

COMMISSION ON HUMAN RIGHTS
REPUBLIC OF THE PHILIPPINES

**POSITION PAPER ON THE DIVORCE BILLS FILED IN THE 19TH
CONGRESS (HOUSE BILL NOS. 78, 2593, 3843, 3885 AND SENATE
BILL NOS. 147, 213, 237)**

The Commission on Human Rights (“Commission” for brevity) as the country’s National Human Rights Institution (NHRI) and the Philippine’s Gender Ombud, and pursuant to its Constitutional mandate to recommend to Congress effective measures to promote human rights,¹ submits this ~~position paper~~ **supporting the reinstitutionalization² of divorce in the Philippines** as filed in House Bill Nos. 78³, 2593⁴, 3843⁵, 3885⁶ and Senate Bill Nos. 147⁷, 213⁸, 237⁹.

Legal Framework

The Universal Declaration of Human Rights recognizes that “men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.”¹⁰

¹ PHIL. CONSTI. art. XIII, § 18 (6).

² Divorce was practiced by pre-colonial Filipinos before it was prohibited during the Spanish occupation. During the American occupation, Act No. 2710 was passed. It allowed absolute divorce upon conviction of adultery or concubinage. During the Japanese occupation, the Philippine Executive Commission issued Executive Order No. 141 which repealed Act No. 2710 and provided more grounds for divorce. One of the notable grounds is “Slander by deed or gross insult by one spouse against the other to such an extent as to make further living together impracticable”. The divorce law introduced during the American occupation was revived after the Philippines was liberated from Japan. This version of the divorce law would be in force until divorce was prohibited by the 1950 Civil Code of the Philippines.

De Borja, Frederick M, *Divorce in the Philippines: A Legal History*, available from <https://www.hg.org/legal-articles/divorce-in-the-philippines-a-legal-history-45701>.

³ House Bill No. 78 (An Act Reinstating Absolute Divorce as an Alternative Mode for the Discussion of Marriage) introduced by Representatives Edcel C. Lagman and Juliet Marie de Leon Ferrer.

⁴ House Bill No. 2593 (An Act Reinstating Absolute Divorce as an Alternative Mode for Dissolution of Marriage) introduced by Representative Ronald V. Singson.

⁵ House Bill No. 3843 (An Act Reintroducing Divorce in the Philippines) introduced by Representatives Arlene D. Brosas, France L. Castro, and Raoul Danniell A. Manuel.

⁶ House Bill No. 3885 (An Act Amending Certain Provisions of Executive Order 209 as Amended, in Order to Define and Introduce Divorce and For Other Purposes) introduced by Representatives Edvic G. Yap, Jocelyn P. Tulfo, and Jeffrey Soriano.

⁷ Senate Bill No. 147 (An Act Expanding the Grounds for Dissolution of Marriage, Instituting Divorce and Setting the Procedures Thereof, Providing Protections to the Parties to the Marriage and its Common Children, Amending For this Purpose Executive Order No. 209, or the Family Code of the Philippines) introduced by Senator Risa Hontiveros.

⁸ Senate Bill No. 213 (An Act Amending Certain Provisions of Executive Order 209 as Amended, in Order to Define and Introduce Divorce and For Other Purposes) introduced by Senator Raffy T. Tulfo.

⁹ Senate Bill No. 237 (An Act Providing For the Dissolution of Marriage) introduced by Senator Robinhood Padilla.

¹⁰ Universal Declaration of Human Rights, art. 16, (Dec. 10, 1948).

The International Covenant on Civil and Political Rights (ICCPR), to which the Philippines is a signatory, provides that “States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children.”¹¹

This is further reiterated by the Convention on the Elimination of Discrimination Against Women (CEDAW).¹² It condemns all forms of discrimination against women, including matters related to marriage and family relations. In particular, CEDAW emphasizes the equal right of women and men to choose a spouse and to enter into marriage; the equal rights and responsibilities during marriage and its dissolution, including matters related to the spouse’s occupation and ownership, management or disposition of property; and the equal right of both spouses on matters related to child rearing.

The above legal instruments emphasize the equality of spouses before, *during*, and *after* marriage (emphasis is ours). Despite this, the legal remedies in the Philippines available to either spouses, have limitations and requirements which exposes the vulnerable spouse to greater disadvantage and risk of abuse by staying in the marriage. This limitation on available remedies for the vulnerable spouse to step out of the abusive marriage depicts inequality, especially against the vulnerable spouse, which violates the commitment of State Parties to the ICCPR and the CEDAW to ensure equality of spouses before, during and after marriage.

