POSITION PAPER ON THE PROPOSED AMENDMENT OF THE COMPREHENSIVE TUBERCULOSIS ELIMINATION PLAN ACT

The Commission on Human Rights (hereinafter the 'Commission'), as the country's national human rights institution and mandated by the 1987 Constitution to protect and promote human rights, submits this Position Paper on the draft substitute bill for House Bill No. 8615, entitled "AN ACT STRENGTHENING THE FIGHT TO END TUBERCULOSIS, AMENDING FOR THE PURPOSE REPUBLIC ACT NO. 10767 OR THE 'COMPREHENSIVE TUBERCULOSIS ELIMINATION PLAN ACT'" authored by Representative Angelina D.L. Tan.[1]

The Commission is gravely concerned that tuberculosis (TB), in all its forms, poses a serious threat to the right to health and the right to life of many Filipinos,[2] and thus, supports any positive governmental action that seeks to lessen the TB burden in the country, provided it is grounded on human rights standards and principles. The Commission recognizes that the proposed amendments to Republic Act No. 10767[3] are sought for this same reason and pose no threat to the enjoyment of human rights of the concerned persons, except for some provisions which may need to be revised to ensure they uphold and are framed in accordance with human rights standards and principles. As such, the Commission submits the following comments and recommendations on each of the proposed amendments in the draft substitute bill for consideration in this paper:

1. On the proposal to amend Sections 8[4], 9[5], and 10[6] of RA 10767

The Commission supports the proposed amendment to relegate the primary responsibility of encouraging higher education institutions to intensify information and education programs on TB (Section 8), inclusion of modules on TB in the public and private elementary and secondary school (Section 9), and encouraging local media outlets to launch media campaigns on eliminating TB (Section 10), from the Department of Health (DOH) to the Commission on Higher Education (CHED), the Department of Education (DepEd), and the Philippine Information Agency (PIA), respectively. The proposal, in allocating these functions

[1] An Act Strengthening the Fight to End Tuberculosis (TB), Amending for the Purpose Republic Act No. 10767 or the "Comprehensive Tuberculosis Elimination Act", Unnumbered substitute bill to H.B. No. 8512, 17th Cong., 3d Reg. Sess., (2019).

[2] Tuberculosis sits at the seventh spot among the top ten leading causes of mortality of Filipinos. Epidemiology Bureau Department of Health, The 2015 Philippine Health Statistics (Report from the Department of Health) at 91, *available at* https://www.doh.gov.ph/sites/default/files/publications/2015PHS.pdf (last accessed Mar. 5, 2019).

[3] RA 10767 was enacted in 2016 to support and expand efforts to eliminate tuberculosis as a public health problem in the country. An Act Establishing a Comprehensive Philippine Plan of Action to Eliminate Tuberculosis as a Public Health Problem and Appropriating Funds Therefor [COMPREHENSIVE TUBERCULOSIS ELIMINATION PLAN ACT], Republic Act No. 10767 (2016).

[4] "**Section 8. *Education Programs.*** – The [~~Secretary of Health, in coordination with the~~] CHAIRPERSON OF THE Commission on Higher Education (CHED), IN COORDINATION WITH THE SECRETARY OF THE DEPARTMENT OF HEALTH (DOH), shall encourage the faculty of schools of medicine, nursing or medical technology and allied health institutions, to intensify information and education programs, including the development of curricula, to significantly increase the opportunities for students and for practicing providers to learn the principles and practices of preventing, detecting, managing, and controlling tuberculosis."

[5] "**Section 9. *Inclusion in Basic Education.*** – The Secretary of THE DEPARTMENT OF EDUCATION (DEPED) [~~Health~~], in coordination with the Secretary of the DOH [~~Department of Education (DepEd)~~], shall work for the inclusion of modules on the principles and practices of preventing, detecting, managing and controlling tuberculosis in the health curriculum of every public and private elementary and high school."

