



Republika ng Pilipinas
Komisyon ng Karapatang Pantao ng Pilipinas
(Commission on Human Rights of the Philippines)

**Position Paper on the Amendment of Republic Act No. 7877
or the Anti-Sexual Harassment Act of 1995
(House Bill nos. 194, 508, 2591, 2932, 3691, 4822, and 5213)**

The Commission on Human Rights ("Commission") pursuant to its mandate to recommend to congress effective measures to promote and protect human rights¹ and investigate violations of the Magna Carta of Women as Gender and Development Ombud², submits this position paper on the proposed amendments³ to the Anti-Sexual Harassment Act of 1995 (RA 7877) filed before the 17th Congress of the House of Representatives.

The Philippines is a state party to the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW)⁴ and International Labor Organization (ILO) Conventions⁵ which recognize sexual harassment as a form of violence against women discrimination and directs State Parties to take appropriate measures to eliminate discrimination against women. 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. Similarly, the United Nations General Assembly Resolution 48/104 on the Declaration on the Elimination of Violence Against Women, provides that violence against women shall be understood to encompass, but is not limited to physical, sexual, and psychological violence including sexual harassment and intimidation at work, in educational institutions and elsewhere.⁶ It further urge States to condemn violence against women and develop penal, civil or other administrative sanctions, including preventive approaches to eliminate violence against women.⁷

The Constitution provides that the State values the dignity of every human person and guarantees full respect for human rights⁸ and the State

¹ Section 18 (6) of the 1987 Constitution of the Philippines.

² Section 39, Magna Carta of Women (Republic Act 9710).

³ House Bill Nos. 194, 508, 2591, 2932, 3691, 4822, and 5213

⁴ Articles 7-16, CEDAW

⁵ The ILO Committee of Experts on the Application of Conventions and Recommendations has confirmed that sexual harassment is a form of sex discrimination covered by the Discrimination (Employment and Occupation) Convention (No. 111) of 1958; See: <http://www.endvawnow.org/en/articles/492-sources-of-international-law-related-to-sexual-harassment.html>

⁶ Article 2 (b); A/RES/48/104; 20 December 1993

⁷ Article 4 -(d-f); A/RES/48/104; 20 December 1993

⁸ Article 2, Section 11.

affirms labor as a primary social economic force. It shall protect the rights of the workers and promote their welfare⁹.

The Commission as the National Human Rights Institution of the Philippines, supports the measures which aim to amend the Anti-Sexual Harassment Act of 1995 (RA 7877) in adherence to Constitution and international human rights standards and principles.

Taking into account these constitutional provisions and international human rights principles, and international commitments, the Anti-Sexual Harassment Act of 1995 (RA 7877) was enacted into law. A perusal of the current sexual harassment law would easily show that its scope is limited only to those harassments which are related to work, training and education. It does not cover sexual harassment that occur outside the four walls of the office or school like streets, public transport vehicle, and even online. 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.¹⁰ 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.”¹¹ Further, the present law which makes an element the authority, influence or moral ascendancy of the offender over the victim, limits the persons who may be held liable for sexual harassment. As such, it does not guard against harassment committed by a colleague, subordinate or even a stranger.

In the same study conducted by the Social Weather Stations, it appeared that women are most vulnerable to sexual harassment, showing that 3 in 5 women were sexually harassed at least once in their lifetime.¹² While women are more prone to experience sexual harassment than men, we cannot discount the fact that sexual harassment could happen to anyone regardless of gender, age, or status, as the act constitute a violation of a person's dignity and human rights.

Recognizing that these derogatory acts are not limited to women as people of diverse sexual orientation, gender identity and expression have

⁹ Article 2, Section 18.

¹⁰ See: <http://cnnphilippines.com/life/culture/2017/03/28/sexual-harassment-policies.html>

¹¹ 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/>)

¹² The study was conducted in Quezon City, Metro Manila's biggest city with a population of over 3 million.

See: <http://www.rappler.com/newsbreak/iq/135240-sexual-harassment-philippines> (accessed on 25 August 2017)

been and continue to be victims of sexual harassment, the Commission supports House Bill Nos. 508, 2591, 4822, 3691, and 5213 which seek to amend R.A. 7877 by expanding the scope of the acts of sexual harassment, bringing into its scope the act of making offensive remarks about a person's sexual orientation, providing stiffer penalties and establishing a monitoring mechanism to oversee the proper implementation of the law. In particular, we see the importance of the initiative to broaden the scope of the coverage to recognize the right of members of the LGBT community of being entitled to the protective mantle of the law.

We equally support the objective of House Bill no. 194 which proposes to include in its provisions a safeguard for overseas Filipino workers (OFWs) against acts of sexual harassment committed by officials and employees in a consular and diplomatic post abroad. This is a welcome amendment as Filipino migrant worker have often become victims and fall prey into the hands of people whose primary job is to protect and promote their welfare. A case in point is the sexual harassment case aired out by Filipino overseas workers in Kuwait¹³ and Canada¹⁴ against diplomatic officials. Thus, as a vulnerable sector, migrant workers are entitled to protection from all forms of abuse and exploitation not just by the receiving state but the sending state. As such, the Philippine government as legal protector of its citizens, has the foremost duty to ensure that their rights are respected and that they are free from abuse and exploitation.

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 equality¹⁵. As such, according to the General Recommendation No. 35 of the same Committee, it is incumbent upon the 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. The Universal Declaration of Human Rights provides for the right to security of a person and Principle no. 5 of the Yogyakarta Principles¹⁶ 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 identity¹⁷.