The 1987 Constitution has a specific section dedicated to the preservation of the family, which has its foundation in the free choice of spouses to unite themselves in marriage. Under the Executive Order No. 209, (otherwise known as The Family Code of the Philippines), marriage is defined as “a special contract of permanent union between a man and a woman, entered into in accordance with law, for the establishment of conjugal and family life.” Although treated as a “special contract” that is governed by law, through the Family Code, there is no prohibition to institute divorce as a means of dissolving marriage, whenever necessary, following specific guidelines provided for by law.

The Constitution affirmed the importance of family relations by stating as a policy that the Filipino family is the foundation of the nation¹³ and that the State shall strengthen its solidarity and actively promote its total development.¹⁴

Evidently, while the Constitution explicitly requires strengthening the foundation of Filipino families, it does not explicitly provide for an absolute

¹¹ International Covenant on Civil and Political Rights, art. 23, (Dec. 16, 1966).

¹² Convention on the Elimination of Discrimination Against Women, art. 16, (Dec. 18, 1979).

“States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women: (a) The same right to enter into marriage; (b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent; (c) The same rights and responsibilities during marriage and at its dissolution; (d) The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount;...”

¹³ PHIL. CONSTI. art. XV, § 1.

¹⁴ PHIL. CONSTI. art. XV, § 2.

prohibition on divorce, and the specific ways of protecting or ending marriage, still lies within the powers and control of the legislature.

In the case of *Antonio vs Reyes*, G.R. No. 1558, the Supreme Court stated that "... the Constitution itself does not establish the parameters of state protection to marriage as a social institution and the foundation of the family. It remains the province of the legislature to define all legal aspects of marriage and prescribe the strategy and the modalities to protect it."¹⁵ The Family Code was enacted to provide for the definition of marriage, its limits, legal consequences and the alternative modes of its dissolution.

On another note, the State ratified the Magna Carta of Women on August 14, 2009, which affirms the rights of women and the mandate to take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and shall ensure the same rights to enter into and leave marriages or common law relationships, referred to under the Family Code, without prejudice to personal or religious beliefs.¹⁶

Dissolution of Marriage

The Family Code provides several legal remedies to dysfunctional marriages of couples, depending on the grounds and conditions before, and during the marriage, to wit: declaration of nullity of marriage, annulment of marriage, and legal separation.

The declaration of nullity of marriage dissolves marriages that are already null and void from the beginning based on the following grounds: absence or lack of legal requisites,¹⁷ psychological incapacity at the time of the marriage,¹⁸ incestuous marriage,¹⁹ marriage against public policy,²⁰ bigamous marriage,²¹ and being a void subsequent marriage.²²

On the other hand, an annulment of marriage considers the marriage valid and existing until it is annulled. A marriage may be annulled if there is a lack of parental consent before marriage, and when one spouse found out the existence of the following, during or at the time of marriage: insanity, fraud, duress, impotence, and serious and incurable sexually transmissible disease.²³

Legal separation does not actually dissolve the marriage but entitles the married couple to live separately, subject to the following grounds: repeated physical violence or grossly abusive conduct; physical violence or moral pressure to compel the petitioner to change religious or political affiliation; attempt of

¹⁵ ANTONIO V. REYES, G.R. No. 155800 (2006).

¹⁶ An Act Providing For The Magna Carta Of Women, Republic Act No. 9710, § 19 (2009).

¹⁷ The Family Code of the Philippines, Executive Order No. 209, art. 35 (1987).

¹⁸ *Id.* art. 36.

¹⁹ *Id.* art. 37.

²⁰ *Id.* art. 38.

²¹ *Id.* art. 41.

²² *Id.* art. 52.

²³ *Id.* art. 45.

respondent to corrupt or induce the petitioner, a common child, or a child of the petitioner; final judgment sentencing the respondent to imprisonment of more than six years; drug addiction or habitual alcoholism; lesbianism or homosexuality of the respondent; contracting by the respondent of a subsequent bigamous marriage; sexual infidelity or perversion; attempt by the respondent against the life of the petitioner; and abandonment without justifiable cause.²⁴

Each of the available legal remedies to marriage has its own limitations. The declaration of nullity of marriage has very limited grounds and requires an exorbitant amount of resources and time to declare the marriage to be void from the onset.