[6] "**Section 10. *Media Campaign.*** – The DIRECTOR-GENERAL [~~Secretary of Health~~] OF THE PHILIPPINE INFORMATION AGENCY (PIA), in coordination with the SECRETARY OF THE DOH [~~Philippine Information Agency (PIA)~~], shall encourage local media outlets to launch a media campaign on tuberculosis control, treatment and management, using all forms of multimedia and other electronic means of communication. ..."

to the proper agencies which specialize in education and advocacy work, reinforces the need for stronger collaborative efforts among government agencies to implement a common goal of protecting the people from a life-threatening disease – emphasizing that the right to health is closely related to and dependent upon the realization of other human rights including the right to access to information.[7]

2. On the proposed inclusion of a section creating a TB Notification Committee[8]

The Commission supports the strengthening of case detection, management and notification of cases of TB by mandating all private and public health centers, hospitals, and facilities to create a TB Notification Committee within their institutions to ensure compliance to the mandatory notification of TB compliance as mandated in RA 10767 and to address the low notification of TB cases managed by private providers.[9]

As an additional measure to attain a 100% compliance with the mandatory notification, especially with that of the private sector, a user-friendly method[10] that utilizes information and communication technologies may be included in the law or in the implementing rules and regulations (IRR).

3. On the proposed inclusion of a section defining the rights of TB patients[11]

The Commission strongly supports the inclusion of a section defining the rights of TB patients to ensure their better protection and to empower them to demand their entitlements due from the duty-bearers.

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[7] UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12 of the Covenant) at ¶ 3, *available at* http://www.refworld.org/docid/4538838do.html (last accessed Mar. 5, 2019).

[8] "**Section 14. *TB Notification Committee.*** – Adult and childhood TB shall be considered as a notifiable disease in all levels of the health care system. Any hospital or clinic which diagnosed a patient with TB shall report the same to the DOH. The DOH shall provide the form and manner of reporting of TB cases.

To ensure that compliance to the mandatory notification of TB cases is observed and enforced, a TB notification committee shall be organized in all public and private health centers, hospitals and facilities, which shall be composed of members as may be determined by the Secretary of Health.

TB notification committees shall submit regular TB notification compliance reports to their respective DOH Regional Coordinating Committees, which shall make a consolidated TB notification compliance reports to the DOH National Coordinating Committee."

[9] Department of Health, National Tuberculosis Prevalence Survey 2016 Philippines (Report from the Department of Health) at 4, *available at* http://www.ntp.doh.gov.ph/downloads/publications/Philippines_2016%20National%20TB%20Prevalence%20Survey_March2018.pdf (last accessed Mar. 5, 2019). [hereinafter DOH Prevalence Survey].

[10] One of the short-term recommendations in the National Tuberculosis Prevalence Survey 2016 relating to the low notification of TB cases managed by private providers is as follows: "Low notification of TB cases managed by private providers must be addressed by the development of user-friendly methods for reporting to the TB registry, considering the creation of social contracts for up-scaling case detection and care services, and exploring approaches to overcoming barriers such as stigma and lack of confidence in the public sector. Engage professional medical and paramedical societies to ensure effective implementation of the provision on mandatory notification of TB cases, as stated in Republic Act No. 10767." *Id.* at 4.

[11] "**Section 17. *TB Patients' Rights and Responsibilities.*** – a. Persons with TB shall have the following rights:

(1) The right to be treated humanely or the right to a humane treatment and respect for the inherent dignity of the human person in the delivery of services without stigma, prejudice or discrimination;
(2) The right to free and equitable access to TB care from diagnosis to completion of treatment;
(3) The right to receive medical advice and treatment that meets international standards for TB care, centering on patient needs, including those of patients with XDR-TB, MDR-TB or TB-HIV coinfection, and preventive treatment for young children and others considered to be at high risk;
(4) The right to benefit from proactive health sector community outreach, education and prevention campaigns as part of comprehensive health-care programs;
(5) The right to information about the availability of health-care services for TB and the responsibilities, engagements, and direct or indirect costs involved;
(6) The right to confidentiality relating to the medical condition without prejudice to the responsibility of health care providers to notify TB cases as provided under Section 12 of R.A. 10767;
(7) The right to participate as stakeholders in the development, implementation, monitoring and evaluation of TB policies and programs with local, national and international health authorities;
(8) The right to job security after diagnosis or appropriate rehabilitation and upon completion of treatment;
(9) The right to nutritional security or food supplements if needed to meet treatment requirements; and
(10) The right to exercise all civil, political, economic, social and cultural rights respecting individual qualities, abilities, and diverse backgrounds and without any discrimination on grounds of physical disability, age, gender, sexual orientation, race, color, language, civil status, religion or national or ethnic or social origin of the TB patient concerned as recognized in the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights. ..."

