



REPUBLIC OF THE PHILIPPINES  
COMMISSION ON HUMAN RIGHTS

## **Position Paper on the Proposed Measures Defining Street, Public Places and Online Sexual Harassment, Providing Protective Measures and Prescribing Penalties**

The Commission on Human Rights (Commission, for brevity) pursuant to its constitutional mandate to recommend to Congress effective measures to promote human rights and as Gender and Development Ombud (Gender Ombud) in the Republic Act 9710 otherwise known as the Magna Carta of Women, submits this position paper on the proposed measures covered by the following bills:

House Bill No. 5781 - AN ACT DEFINING GENDER-BASED STREET AND PUBLIC SPACES HARASSMENT, PROVIDING PROTECTIVE MEASURE AND PRESCRIBING PENALTIES THEREFOR, AND FOR OTHER PURPOSES

House Bill No. 5956 - AN ACT DEFINING STREET, PUBLIC SPACES AND ONLINE SEXUAL HARASSMENT COMMITTED ON AND AGAINST ANY PERSONS, PROVIDING PROTECTIVE MEASURES AND PRESCRIBING PENALTIES THEREFORE, AND FOR OTHER PURPOSES

House Bill Nos. 5781 and 5956 seeks to define and penalize gender-based harassment in the streets, public places, and even online as a form of sexual harassment. These forms of harassment include but are not limited to cat-calling, wolf-whistling, and unwanted sexual remarks and comments online.

The 1987 Constitution provides that “the state recognizes the role of women in nation-building and the fundamental equality before the law of women and men”. As state party to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) it is the responsibility of the state to provide for protection against gender-based violence. The CEDAW Committee’s General Recommendation 19 states that gender-based violence and sexual harassment is a form of discrimination against women, and should thus be addressed by States Parties. The Universal Declaration of Human Rights provides for the right to security of a person and Principle no. 5 of the Yogyakarta Principles<sup>1</sup> makes available that states must take all measures to impose criminal penalties for violence and related harassment on the basis of one’s sexual orientation and gender identity. The Human Rights Council adopted a resolution calling on states to work in cooperation for the protection of persons against violence and discrimination based on sexual orientation and gender identity.<sup>2</sup>

<sup>1</sup> Principle 5, the Right to Security of the Person, Yogyakarta Principles

<sup>2</sup> A/HRC/RES/32/2, Resolution adopted by the Human Rights Council on 30 June 2016



The United Nations Commission on the Status of Women called on states to “use all appropriate means of a legislative, political, economic, social and administrative nature in order to promote and protect all human rights and fundamental freedoms of women and girls”. It likewise urges states to “increase measures to protect women and girls from violence and harassment, including sexual harassment and bullying, in both public and private spaces, to address security and safety, through awareness-raising, involvement of local communities, crime prevention laws, and policies”.<sup>3</sup>

According to a February 2016 Social Weather Stations survey, 58 percent of sexual harassment occurred in streets, major roads, and alleys, with majority of physical harassment happening in public transport vehicles. Street harassment which is the most common form of sexual harassment has been defined as “unwanted comments, gestures, and actions forced on a stranger in a public place without their consent and is directed at them because of their actual or perceived sex, gender, gender expression, or sexual orientation.”<sup>4</sup> Street harassment is a human rights issue because it limits harassed persons’ ability to be in public, especially women.

In this digital age, sexual harassment also happens online, commonly through the use of social media and social networking platforms. There have been media reports of female protesters being sexually harassed online via Facebook groups where people post sexually explicit pictures and videos of women and express sexually offensive and expletive remarks against women<sup>5</sup>. Hence, we support Section 4 of HB 5956 that includes online sexual harassment. As stated in the inputs of the Commission on Human Rights in the Human Rights Council Resolution 32/13 on the protection, promotion and enjoyment of human rights on the internet, “the internet can be a place to gather information, participate in discourse, express ourselves and our opinions. However, it can also be used for human rights abuses against people of all ages, gender, identities and political affiliations from all over the country”<sup>6</sup>

We should recognize that derogatory acts and sexual statements are not limited to women as people of diverse sexual orientation, gender identity and expression have been and continue to be victims of sexual harassment through homophobic and transphobic statements, we see the importance of the initiatives that includes in Section 5 of HB 5956 where such acts constitute gender-based harassment.

General Recommendation No. 19 of the CEDAW Committee states that gender-based violence which includes sexual harassment hinders women from enjoying the rights on the basis of gender equality<sup>7</sup>. As such, according to the General Recommendation No. 35 of the same Committee, it is incumbent upon the

<sup>3</sup> UN Commission on the Status of Women report on the fifty-seventh session. E/CN.6/2013/11

<sup>4</sup> Stop Street Harassment’s working definition of gender-based street harassment. **Stop Street Harassment** (SSH) is a nonprofit organization dedicated to documenting and addressing and ending gender-based street harassment worldwide (See: <http://www.stopstreetharassment.org/about/what-is-street-harassment/>)

<sup>5</sup> <http://cnnphilippines.com/news/2016/11/21/Marcos-burial-online-threats-sexual-attacks-misogyny.html>

<sup>6</sup> Commission on Human Rights Inputs to the HRC Resolution 32/13 on the Promotion, Protection and Enjoyment of Human Rights on the Internet.

