



COMMISSION ON HUMAN RIGHTS
REPUBLIC OF THE PHILIPPINES

POSITION PAPER ON THE COMPREHENSIVE ANTI-DISCRIMINATION BILL
(Senate Bill Nos. 108, 233, 747, 1264, and 1300)

The Commission on Human Rights (CHR), as the country's national human rights institution (NHRI)¹ and in the exercise of its constitutional mandate to protect and promote human rights,² issues this Position Paper on the proposed Comprehensive Anti-Discrimination Bills filed in the Senate of the 19th Congress.³

1. The **Commission reiterates its strong support** for the immediate passage and implementation of a comprehensive anti-discrimination law that will help enforce the constitutional guarantee against discrimination by defining specific acts or omissions that constitute discrimination, as well as by defining positive acts by which both the State and non-state actors may promote equality and fight discrimination. This transcends mere penal legislation and takes a more holistic approach to truly reshaping societal attitudes.
2. Equality and non-discrimination are basic principles that underpin the rule of law and the human rights framework. These two principles are embedded in the international human rights obligations of the Philippines as a State Party to the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social, and Cultural Rights (ICESCR), the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Convention on the Rights of the Child (CRC), the International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families (ICMW), the Convention on the Rights of Persons with Disabilities (CRPD), and other international human rights laws. These principles are also at the core of the Universal Declaration of Human Rights (UDHR) and the 1987 Constitution⁴.

¹ 1 Based on the Principles relating to the status of national institutions or the Paris Principles in relation to the CHR mandates in the 1987 Constitution. National Institutions for the Promotion and Protection of Human Rights, G.A. Res. 48/134, Annex, U.N. Doc. A/RES/48/134 (Dec. 20, 1993).

² PHIL. CONST. art. XIII, sec. 18.

³ **S.B. 108**, short titled "Comprehensive Anti-Discrimination Act" filed by Sen. Grace Poe; **S.B. 233**, short titled, "Anti-Discrimination Act" filed by Sen. Robinhood Padilla; **S.B. 747**, short titled "Comprehensive Anti-Discrimination Act" filed by Sen. Joel Villanueva; **S.B. No. 1264**, short titled "Comprehensive Anti-Discrimination Act," filed by Sen. Imee Marcos; and **S.B. 1300**, shot titled "Equality and Non-Discrimination on Race, Ethnicity and Religion Act" filed by Senator Jinggoy Estrada

⁴ PHIL. CONST. Art. II, Sec. 2, Art. III, Sec. 1, 5, Art. XIII, Sec. 1, 3, 18.

3. Special laws that protect and promote the human rights of vulnerable and marginalized sectors, such as persons with disability,⁵ persons living with HIV,⁶ and persons affected by mental health conditions,⁷ among others, generally include non-discrimination provisions to emphasize its importance and to highlight that, although international and domestic laws strictly prohibit discrimination in principle, members of these sectors continue to suffer from acts constituting the same. The vulnerability to discrimination is even more pronounced for sectors that do not have specific legislation that protect them against it. This is true especially for members of the LGBTQI+ community, persons in lower socio-economic status, and older persons, among others.
4. For purposes of the discussion in this Position Paper, we refer mainly to **Senate Bill No. 1264**, filed by Sen. Imee Marcos, which was agreed to be the reference bill for consolidation by the Senate Committee on Cultural Communities, during the Technical Working Group Meeting on the bills held on June 20, 2024.

RECOMMENDATIONS

1. Declaration of Policy

1.1 The Commission recommends the inclusion of all core international human rights laws that have relevant provisions on the subject of discrimination, discussed in the bill, as well as the relevant General Comments and/or General Recommendations of the UN Treaty-Bodies assigned to interpret these international human rights covenants and conventions.⁸

1.2 The proposal raised during the TWG meeting held on June 20, 2024 was to use the word “**protected attributes**” in the title of the S.B. 1264 (as the base bill) instead of mentioning all the identified protected attributes.⁹ The same should also be applied in Section 2, on the

⁵ An Act Providing for the Rehabilitation, Self-Development and Self-Reliance of Disabled Persons and Their Integration into the Mainstream of Society and for Other Purposes [Magna Carta for Disabled Persons], Republic Act No. 7277, §§ 17, 32, 33, 34, 35, 36, 44 (1992).