While it is a concern that providing a list in a piece of legislation could be construed as limiting the list to what is explicitly provided, the Commission notes that this particular proposal provides a "catch-all" provision to ensure all other human rights defined in international human rights treaties to which the Philippines is a State Party shall be deemed included in the proposed list of rights of a TB patient. To better illustrate this intent, the Commission recommends the amendment of Section a.11. by including the International Covenant on Civil and Political Rights ICCPR) and all other core international human rights instruments as among the sources of these rights. Thus, we recommend that the Section be amended as follows:

> "The right to exercise all civil, political, economic, social and cultural rights respecting individual qualities, abilities, and diverse backgrounds and without any discrimination on grounds of physical disability, age, gender, sexual orientation, race, color, language, civil status, religion or national or ethnic or social origin of the TB patient concerned as recognized in the Universal Declaration of Human Rights, THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS, ~~and~~ the International Covenant on Economic, Social and Cultural Rights, AND OTHER INTERNATIONAL HUMAN RIGHTS TREATIES TO WHICH THE PHILIPPINES IS A STATE PARTY."

4. On the proposed inclusion of a section defining the responsibilities of TB patients[12]

The Commission supports the inclusion of a section defining the responsibilities of TB patients. However, we submit that the law should also define the consequences if a person refuses or fails to deliver on his/her responsibilities as a TB patient. These consequences should not result in causing further harm against the person.

5. On the proposed inclusion of a section on convergences of TB services[13]

The Commission supports the inclusion of a section mandating the Department of Social Welfare and Development (DSWD) to cover all indirect costs borne out of accessing TB treatment. In addition to transportation and accommodation costs, the Commission recommends the inclusion of income lost for days dedicated for treatment among the indirect costs which the DSWD shall cover. Because one of the sectors vulnerable to being afflicted with TB is persons living in poverty, the

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[12] "**Section 17.** ***TB Patients' Rights and Responsibilities.*** – ... b. Persons with TB shall have the following responsibilities:
(1) To provide as much information as possible to health-care providers about present health, past illnesses, and other relevant details;
(2) To provide information to health-care providers about contacts with immediate family, friends and others who may be vulnerable to TB or who may have been infected;
(3) To follow the prescribed and agreed treatment regimen and to conscientiously comply with the instructions given to protect the patient's health and that of others;
(4) To inform healthcare providers of any difficulties or problems in following treatment, or if any part of the treatment is not clearly understood;
(5) To contribute to community well-being by encouraging others to seek medical advice if they exhibit symptoms of TB;
(6) To show consideration for the rights of other patients and healthcare providers, understanding that this is the dignified basis and respectful foundation of the TB community;
(7) To show moral responsibility and solidarity with other patients marching together towards cure;
(8) To share information and knowledge gained during treatment and to share this expertise with others in the community, making empowerment contagious; and
(9) To join in efforts to make the community free of TB."

[13] "**Section 19.** ***Convergence of TB Services.*** – The Department of Social Welfare and Development (DSWD) shall cover all indirect costs borne out of accessing TB treatment including transportation, accommodation or halfway house and meals among others.

TB patients and survivors shall not be deprived of any employment, livelihood, micro-finance, self-help, and cooperative programs by reason as a result of the TB ailment. The DSWD, in coordination with the Department of Labor and Employment (DOLE), Department of Interior and Local Government (DILG), and Technical Education and Skills Authority (TESDA), shall develop enabling policies and guidelines to ensure economic empowerment and independence designed for marginalized TB victims.

The Department of Education (DepEd), the Commission on Higher Education (CHED), TESDA, DOLE, DILG and other appropriate government agencies shall develop a comprehensive program of support services for TB victims and their affected children and families."

loss of income may be a strong counterincentive to prevent them from accessing and completing treatment.

On the second paragraph of the proposed Section 19 which provides that "TB patients and survivors shall not be deprived of any employment, livelihood, micro-finance, self-help, and cooperative programs by reason as a result of the TB ailment," it is not clear if this intends to amend or at least qualify Article 284 of Presidential Decree No. 442, series of 1974 or the Labor Code of the Philippines which provides that disease is an authorized cause for termination of employment.[14] The Commission recommends that this be clarified in the bill.

6. **On the proposed inclusion of a section making TB-Directly Observed Treatment Short Course (TB-DOTS) as a condition for retention in the Conditional Cash Transfer Program[15]**

The Commission supports the inclusion of a provision making TB-DOTS a condition for retention in the Conditional Cash Transfer Program, noting the relatively high non-adherence rate,[16] and provided the person availing of this treatment should not be financially burdened in any way. As provided in the proposed section on convergences of TB services, incidental costs – transportation, meals, accommodation, and lost income – should be covered by the Government. Furthermore, special consideration should be given to persons living in geographically isolated and disadvantaged areas (GIDAS) as it may be logistically difficult for the DOH to establish TB-DOTS centers in these areas, and that they may require more assistance in addition to the reimbursement of incidental costs of accessing TB-DOTS centers.