Meanwhile, legal separation does not completely dissolve the marriage, thus, preventing the parties involved from remarrying. Further, some grounds would require that the petitioner or their child be first exposed to possible human rights violations *before* there can be a valid ground for legal separation.²⁵ In addition, the first ground for legal separation, which is “repeated” physical violence and “grossly” abusive conduct, unnecessarily exposes the petitioner and their children to even greater risk of abuse that may lead to irreparable harm on the part of abused spouse and the abused child, or even death, if further abuse is not prevented.

An annulment, while having the desired effect of dissolving a valid marriage, requires a strict, tedious, lengthy, and expensive process which requires the grounds to be existing at the time of the marriage.

Comments and Recommendations

Taking all these into consideration, the Commission supports the enactment of a Divorce Law that would recognize and protect the equal rights of women and men during and after the dissolution of marriage. The Commission is of the belief that the enactment of a Divorce Law would protect the rights of women, even men, who are currently trapped in dysfunctional and abusive relationships. Divorce Law would do away with the drawbacks of legal separation and annulment, and allow the parties to move on with their lives.

The Commission, therefore, recommends the filing of a consolidated substitute bill in both Houses using House Bill No. 78 filed by Rep. Edcel C. Lagman and Rep. Juliet Marie de Leon Ferrer as the basis, subject to the following comments and recommendations:

1. Removal of “grossly” as a qualifier for “abusive conduct” as a ground for divorce under Section 5(a)(1) of House Bill No. 78 and House Bill No. 2953.

²⁴ *Id.* art. 55.

²⁵ Repeated physical violence or grossly abusive conduct; physical violence or moral pressure to compel the petitioner to change religious or political affiliation; attempt of respondent to corrupt or induce the petitioner, a common child, or a child of the petitioner, to engage in prostitution, or connivance in such corruption or inducement; and attempt by the respondent against the life of the petitioner.

Generally speaking, women and children are already disadvantaged in the family. Requiring for the ground of annulment to be “grossly” abusive exposes the petitioner and their children to greater risk of being a victim of abuse. It also provides an additional burden of establishing that there was, in fact, a “grossly” abusive conduct. Abusive conduct, regardless of severity, should be sufficient enough as a ground for divorce.

2. Removal of “moral” as a qualifier for “pressure to compel the petitioner to change religious or political affiliation” under Section 5(a)(2) of House Bill No. 78 and House Bill No. 2953.

The ICCPR recognizes everyone’s right to freedom of association²⁶, and freedom of thought and religion. The equal right of both spouses to these freedoms should be protected even during marriage. The ICCPR expressly states that “No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice”.²⁷ Therefore, mere “pressure to compel the petitioner to change religious or political affiliation” in itself, sufficient as a ground for divorce. This is part of the duty of the State to protect its citizens against third parties who directly violate the individual rights accorded to its citizens.

3. The Commission supports the proposal of Section 5(b)(6)(f) of House Bill No. 78 and House Bill No. 2953 which includes “irreconcilable marital differences” as a ground for divorce. It is defined in the bill as “the substantial incompatibility of the spouses due to their intransigence or fault by holding on to divergent and divisive behavior resulting in the total breakdown of their marriage which could not be repaired despite earnest efforts to reconcile.”

Having “irreconcilable marital difference” as a ground for divorce will prevent married couples from hurling insults and accusations to one another that will allow them to instigate either an action for annulment or nullity of marriage. The spouses would not have to resort to proving insanity, psychological incapacity, or resort to any other accusation which would hurt the relationship more than ever and expose the children to unwanted physical or psychological harm. It will decrease the likelihood of raising a child in a toxic and dysfunctional family that may result in the development of behaviors prejudicial to the life of the child.

²⁶ International Covenant on Civil and Political Rights, art. 22, (Dec. 16, 1966).

²⁷ International Covenant on Civil and Political Rights, art. 18, (Dec. 16, 1966).

The Commission reiterates its commitment to ensuring the primacy of all human rights on the basis of equality and nondiscrimination, in particular for those who are vulnerable, marginalized and disadvantaged. While the Commission recognizes the inviolable importance of the family in the Filipino society, the Commission is calling on all legislators to be open to balancing the Filipino values with the realities and challenges faced by a number of families living in unhealthy relationships, detrimental to the health and wellbeing of its members.

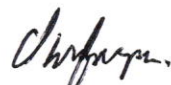
ISSUED this 13th day of February 2023, Quezon City, Philippines.



RICHARD H. PALPAL-LATOC
Chairperson



BEDA A. EPRES
Commissioner



FAYDAH M. DUMARPA
Commissioner