⁶ An Act Strengthening the Philippine Comprehensive Policy on Human Immunodeficiency Virus (HIV) and Acquired Immune Deficiency Syndrome (AIDS) Prevention, Treatment, Care, and Support, and Reconstituting the Philippine National AIDS Council (PNAC), Repealing for the Purpose Republic Act No. 8504, Otherwise Known as the “Philippine AIDS Prevention and Control Act of 1998,” and Appropriating Funds Therefor [Philippine HIV and AIDS Policy Act], Republic Act No. 11166, §§ 2, 3, 10, 16, 23, 38, 40, 48, 49, 50 (2018).

⁷ An Act Establishing a National Mental Health Policy for the Purpose of Enhancing the Delivery of Integrated Mental Health Services, Promoting and Protecting the Rights of Persons Utilizing Psychiatric, Neurologic and Psychosocial Health Services, Appropriating Funds Therefor and for Other Purposes [Mental Health Act], Republic Act No. 11036, §§ 4, 5, 44 (2018).

⁸ Particularly CEDAW General Recommendation No. 28 (G.R. No. 28) on Non-Discrimination based on Sexual Orientation of Gender Identity and the United Nations Declaration on Rights of Indigenous Peoples (UNDRIP) and General Comment No. 20, Non-Discrimination in Economic, Social and Cultural Rights, E/C.12/GC/20, dated 2 July 2009, as well as the United Nations Declaration in the Rights of Indigenous Peoples.

⁹ Identified Protected Attributes by S.B. 1264 and S.B. 108 are the same: age, indigenous, racial or ethnic origin, religious belief or activity, political inclination or conviction, social class, sex, gender, sexual orientation, sex characteristics, gender identity, gender expression, marital or relationship status, disability, HIV status, profession or occupation, health status or medical history, language, physical features and other status.

declaration of policy as well as Section 3 (b) on the definition of discrimination.

2. Definition of Terms

2.1 Age

2.1.1 To give clarity on what is considered **age discrimination**, the Commission recommends the same to be defined and understood as the *“act of discriminating a person, which includes bullying, based solely on the actual or perceived age of a person, whether accurate or not.”*

While the same is prohibited in some context, the lack of an internationally agreed or locally prescribed definition of age discrimination in human rights law impedes the reduction of inequalities,¹⁰ especially among older persons or senior citizens.

Mandatory retirement ages and age discrimination in recruitment procedures prevent older persons from finding jobs and continuing working, and may further promote social exclusion¹¹.

Older persons should have a right to decide whether they want to work and what job is suitable for them. They should neither be forced to work nor to retire, but real choice is often impossible owing to barriers in law, lack of employment opportunities, the unavailability of pensions and the absence of support and reasonable adaptations for older workers.¹²

2.2 We have noted that the definition of **“Disability”** in Section 3(a), was lifted from R.A. No. 7277 or the “Magna Carta for Disabled Persons”¹³ which focuses on the medical condition and how it can restrict a person’s role and function in society.¹⁴ The Commission recommends the adoption of the definition of disability provided by the United Nations Convention on the Rights of Persons with Disabilities.

In contrast with this definition, the CRPD, adopts the social model of disability which considers it as an evolving concept and focuses not on the limitation but on how society can better respond to the needs of persons with disability.¹⁵ The definition in CRPD refocuses disability into a human rights issue which promotes accessibility, empowerment, and equality and ensures and acknowledges the contributions of persons with

¹⁰ Sustainable Development Goal 10

¹¹ See Committee on Economic Social and Cultural Rights, general comment No. 6

¹² Report of the Independent Expert on the enjoyment of all human rights by older persons, (A/HRC/39/50) dated 10 July 2018, available at this link:

<https://documents.un.org/doc/undoc/gen/g18/210/00/pdf/g1821000.pdf?token=kenRKHoLBRJzkaUG4v&fe=true> (last accessed July 14, 2024)

¹³ R.A. No. 7277, sec. 4(c)

¹⁴ Vera Files, Inc., Getting It Right: Reporting on Disability in the Philippines, available at

<https://asiafoundation.org/wpcontent/uploads/2018/03/Getting-It-Right.-Reporing-on-Disability-in-the-Philippines.pdf> (last accessed 28 Jul. 2020)

¹⁵ Id

disability to society. With this, we respectfully recommend to use the CRPD definition of “disability” as it is more aligned with the objectives of the proposed law, thus:

“Disability refers to long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder a person’s full and effective participation in society on an equal basis with others.”