Addressing low treatment adherence may involve innovative behavior change techniques which are tailor-fit to the circumstances of different risk groups and stakeholders.[17] While the "disincentivizing" approach involving the Conditional Cash Transfer Program may prove effective among the beneficiaries of this Program, it will certainly not affect those who do not benefit from it. Thus, it is recommended that the DOH explore other ways to address the issue on non-adherence to treatment which are designed for other groups or sectors at risk.

7. **On the proposal to require the mandatory TB screening of high-risk populations[18]**

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[14] A Decree Instituting a Labor Code, Thereby Revising and Consolidating Labor and Social Laws to Afford Protection to Labor, Promote Employment and Human Resources Development and Ensure Industrial Peace Based on Social Justice, Presidential Decree No. 442, series of 1974, art. 284 (1974).

[15] "**Section 22.** ***TB-Directly Observed Treatment, Short-Course (TB-DOTS) As Condition for Retention in the Conditional Cash Transfer Program.*** – Beneficiaries of the conditional cash transfer program of the government who are diagnosed with TB, including drug-susceptible and drug-resistant TB shall be required to undergo TB-Directly Observed Treatment Short-Course (TB-DOTS) as one of the essential conditions for retention in the program."

[16] In a survey cited in the National Tuberculosis Prevalence Survey 2016, it is reported that 17.2% or 162 out of 942 given anti-TB medicines who stopped taking their anti-TB medicines. DOH Prevalence Survey, *supra* note 9 at 100.

[17] *Id.* at 119.

[18] "**Section 23.** ***Mandatory Screening for High-Risk Population.*** – As a policy, TB screening shall be required for high-risk population, which may include the following persons:

(a) Those who are in close contacts with persons known or suspected to have TB;
(b) Those infected with Human Immunodeficiency Virus (HIV) and Acquired Immune Deficiency Syndrome (AIDS);
(c) Those who are smokers of cigarettes and illegal drugs;
(d) Those who inject illicit drugs or users of other locally identified high-risk substance;
(e) Those who have medical risk factors, such as diabetes and other comparable diseases, known to increase the risk for disease when infection occurs;
(f) Residents and employees of high-risk congregate settings;
(g) Healthcare workers who serve high-risk clients;
(h) Infants, children, and adolescents exposed to adults in high-risk categories;
(i) Such others as may be identified by the Secretary of Health.

The DOH shall ensure access to routine TB screening test as part of clinical and medical care in all health care settings and facilities. The routine TB screening test shall form part of the normal standard of care offered irrespective of whether or not the patient has signs and symptoms of underlying TB infection or has other reasons for presenting to the facility."

The Commission observes that the proposed section on mandatory TB screening for high-risk populations needs further clarification as to whether the requirement for TB screening is a requisite for the provider or for the subject of the screening, i.e., is the provision requiring the DOH and all health care providers to screen the enumerated high-risk populations but the individual subject may refuse to be screened? Is it requiring individuals in these high-risk populations to undergo screening, without a chance to opt out or not participate? Or does the mandatory character of the proposed section apply to both? With this, the Commission does not support the inclusion of this section as it is too vague and ambiguous.

In addition, any of these interpretations could lead to a scenario of indiscriminate mass screening. Indiscriminate mass screening, according to the World Health Organization's (WHO) resource on systematic screening for active tuberculosis, "should be avoided; and screening in selected risk groups requires careful consideration of the potential benefits and risks of harm, including side effects and other harms for the individual from false diagnosis as well as the inappropriate use of health-care resources."[19]

Furthermore, the proposal is contrary to the guarantees of confidentiality and privacy under Republic Act No. (RA) 11166 or the "Philippine HIV and AIDS Policy Act"[20] insofar as it lists those infected with HIV/AIDS as a high-risk population to be subjected in the mandatory screening. While Section 45(a) of RA 11166 provides an exception to the confidentiality and privacy guarantee with respect to the national active and passive surveillance system of the DOH, this same provision still requires that "the information related to a person's identity shall remain confidential." Being worded as "mandatory", the proposal would force a person living with HIV to divulge his/her status as such and expose him/her to the dangers which RA 11166 seeks to prevent.

