be put on record because as seen in the text of the Supreme Court ruling in the *Garcia vs. Drilon* case, the High Court referred to the records of the deliberation of RA 9262 as a bill in Congress to ascertain the wisdom of the measure.

VIOLENCE AGAINST ALL PERSONS INCLUDING THOSE OF DIVERSE SOGIE

HB 5584 seeks to expand the legal protection that RA 9262 affords women and children by proposing the criminalization of domestic violence. Domestic violence is defined in the bill as:

“any act or a series of acts committed constituting psychological, physical, and sexual violence by any person under RA 9262 and shall also include those acts **committed against any individual** who is his/her spouse or former spouse or against such person with whom the person has or had a sexual or dating relationship, regardless of gender or sexuality within or without the family abode, which result in or is likely to result in physical, sexual, psychological harm or suffering, including threats of such acts, battery, assault, coercion, harassment or arbitrary deprivation of liberty.” (*Emphasis supplied*)

In other words, the bill seeks to expand what we currently know as VAWC to all persons regardless of sexual orientation, gender identity and expression (SOGIE).



As an ASEAN-member state and through the ASEAN Declaration on the Elimination of Violence Against Women and the Elimination of Violence Against Children (ASEAN Declaration on the EVAW and the EVAC), the Philippines agreed to address this issue, taking into account the age and SOGIE of the victims.

In addition to the increasing cases of violence against women and children and the rise of electronic violence, there have also been an alarming number of cases of hate crimes and violence against persons of diverse SOGIE. One example is the case of Jennifer Laude, a 26-year old transwoman who died of "asphyxiation by drowning" on October 2014 by Private First Class Joseph Scott Pemberton. The suspect was found guilty of homicide only, rather than murder, hence the reduced sentence. According to the suspect, he acted "out of passion and obfuscation" after finding out that Laude was a transwoman.¹⁵

The Commission agrees that "it is undoubted that victims of domestic violence do not only include women and children"¹⁶ and that "there are men and even members of the LGBT community who find themselves in the middle of domestic violence which may come in many forms, be it physical, sexual or emotional." In the case of *Garcia vs. Drilon*,¹⁷ Associate Justice Leonen, in his separate concurring opinion, acknowledged that "violence in the context of intimate relationships should not be seen and encrusted as a gender issue; rather it is a power issue."

The Commission welcomes such a significant expansion of RA 9262 but reserves the right to comment further on the specific provisions of the bill. Further, the Commission believes that careful examination of such a bill is warranted given its possibly compelling effect in the operation of existing protective mechanisms on VAWC.

CREATION OF A NATIONAL TASK FORCE ON VIOLENCE AGAINST WOMEN

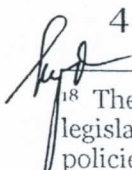
HB 2850 seeks the establishment of a "National Task Force on Violence Against Women" which shall be under the Office of the President. As proposed in the bill, the general purpose of the Task Force is to develop a uniform law enforcement strategy aimed at protecting women against violent crimes, punishing persons who commit such crimes, and enhancing the rights of victims of such crimes.

The Commission encourages evidence-based and well-researched policies and strategies, especially in the field of law enforcement and

commends the bill's aims towards the same, as adequately explained in its Explanatory Note. Notwithstanding, in view of the administration's priority agenda to streamline government operations by rightsizing the organizational structure of the Executive branch of government, the Commission submits that the Committee may consider reassessing the necessity of creating another body within the bureaucracy to avoid the duplication of functions which are already being performed by existing agencies and inter-agency bodies such as the Philippine Commission on Women (PCW),¹⁸ the Council for the Welfare of Children (CWC),¹⁹ the Inter-Agency Council Against Trafficking (IACAT),²⁰ and the Inter-Agency Council on Violence Against Women and Their Children (IAC-VAWC).²¹

The Commission wishes to clarify certain issues regarding the proposed mandate of the Task Force:

1. The bill proposes to delegate to the Task Force the power to conduct hearings, sit and act at such times and place, take testimony, and receive evidence it may deem appropriate and necessary for its purpose. The limits of this power may be clarified so as to ensure it does not encroach on, if not prejudice, the mandate of the DOJ and the Courts to hear and adjudicate cases of VAWC.
2. If in case what the law envisions is the creation of a Gender Based Violence (GBV) Observatory, existent in other jurisdictions, the mandate of the Task Force should be made clearer and more specific, as well as the way it will conduct research and define its membership, attuned with keeping it as broad and inclusive as possible.
3. In view of these, the Commission recommends that the proposed legislation be studied further, taking into consideration the various agencies and inter-agency mechanisms tasked to address VAWC, and the research these bodies have already undertaken in relation to VAWC, and from there determine the necessity for such a Task Force, or identify how its proposed functions and mandates could complement, and not duplicate, the functions and mandates of existing offices and inter-agency mechanisms.
4. It is also recommended that instead of creating a separate office, that