2.3 Discrimination

2.3.1 In Section 3(b) of S.B. 1264, we respectfully recommend the use of the term “protected attribute” instead of listing all grounds or characteristics from which discrimination is prohibited.

2.3.2 **Ethnic Origin** as a protected attribute should include **color**, alongside race, national origin, and ethno-linguistic origin. Please see paragraph 9 above.

2.3.3 **The Commission recommends the inclusion of association with a person who has, or is, believed (whether accurate or not) to have any of these attributes in the definition of discrimination.** Taking into account instances where a person is also discriminated against or excluded on the basis of his or her association, or relations with a person having characteristics or attributes considered as prejudicial. We note that this has been mentioned in Section 4, (except the qualification on whether the belief was accurate or not) but for purpose of clarity and easy reference, it has to be mentioned that when a person is treated less favorably than others, based solely on one’s association, or relations with someone possessing a protected attribute, that in itself is considered discrimination.

2.4 Harassment

2.4.1 We recommend defining harassment for purposes of this act as:

“Harassment refers to the unwanted treatment against a person on grounds of one or more protected attributes or in association with them, with the effect or purpose of creating unfriendly, hostile, offensive, humiliating or rejecting atmosphere for that person”¹⁶

¹⁶ Principle 5, Declaration of Principles on Equality, Equal Rights Trust, London, 2008. This is a collective work of 128 international experts on equality from more than 40 different countries. The Declaration consolidates and elaborates international standards on the rights to equality and nondiscrimination. Available at this link: <https://www.equalrightstrust.org/ertdocumentbank/Pages%20from%20Declaration%20perfect%20principle.pdf> (last accessed July 14, 2024)

2.4.2 We favorably note that discrimination, as defined, also includes incitement to discriminate and harassment.

“Harassment refers to the unwanted treatment against a person on grounds of one or more protected attributes or in association with them, with the effect or purpose of creating unfriendly, hostile, offensive, humiliating or rejecting atmosphere for that person”¹⁷

2.4.3 We are also in agreement with the position of the UP Gender Law and Policy Program (UP-GLPP) that discrimination is a result of stigma against persons or communities possessing (either currently or not) or believed to possess any of the protected grounds. The actual status of the person subjected to discrimination shall not be relevant for the purpose of determining whether an act of discrimination has been committed.

2.5 Gender Expression and Gender Identity

2.5.1 The Yogyakarta Principles Plus 10 (YP+10)¹⁸ included a reference to “gender expression” and “gender identity.” Although having the status of secondary or soft law, these Principles are used as a benchmark for the protection of human rights of LGBTQI+ persons, and often have been referenced at international, regional and national levels, including courts.

2.5.2 In lieu of the YP+10, the Commission recommends the following definitions as embodied in the Principles, to wit:

“Gender Expression refers to a person’s presentation of their gender through physical appearance, including dress, hairstyles, accessories, cosmetics, and mannerisms, speech, behavioral patterns, names and personal references.”¹⁹

“Gender Identity refers to each person’s deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth.”²⁰

2.6 HIV status

¹⁷ Principle 5, Declaration of Principles on Equality, Equal Rights Trust, London, 2008. This is a collective work of 128 international experts on equality from more than 40 different countries. The Declaration consolidates and elaborates international standards on the rights to equality and nondiscrimination. Available at this link: <https://www.equalrightstrust.org/ertdocumentbank/Pages%20from%20Declaration%20perfect%20principle.pdf> (last accessed July 14, 2024)

¹⁸ The Yogyakarta Principles Plus 10, available at https://data.unaids.org/pub/manual/2007/070517_yogyakarta_principles_en.pdf (last accessed July 14, 2024)

¹⁹ Yogyakarta Principles Plus 10, Preamble, par. 4

²⁰ Yogyakarta Principles, Plus 10 Preamble, par. 5

2.6.1 The Commission notes and agrees with the recommendation of UP GLPP on the definition of **HIV Status** as referring to **actual or perceived** presence or absence of the human immunodeficiency virus in the body of the individual.