The Commission, thus, strongly recommends that this proposed section be revised to ensure that the term "mandatory screening" is clear and not subject to interpretation and embedded with safeguards to ensure the right to privacy and confidentiality of all persons.

Instead of providing for a mandatory screening, this proposed section may also be replaced with a provision defining "systematic screening for active TB" taking guidance from the WHO's principles of systematic screening. The following language may be adopted:

> "The DOH shall develop a policy for the systematic screening for active TB following these principles:
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> a. Before screening is initiated, high-quality TB diagnosis, treatment, care, management and support for patients should be in place, and there should be the capacity to scale these up further to match the anticipated rise in case detection that may occur as a result of screening. In addition, a baseline analysis should be completed in order to demonstrate that the potential benefits of screening clearly outweigh the risks of doing harm, and that the required investments in screening are reasonable in relation to the expected benefits.[21]
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> b. Indiscriminate mass screening should be avoided. The prioritization of risk groups for screening should be based on assessments made for

[19] World Health Organization, Systematic Screening for Active Tuberculosis: Principles and Recommendations, at 9, *available at* https://apps.who.int/iris/bitstream/handle/10665/84971/9789241548601_eng.pdf;jsessionid=006FB526538A9F3D599BF0A1BD0D6CD0?sequence=1 (last accessed Mar. 5, 2019).

[20] 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, art. VI, §§ 44-48 (2019).

[21] *Id.* at 57.

each risk group of the potential benefits and harms, the feasibility of the initiative, the acceptability of the approach, the number needed to screen, and the cost effectiveness of screening.[22]

c. The choice of algorithm for screening and diagnosis should be based on an assessment of the accuracy of the algorithm for each risk group considered, as well as the availability, feasibility and cost of the tests.[23]

d. TB screening should follow established ethical principles for screening for infectious diseases, observe human rights, and be designed to minimize the risk of discomfort, pain, stigma and discrimination.[24] Ethical principles involving informed consent,[25] privacy and confidentiality,[26] and protecting vulnerable populations[27] shall always be followed.

e. The TB screening approach should be developed and implemented in a way that optimizes synergies with the delivery of other health services and social services.[28]

f. A screening strategy should be monitored and reassessed continually to inform re- prioritization of risk groups, readaptation of screening approaches when necessary and discontinuation of screening at an appropriate time."[29]

The last paragraph of the proposed Section 23 may be adopted as a separate section entitled "Establishing routine screening in all health facilities."

8. On the proposed inclusion of a section on contact tracing and prophylactic treatment[30]

The Commission recognizes that in some cases, mandatory screening of persons must be implemented and that these cases include people who are in contact with an index case person with TB. Thus, we support the inclusion of a provision on this subject provided it explicitly provides for safety measures to ensure the autonomy of the person is not subjugated including informed consent. To reflect this in the language of the provision, the following amendment is recommended:

> "*Contact Tracing and Prophylactic Treatment.* – Screening by chest x-ray shall be initiated among all contacts of an index case with bacteriologically-confirmed pulmonary tuberculosis in order to offer preventive treatment when necessary to those with latent infection, following prescribed guidelines and standards <u>ON RESPECTING THE RIGHT OF THE SUBJECT TO INFORMED CONSENT, AMONG OTHERS.</u>"

The Commission, in submitting these comments and recommendations, joins the House Committee on Health of the 17th Congress in pushing for a strengthened RA 10767 in light of the approval of the Political Declaration on the Fight Against Tuberculosis. With TB as a global epidemic, and the Philippines as among the high burden countries in the world, the Commission offers its utmost support in legislation and policy for a human

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[22] *Id.* at 58.
[23] *Id.* at 59.
[24] *Id.* at 61.
[25] *Id.*
[26] *Id.*
[27] *Id.* at 62.
[28] *Id.*
[29] *Id.* at 63.
[30] "**Section 26.** ***Contact Tracing and Prophylactic Treatment.*** – Screening by chest x-ray shall be initiated among all contacts of an index case with bacteriologically-confirmed pulmonary tuberculosis in order to offer preventive treatment when necessary to those with latent TB infection, following prescribed guidelines and standards."

rights-based approach to addressing the TB epidemic and to attaining the vision of a world free of TB.

ISSUED this 1st day of April 2019, Quezon City, Philippines.

(On Official Travel)
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