[https://www.ohchr.org/Documents/Issues/Women/WRGS/GenderDigital/CHR\\_Philippines.pdf](https://www.ohchr.org/Documents/Issues/Women/WRGS/GenderDigital/CHR_Philippines.pdf)

<sup>7</sup> CEDAW Committee General Recommendation no. 19

state to ensure that all forms of gender-based violence against women in all spheres are criminalized and victims/survivors of such violence are protected and provided with effective remedies including access to justice.

Taking into consideration the intent of the authors of House Bill nos. 5871 and 5956, the Commission respectfully recommends the consolidation of both bills using the latter as reference bill. We respectfully provide the 17<sup>th</sup> Congress of the House of Representatives Committee on Women and Gender Equality, the comments and recommendations on some of the specific provisions of the subject measures, for the Committee's consideration.

1. The Committee must adopt a definition of "Gender" comprehensive to include all persons of different sex including the members of the LGBTQ and persons who identifies themselves based on their sexual orientation and gender identity and expression which definition shall be use all throughout the proposed legislation (SOGIE).

The bill defines what Gender-based street, public spaces, and online harassment is and when we speak of "gender" it shall not be exclusive only to male and female but should be extended to the members of the LGBTQ Community and SOGIE. For it to fully serve its purpose of providing reparations to everyone who are victims of these specific kinds of harassments, the definition of "gender" shall be inclusive, wide-ranging, and all-encompassing.

According to the World Health Organization, "gender" refers to the socially constructed characteristics of women and men, such as norms, roles, and relationships of and between groups of women and men<sup>8</sup>. It also often refers to cultural and social differences and sometimes encompasses a broader range of identities than the binary of male and female<sup>9</sup>.

Thus, the Commission offers the definition of "gender" as;

*Sec. 3. Definition. – xxx*

- a. Gender – refers to the state of being male and female which shall include the members of the LGBTQ and those who identifies themselves based on their sexual orientation and gender identity and expression (SOGIE).*
2. The spirit of the proposed legislation is primarily to protect the victims of harassment and to provide reparation for the same. On the other hand, the State as the *parens patriae* acts as a legal protector of its citizens who are incapable of protecting themselves by reason of minority, mental or psychological incapacity, and the like. By giving the authorities mandate to initiate legal proceedings against the perpetrator of the harassment, these persons will be given sufficient redress to the wrong committed against them.

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<sup>8</sup> <http://www.who.int/gender-equity-rights/understanding/gender-definition/en/>

<sup>9</sup> <https://en.oxforddictionaries.com/definition/gender>



Thus, to create a balance between the decision of the victim of the harassment and the mandatory aspect of reporting said occurrence by the authorities, the Commission offers for consideration the inclusion of the following in its Section 4, to wit;

*“Due consideration should be given to the desire of the victim in the filing of a complaint.”*

3. Section 6 of the proposed legislation seems to cover only those cases where the victim can demonstrate their express resistance but do not include those resistances that were made impliedly which can also reflect the victims lack of consent.

The Commission proposes that the language and intent of the “no means no” principle as stated in its Section 6 be improved to protect the human rights of victims of such abuse and harassment through inclusion of this school of thought that the lack of protest or resistance does not mean consent and that silence also do not mean consent. *No means no* does not always have to be verbally uttered especially those cases where the intended victim lacks the ability to speak by reason of any psychological or medical reasons. Lack of consent can be demonstrated not only through express physical or verbal resistance but also through behavioral resistance amounting to its implied protest such as flight from the scene or place of harassment.

Further, there are instances when the supposed victim would initially give consent to the sexual advances of another, either the victim would freeze out of fear, or just plain approval, but would eventually resist to further advances. In this particular scenario, the provision on the *no means no* shall provide that the lack of consent can be manifested by the victim at any stage of the act constituting harassment and it shall not matter whether the victim initially gave his/her consent.

Thus, the Commission respectfully recommends the following to be included in its Section 6;

*Sec. 6. “No means No” Principle.*

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*Further, in cases where the victim either lacks ability to speak, by reason of any psychological or medical condition, or unable to resist before and/or during harassment, lack of consent can be manifested through the victims behavior before, during, or after the occurrence of the act or acts complained of constituting harassment.*

4. *Authority to Apprehend Gender-based Street Harassment Perpetrators to Light and Medium Offenses.*

We recommend that enforcers of the MMDA undergo gender sensitivity training prior to authorizing them to receive and act on complaints of sexual harassment to ensure that victims do not face further abuse or harassment.



5. *Gender-based Harassment Involving Schools and Educational Institutions.*

The offenses under this proposed measure may be included in the jurisdiction of the Committee on Decorum and Investigation mandated by RA 7877 or the Anti-Sexual Harassment Act of 1995<sup>10</sup>.

6. Section 8 of HB no. 5956 states that the DILG shall ensure that the local government units have Sexual Harassment Desks for grievances and redress. The Commission on Human Rights as Gender and Development Ombud mandated by RA 9710 or the Magna Carta of Women may be tasked by this proposed measure to monitor and ensure the implementation of this requirement.

The Commission on Human Rights reiterates that sexual harassment will always be unacceptable regardless of who the perpetrator is as it demeans the dignity and human rights of a person. It creates an intimidating, hostile and humiliating environment contrary to the security and well-being of the victim and has a detrimental effect limiting the victim's freedom and behavior. Hence, the government as the primary duty bearer must take the lead in eliminating gender-based violence by filling in the gaps and limitations of the current law to respond to the needs of the changing times and providing a healthy environment free from any form of sexual harassment.

Issued this 10<sup>th</sup> day of September 2018, Quezon City, Philippines.

  
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<sup>10</sup> Section 4 (b), Republic Act 7877.