2.7 Muslim

2.7.1 The Commission also recommends to remove the word **Muslim** in the definition of terms, which refers to those followers of Islamic faith, whether from birth or by conversion. The term is not specifically mentioned in the bill and therefore there is no operational need to define it. The term is also already impliedly included in the term “**religion or religious belief**” as a ground prohibited from discrimination.

Muslims and other persons affiliated or not, with any other religious sects, are disproportionately discriminated by merely belonging or not belonging, to a particular religious congregation and hence the inclusion of religion as a protected attribute. It is therefore covered in the blanket of protection against discrimination.

2.8 Political Inclination

2.8.1 On the definition of “**political inclination,**” the Commission recommends the adoption of CDESCR General Comment No. 20 be adopted, thus:

“Political inclination or other opinion refers to a person's preference as regards membership or belief in a particular political party, organization or ideology. It covers both the holding and not holding of opinions, as well as expression of views or membership within opinion-based associations, trade unions or political parties.”

2.9 Profiling

2.9.1 The Commission proposes that it be understood as an act by any person, usually those from the law enforcement sector, including members of the police, military and uniformed personnel in government service. We propose including the paragraph below in Section 5 (i):

Provided that, law enforcement officers are allowed to conduct criminal profiling based on the commission of verifiable illegal acts²¹, and not on stereotypical assumptions attached to any of the protected attributes. Provided further, that the purposes of profiling include investigation, insurance, and other forms of profiling

²¹ Verifiable illegal acts emphasize the ability to confirm or prove that an illegal act has taken place. While an act may be illegal, it may not always be easily verifiable due to a lack of evidence or witnesses. verifiable illegal acts are those for which there is sufficient evidence or documentation to substantiate that the act occurred and is indeed illegal

which have the intention or effect of nullifying or impairing the recognition, enjoyment or exercise on an equal footing of political, civil, economic, social or cultural rights.

2.10 Religion

2.10.1 For clarity, The Commission recommends defining the term “**religion**” as a protected attribute. It is expressly listed as one of the prohibited grounds against discrimination. Everyone has the right to freedom of thought, conscience and religion. This right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.²² The rights to freedom of religion, as an obligation of the State, covers any person who is theistic, non-theistic and atheistic believers, as well as those who do not profess any religion or belief.

The Commission notes the definition of “religious belief” and “religious affiliation” are the same in all bills filed in the Senate. The definition is reflective of the broad interpretation of religion as referring to the profession or non-profession of religion or beliefs of one's choice that may be publicly manifested in worship, practices and teaching.

However, the right to religious profession and worship has a two-fold aspect, vis., freedom to believe and freedom to act on one's belief. The first is absolute as long as the belief is confined within the realm of thought. The second is subject to regulation where the belief is translated into external acts that affect the public welfare.²³

The sole justification for a prior restraint or limitation on the exercise of religious freedom is the existence of a grave and present danger of a character both grave and imminent, of a serious evil to public safety, public morals, public health or any other legitimate public interest, that the State has a right (and duty) to prevent.²⁴ Hence, unless the religious belief manifested or translated through acts or expressions that is interpreted as a clear and present danger to public safety, public morals, public health or any other legitimate public interest, that religious expression may not be limited or subject to discrimination.

There should be a distinction between religion, **religious affiliation and belief** which are absolute and should not be subject of discrimination and **religious expression** which is subject to allowable restrictions. The UP GLPP suggested definition of religious expressions is acceptable as it essentially distinguishes from religious belief or affiliation.

²² Article 18 of the Universal Declaration of Human Rights (UDHR)

²³ Ebralinag et al. vs. The Division Superintendent of Schools of Cebu (G.R. NO. 95770, March 1, 1993)

²⁴ Ibid

“Religious Expression refers to acts of worships or teachings of religious leaders on the basis of their faith, whether it conforms to or opposes one's view or belief, which are made within the confines of their religious service, ceremony or gathering, and which are in accordance with the most deeply held fundamental religious convictions of the religion to which they belong.”