¹⁸ The PCW website lists the office's functions which include "conducts policy studies and reviews legislations to integrate women's concerns," "monitors and assesses the implementation of laws and policies on women," and "implements pilot projects for the delivery of services for women as basis for policy formulation and program recommendations." Retrieved 24 August 2017 from <http://www.pcw.gov.ph/about-us/mission-and-vision>

¹⁹ The CWC website lists "legislative and policy review and revisions to harmonize national and local laws with CRC and other international conventions" as one of its thrusts and priorities. Retrieved 24 August 2017 from <http://www.cwc.gov.ph/about-us/mission-and-vision>

more effort be placed on empowering existing institutions and structures that are specifically mandated to protect and promote women's human rights, i.e., the Philippine Commission on Women. In doing so, the Philippines will be consistent with the CEDAW Concluding Observations which recommended for the Philippine Government to "provide the Philippine Commission on Women with sufficient technical, human and financial resources to discharge its mandate effectively,"²² The Commission further recommends the strengthening of the IAC-VAWC, a council created by RA 9262 and composed of 13 national government agencies tasked to formulate programs and projects to eliminate VAWC.

INSTITUTIONALIZATION OF AN ADDRESS CONFIDENTIALITY PROGRAM

HB 1471 and HB 2592²³ seek to institutionalize an Address Confidentiality Program as a mandatory service for VAWC victims to ensure their protection and safety by providing them with a substitute address to be used when interacting with government agencies and a new mailing address which keeps their actual address confidential and free from the risk of discovery by third parties. As proposed, the Program shall cater to victims who intend to, or have already, established a new residence unknown to their assailants who may use public records to find them. Also, it is proposed that the Program shall be established and administered by the Department of Justice.

The Commission acknowledges the plight of VAWC survivors in ensuring their safety after having experienced violence and stresses how privacy and confidentiality is critical in ensuring they are able to live peacefully in an environment where they feel secure. With this, the Commission strongly supports the institutionalization of an Address Confidentiality Program as proposed in HB 1471 and 2592 and leaves it to the wisdom of the legislators on the best form on which it could be operationalized (whether as a separate law in itself, as is HB 1471, or as part of an amendatory law to RA 9262, as is HB 2592). However, the Commission requests the Committee to take note of the following comments and other points for clarification:

1. The language of HB 1471 suggests that the Program shall cover only victims of VAWC as defined in RA 9262 while in HB 2592, it shall cover only victims of E-VAWC as defined in the same bill. Whether the proposed Program shall cover victims of all other forms of violence outside the ambit of RA 9262 should be clarified as it could become an issue of unequal protection of the law.

RA 9262 are also subjected/exposed to various forms of threats from their perpetrators and may need the protection the Program offers.

2. Considering that enrollees to the Program, while enjoying its benefits, are at the same time in correspondence with the courts and other government agencies and private individuals in pursuance of a case involving RA 9262 or other laws, how can it be ensured that enrollment to the Program would not result in delays in the receipt and sending of important documents that may adversely affect their case in court? Enrollees to the program deserve assurance that they will be protected from delays that may prejudice their case against the perpetrator.
3. The criteria for eligibility to the program in Section 5 should provide a clearer and precise standard to ascertain eligibility and admissibility to the program. We suggest that aside from the sworn statement of the applicant, the latter must be required to present evidence such as police report, medico-legal report, and court record, among others, to substantiate the claim of being a victim of violence. Without unnecessarily burdening the applicant but only establishing proper safeguards, such additional requirements will prevent unscrupulous individuals from using the program for their unlawful motives or illegal activity, and will possibly preclude instances of abuse of discretion by the approving authority.

CONCLUSION

The Commission recognizes that violence through the use of ICT is a valid concern that demands recognition in law. Further, in recognition of the equal rights of all persons, regardless of their sexual orientation, gender identity, and expression, the Commission recognizes that victims of physical, mental, and sexual violence are not limited to women and children but to persons of diverse SOGIE as well.


As the country's National Human Rights Institution and Gender and Development Ombud under the Magna Carta of Women, the Commission, dedicated to protecting and promoting the dignity of all, condemns all forms of violence against all persons and strongly supports the enactment, strengthening, and expansion of laws to ensure that those vulnerable to violence receive the protection they need. It is in this spirit that the Commission also believes that an Address Confidentiality Program will work to the benefit of VAWC survivors for as long as the criteria for eligibility are clear and sufficient assurance can be given to the enrollees that unnecessary delays in the sending and receipt of court documents

Finally, the Commission also strongly recommends that the proposed measures include appropriations for training and education considering the speed by which technology evolves, hence the need for government personnel tasked to implement the law to keep up with emerging platforms and applications. Such knowledge empowerment extends as well to institutions such as the Philippine Commission on Women and the IAC-VAWC.

Issued this 2nd day of October 2017, Quezon City, Philippines


JOSE LUIS MARTIN C. GASCON
Chairperson


KAREN S. GOMEZ DUMPUTI
Commissioner


GWENDOLYN LL. PIMENTEL-GANA
Commissioner


LEAH C. TANODRA-ARMAMENTO
Commissioner

ROBERTO EUGENIO T. CADIZ
Commissioner