¹³ <http://www.rappler.com/nation/15726-ph-ambassador-to-be-probed-for-sexual-harassment>

¹⁴ <http://news.abs-cbn.com/global-filipino/06/06/13/embattled-ph-diplomat-canada-accused-sexual-harassment>

¹⁵ CEDAW Committee General Recommendation no. 19

¹⁶ Principle 5, the Right to Security of the Person, Yogyakarta Principles

¹⁷ A/HRC/RES/32/2, Resolution adopted by the Human Rights Council on 30 June 2016

Bearing in mind the objectives of the bills, the Commission respectfully recommends the consolidation of all bills using House Bill No. 5213 as reference bill as it expands R.A. 7877 by introducing various forms of sexual harassment apart from amending the provision on sexual harassment in the work, school and training environment, which is a substantial improvement of the current law. With these, the Commission respectfully provides the 17th Congress of the House of Representatives Committee on Women and Gender Equality, its comments and recommendations on some of the specific provisions of the subject measures, for the Committee's consideration:

1. Since the paramount consideration in amending the Anti-Sexual Harassment Law is to broaden its coverage, such intention must be established at the onset. We recommend that the language of the Declaration of Policy in Section 2 must be enhanced to indicate that the expanded anti-sexual harassment law is for all persons and not just for students or workers.

2. To provide ample protection, we recommend to include the word "offensive conduct" to the proposal "or makes offensive remark about a person's sexual orientation" found in Section 3 of House Bills No. 508, 2591, 3691, 4822, considering that sexual harassment could also be committed by offensive conduct pertaining to the victim's sexual orientation, without necessarily demanding, requesting or requiring sexual favor. This is also to reinforce the amendment in the said provision that the means to commit the act include verbal, physical and visual through the use of technology.

3. We recommend that a specific mandatory provision on education, awareness and advocacy programs and orientation for new hires about sexual harassment and how to address it must be introduced in the law. Initiatives to surface the issue to raise awareness and impart knowledge about it could pave the way to empower victims to speak out and change society's perception that sexual harassment is a violation of one's dignity and human right and that something must be done about it.

4. To enhance the collection of data on sexual harassment, we recommend that the law must mandate the conduct of surveys, research programs and studies on gender-based violence, specifically on sexual harassment, to assess the prevalence and severity of such violence and the social or cultural beliefs exacerbating the same.¹⁸

5. The monitoring mechanism introduced by House Bills No. 2591 and 3691¹⁹ which is a new provision will considerably impact the monitoring and

¹⁸ CEDAW General Recommendation No. 35; 14 July 2017.

¹⁹ "Sec. 10 Monitoring Mechanism. – The Civils Service Commission (CSC), the Department of Labor and Employment, Department of Education (DepEd), the Commission on Higher Education (CHED), and the Technical Education and Skills Authority (TESDA) are mandated to monitor public and private offices, educational and training institutions, with regard to their compliance with the provisions of this Act. xxx"

assessment of the progress of the law. At this point, the Commission may be considered to be included in the monitoring mechanism and crafting of the implementing rules and regulations pursuant to its mandate of investigating gender-based violence committed against women and persons of diverse SOGIE guided by the nine human rights treaties to which the Philippines is a state party and the Yogyakarta Principles²⁰.

6. We support the proposal to make stiffer the penalty to give the law more teeth in deterring and at the same time penalizing the commission of the prohibited acts. Specifically, where the offender is a consular or diplomatic official, we suggest that the penalty should be a degree higher because a government official is expected to exhibit at all times the highest sense of honesty and dedication to duty and the act of engaging in the act of sexual harassment constitutes breach of duty.

7. 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 remarks against women²¹. Hence, we support the proposal contained in HB 4822 to include “the use of electronic device or any available technology or means, within or outside the place of employment, training or education” as one of the means to commit sexual harassment to penalize those who utilize social media irresponsibly through the commission of such prohibited acts.

In addition to the comments and recommendations, the Commission wishes to raise some points of clarification for consideration:

1. Section 7 of House Bills No. 2591 and 3691 which makes the “employer, head of office, educational or training institution solidarily liable for damages arising from the acts of sexual harassment” deserves sufficient analysis. Where the employer is a private corporation or government office, will solidary liability for damages be attached to the private corporation or government office as juridical person or will it be attached to the head of such institution, who is a natural person? In other words, who will bear the solidary liability should be clearly stated in the law.

2. The last paragraph of Section 7 of House Bills No. 2591 and 3691 provides: “In case of employment-related sexual harassment that results to the constructive dismissal of the employee, the employer who is found liable under the provisions of this Act, shall also be held liable for damages.” The essence of this provision is to counter any retaliatory act that might be done

²⁰ Commission on Human Rights Gender Ombud Guidelines

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

as a consequence of filing a sexual harassment case against an employer. However, it is only limited where there is an employer-employee relationship, thus, stand as a precaution to the latter's security of tenure. Such safeguard against reprisal could be widen to also include students whose academic standing is dependent upon persons exercising authority or ascendancy over them like teachers or professors. Hence, we recommend that the protection from retaliation should also extend to students and trainees alike as they are also vulnerable to such acts.

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 adverse to the security and well-being of the victim and leaves detrimental effect that limits 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 21st day of December 2017, Quezon City, Philippines.


JOSE LUIS MARTIN C. GASCON
Chairperson


KAREN S. GOMEZ BUMPIT
Commissioner

GWENDOLYN L.L. PIMENTEL-GANA
Commissioner


LEAH C. TANODRA-ARMAMENTO
Commissioner

ROBERTO EUGENIO T. CADIZ
Commissioner