Prohibited Grounds for Discrimination / Protected Attributes

1. The protected attributes are the list of grounds or characteristics where discrimination is prohibited. The International Bill of Rights²⁵ has an **open-ended list** of protected attributes that expressly include: **race, color, sex, language, religion, political or other opinion, national or social origin, property, birth and other status.**²⁶ The “other status,” as far as the ICESCR is concerned, includes: **disability, age, nationality, marital and family status, sexual orientation and gender identity, gender expression, health status, place of residence, and economic and social situation.**²⁷
2. In addition, under the CEDAW, States are obligated to take steps to protect women from discrimination on the grounds of **maternity and pregnancy**, and under the ICERD, racial discrimination covers discrimination on the basis of **descent**.
3. It is therefore recommended that the **protected attribute** as a term should be **defined separately in Section 3**, instead of just being mentioned in Section 4 as prohibited grounds for discrimination. As mentioned above, this refers to *identified grounds or characteristics where discrimination is prohibited. These grounds or characteristics include but is not limited to, age, indigenous, racial, color or ethnic origin, religious belief or activity, political inclination or conviction, social class, formerly incarcerated persons, sex, gender identity or expression, sexual orientation, sex characteristics, marital or relationship status, disability, HIV status, profession or occupation, health status or medical history, language, physical features and other status.*

This term must be all inclusive, and the list must be open-ended so as to avoid any other grounds or characteristics being excluded and thereafter being subject to discrimination.

Having “protected attributes” defined in Section 3 will also make easy reference for those who need to implement the law, as they are guided

²⁵ UDHR, ICCPR, and ICESCR

²⁶ UDHR, art. 2; ICCPR, art. 2(1); ICESCR, art. 2(2).

²⁷ UN Committee on Economic, Social and Cultural Rights (CESCR), General comment No. 20: Non-discrimination in economic, social and cultural rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights), 2 July 2009, E/C.12/GC/20, available at: <https://www.refworld.org/docid/4a60961f2.html> (last accessed 14 Sep. 2020).

against discrimination, on the basis of any of the protected attributes as defined and as specified in a non-exclusive list of grounds or characteristics.

4. The Commission is in agreement with the **inclusion of all protected attributes mentioned in all the bills filed at the Senate**. Specifically, Senate Bill No. 233 filed by Senator Padilla included as a protected attribute, the fact that *a person was formerly incarcerated*, and hence the definition provided in the said bill should be adopted.²⁸

Both color or race are also mentioned in S.B. 233²⁹, 747³⁰ and 1300.³¹ They are expressly mentioned as protected attributes under the International Bill of Rights. While these terms have ordinary meanings for the application of the law, it is best to ensure that they are collectively understood to fall under ethnic origin as a protected attribute under this Act.

5. The term **“other status”** as defined in S.B. 108³² and S.B.1264³³ should also be adopted to give clarity as to which characteristics or grounds are likely to be recognized and protected by the courts, among rights-holders, duty-bearers and those responsible for implementation and enforcement. The absence of such criteria on what “other status” is considered protected attribute, creates the risk of litigation being brought, seeking protection on grounds which do not need or deserve protection and, conversely, lack of clarity on part of groups or individuals of whether they will enjoy protection.

On the other hand, the definition of “other status” allows for flexibility for further groups to be recognized and protected in the future and minimizes the risk of unnecessary litigation, unfettered judicial discretion and of confusion among the general public as to which grounds should qualify.

6. Section 4 should be retained except that there is no need to list all protected attributes as the same are already defined and listed in Sec. 3 on definition of terms. The recommended wording for Section 4 is as follows:

“Discrimination that is directly or indirectly based on the actual or perceived attributes, which include an open-ended list of attributes or characteristics, defined and specified in Section 3 hereof. For purposes of this

²⁸ S.B. No. 233 Sec. 3(f) Formerly Incarcerated Person – refers to a person or individual who had prior involvement with the justice system, including but not limited to, one who had been accused of committing a criminal act, one who had been acquitted, or who may have been previously incarcerated and served his or her sentence in any jail system and penal institution.

²⁹ S.B. 233, introduced by Senator Robinhood Padilla

³⁰ S.B. 747, introduced by Senator Joel Villanueva

³¹ S.B. 1300, introduced by Senator Jinggoy Estrada

³² S.B. 108, introduced by Senator Grace Poe

³³ S.B. 1264, introduced by Senator Imee Marcos, whose Sec. 3(dd) defined “Other Status” as referring to other forms of differential treatment or grounds of discrimination which either undermines human dignity, causes or perpetuates systemic disadvantage, or adversely affects the equal enjoyment of a person’s rights and freedoms in a serious manner that is comparable to the protected attributes enumerated in Section 4 (and as defined) in this act. These grounds include, but are not limited to the following: association and relation with persons with protected attributes, pregnancy or maternity / paternity status, family responsibilities, health status or medical condition, or criminal record.

Act, these personal characteristics shall be collectively termed as "protected attributes".

The protected attributes that may be subjected to differentiation or any form of discrimination shall be interpreted in their most common or universal definitions and with due regard to the promotion of meaningful implementation of non-discrimination policy.

In determining whether a person is distinguished by one or more of the protected attributes, identification shall, if no justification exists to the contrary, be based upon self-identification by the individual concerned. Membership also includes association with a group characterized by one of the prohibited grounds or perception by others that an individual is part of such a group.”

Acts of Discrimination

1. Generally, where an act is committed in violation of a special law, criminal intent is immaterial. However, when the special law requires that the act be committed knowingly and willfully, criminal intent is required to be proved before criminal liability may arise.

Guided by this principle, the bill may be modified to make the acts punishable only if the offender knowingly and deliberately committed the discriminatory act or conduct in such a way as to insult or spite the offended party. In contrast, where it can be shown that the respondent has no criminal intent, in which case, the burden is upon the respondent to show that the act was unintentional, then liability will not attach.

We emphasize that not all discriminatory acts are characterized by intent as there are cases where the act is not intentional but only has the effect of nullifying or impairing the recognition, enjoyment or exercise of human rights. As further noted, “direct discrimination can occur in cases where the discriminating party believes that they are acting in the best interest of the victim, while indirect discrimination can occur in cases where the discriminating party applies a rule, provision or practice which, while disproportionately disadvantaging members of a particular group, nevertheless pursues a legitimate aim.”

2. In view of our comments above, we respectfully submit for the legislators to carefully review the proposed prohibited acts so as to ensure that the application of criminal penalties would not be disproportionate and unjustified.
3. Denial of right to work, under Section 5 (e, no. 1), penalizes the act of refusal or failing to employ a person which is qualified, or imposes a more onerous terms and condition, on the basis of the existence of any protected attribute. Under the text of this provision, an employer can face criminal liability for choosing one applicant over another even without any evidence of outright discrimination, apart from not choosing the person belonging

to a minority. The discrimination should be based solely on the existence of one, or a combination of any of the protected attributes.

Given that the proposed law is largely penal in character, we respectfully submit that the proposed offense should be better defined to ensure that discrimination is based solely for the existence of any or a combination of prohibited grounds. The recommended amended wording for this provision is as follows:

Sec. 5 (e) (1) refuse or fail to employ a person for work, of any type or kind, which is available, and for which the person is qualified, or impose on the person onerous terms and conditions, on the basis *solely of the existence* of the protected attributes under Section 4 of this Act.

4. Abuses by the government and private persons, under Sec 5 (j) should also include harassment verbally or physically to curtail freedom of movement, *association, or assembly*, or to extort from a person or a group of persons on the basis of the grounds stipulated in Section 4.

Exceptions

1. The Commission is of the view that where a genuine distinction is necessary, exceptions must be provided. To quote the UN Human Rights Committee, which is the group of experts tasked to interpret the provisions of the International Covenant on Civil and Political Rights, “not every differentiation of treatment will constitute discrimination, if the criteria for such differentiation are reasonable and objective and if the aim is to achieve a purpose which is legitimate under the Covenant.”³⁴ Indeed, a difference of treatment may be considered as having an objective or reasonable justification if it is for a legitimate purpose compatible with the human rights obligations of the State.
2. For example, a Muslim woman wearing a Niqab or a Burqa must still be allowed entry to and do business in banks or other private establishments despite the no-masks policies in these establishments. However, as a matter of policy, the establishment may impose an additional security requirement before allowing entry, while still ensuring that the dignity of the person involved is still respected. In this case, the client may remove her veil in a private room and show her ID in the presence of a female employee. This differentiation in treatment is reasonable, has a legitimate objective and proportionate requirement, and does not constitute discriminatory treatment.
3. In view of this, the Commission respectfully recommends a thorough discussion on cases where a difference of treatment based on a protected attribute, whether preferential or otherwise, is not unlawful. If needed, a provision on exceptional circumstances and the standards for allowing

³⁴ UN Human Rights Committee, CCPR General Comment No. 18: Non-discrimination, available at <https://www.refworld.org/docid/453883fa8.html> (last accessed Feb. 20, 2020).

exceptions may be provided while ensuring that these exceptions are not too broad to the point of nullifying the very purpose of the law. One reference which can be used for this purpose is the “**substantial differentiation**” doctrine applied to constitutional questions of equal protection of the law where the classification, to be **reasonable, must conform to the following requirements: based upon substantial distinctions; germane to the purposes of the law; limited to existing conditions only; and apply equally to all members of the class.**

Penalties

1. To be consistent with the other laws prohibiting discrimination, such as Sec. 49 of R.A. 11166 or the “Philippine HIV and AIDS Policy Act,” the Commission proposes a similar penalty of imprisonment of six (6) months to five (5) years, and/or a fine of not less than Fifty thousand pesos (P50,000.00), but not more than Five Hundred Thousand (P500,000.00), at the discretion of the court, and without prejudice to the imposition of administrative sanctions such as fines, suspension or revocation of business permit, business license or accreditation, and other professional license.

However, imposition of penalty in its maximum period for offenses qualified under Sec. 8 is acceptable.

2. Remittance of fines collected by the Court to the Commission is a welcome provision given that we put a premium to the compensation of victims as part of their right to reparation and relief.

Redress Mechanism for Discrimination Cases

1. While the Commission notes the additional duties of the Philippine National Police (PNP) Women and Children’s Desks, under Section 9 (a) it seems imperative to capacitate the men and women tasked to attend to the complaints / cases covered by this Act. The Commission, together with concerned civil society organizations should be mandated to provide sufficient time and resources to conduct training on human rights particularly on the issues of equality and non-discrimination.
2. Prior to the application of this provision, it highly recommended that positive reinforcements are in place including ensuring that the police authorities are trained and capacitated to address cases of discrimination and are sensitized on the issues of discrimination against the protected attributes.
3. At the same time the key agencies of government should also be laying the foundation to ensure there is proper understanding of acts that directly or indirectly discriminate. They should adopt special measures to suppress conditions that perpetuate discrimination. Such measures are legitimate to the extent that they represent reasonable, objective, and proportional means to redress de facto discrimination. Such positive measures may exceptionally need to be of a permanent nature, such as interpretation

services for the linguistic minorities and reasonable accommodation of persons with sensory impairments in accessing health-care facilities.

4. The creation of an Inter-Agency Technical Committee, led by the Commission alongside key government agencies, tasked to act as an advisory and recommendatory body on establishing developmental programs that will promote non-discrimination and management of diversity, is a welcome provision, especially since it involves consultations with civil society organizations with proven expertise on the different protected attributes. This Inter-Agency Technical Committee must lead in advising the relevant authorities of the needed positive measures to address both direct and indirect discrimination.
5. It must be noted however, that aside from making relevant consultations with the Inter-Agency Technical Committee, there should be express elaboration of general duties of relevant national government agencies in a separate section of the law, e.g., the promulgation of necessary rules and regulations by the Department of Education, Commission on Higher Education, and Technical Education and Skills Development Authority, Department of Labor and Employment, Department of Health, Department of Trade and Industry, Department of the Interior and Local Government, and Department of Transportation, among others.
6. We also respectfully recommend the express elaboration of the duty of the Bangsamoro Government to establish its institutional mechanism to protect and promote the right of all persons against discrimination on the basis of the protected attributes. While the CHR, as a national institution, has the power to operate within the whole country, in practice, it has operated in the (formerly) Autonomous Region in Muslim Mindanao with due regard to its relative autonomy as a region. At present, the CHR does not run an office inside the Bangsamoro Autonomous Region in Muslim Mindanao but it has maintained a harmonious working relationship with its counterpart – the Bangsamoro Human Rights Commission (BHRC). The bill should be able to specify the duties and functions of the latter, in coordination with the Commission, in ensuring parallel work is being done to institute positive measures to address discrimination within the region.

Programs to Promote Non-Discrimination, Equality and Diversity

1. The Commission notes with appreciation the establishment of programs that will address all forms of discrimination against all the protected attributes. It is noteworthy however that these programs should be encapsulated in a national action plan, complete with a designated timelines when to progressively eliminate discrimination.
2. Economic policies, such as budgetary allocations and measures to stimulate economic growth are crucial elements to effectively implement positive measures to attain progressive equality across all citizens and communities. The establishment of an incentive and award schemes to encourage public

and private establishments to provide programs that promote non-discrimination is a welcome initiative.

Public and private institutions should be required to develop plans of action to address non-discrimination and the State should conduct human rights education and training programs for public officials and make such training available to judges and candidates for judicial appointments. Teaching on the principles of equality and non-discrimination should be integrated in formal and non-formal inclusive and multicultural education, with a view to dismantling notions of superiority or inferiority based on prohibited grounds and to promote dialogue and tolerance between different groups in society. Adoption of appropriate preventive measures to avoid the emergence of new marginalized groups is also necessary.

Enforcement

1. The Commission also notes with appreciation the author, Sen. Imee Marcos, for granting necessary clarification on the powers that the Commission may exercise pursuant to its mandates, under the Constitution and the laws. The affirms that it can investigate *motu proprio* or upon complaint any acts that would constitute discrimination as defined in this bill.
2. The legal and preventive measures, as well as provisional remedies provided in Section 11 for the Commission to exercise are necessary not just in the investigation of cases of discrimination but in all cases of human rights violations.
3. The power to direct the officer concerned to take appropriate action against a public office or employee at fault or who neglected to perform an act or discharge a duty under this Act, is also a welcome initiative granted by Congress, as the Commission is expected to perform such other duties and functions as may be provided by law.³⁵
4. We note however, with reservation the grant of exclusive jurisdiction over the conduct of investigations on the basis of complaints filed by indigenous cultural communities or indigenous persons (ICC/IPs) to the National Commission on Indigenous Peoples (NCIP). The Commission should be able to exercise its powers of investigation over violations of human rights, especially against those belonging to the marginalized or vulnerable groups, including the ICC/IPs. Thus, we recommend concurrent jurisdiction with NCIP, taking into consideration the independence of the Commission in the conduct of its powers.
5. The additional duty to CHR to recommend to the Civil Service Commission (CSC) or to the Department of Interior and Local Government (DILG) the imposition of sanctions under appropriate laws is also a welcome initiative and the Commission accepts such duty if only to ensure the implementation of its recommendations.

³⁵ 1987 Constitution Article XIII Sec. 18, par. 11

6. Likewise, the Commission welcomes and accepts the duty to impose fines in only to ensure that the same be allocated to victims of discrimination, as part of their right to compensation and reparation.
7. Finally, the CHR, fully committed to ensuring the respect, protection, and fulfillment of the human rights of all persons, including the right to equality and against discrimination, expresses its full support to the enactment of a comprehensive anti-discrimination law that will give “flesh and teeth” to the constitutional guarantee of equality and non-discrimination.

In conclusion, we support the passage of a proposed bill that would ensure the protection of the disadvantaged, vulnerable, and marginalized sectors of society from discrimination.

ISSUED this 6th day of September 2024, Quezon City, Philippines.



RICHARD P. PALPAL-LATOC
Chairperson



BEDA A. EPRES
Commissioner



FAYDAH M. DUMARPA
Commissioner



Justice MONINA A. ZENAROSA (ret.)
Commissioner