

COMMISSION ON HUMAN RIGHTS
U.P. Complex, Commonwealth Avenue
Diliman, Quezon City

In The Matter Of:

**Letter-Complaint against
Davao City Mayor Rodrigo
Roa Duterte for Violations
of Republic Act No. 9710,
otherwise known as the
“Magna Carta of Women”**

Case No. 2016-078

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RESOLUTION

For the consideration of the Commission is a Letter-Complaint¹ filed by individuals and groups, representing women in the Philippines, against Rodrigo Roa Duterte, incumbent Mayor of Davao City, for violations of Republic Act No. 9710, otherwise known as the Magna Carta of Women.

Under Section 39 of the Magna Carta of Women, the Commission has been mandated as the Gender and Development Ombud to, among others, conduct investigations and handle complaints of discrimination and violations of women’s rights guaranteed by the Magna Carta of Women, and other related laws and regulations.

Section 39 of the Magna Carta of Women pertinently provides, to wit:

SEC. 39. *Commission on Human Rights (CHR).* – The Commission, **acting as the Gender and Development Ombud**, consistent with its mandate, shall undertake measures such as the following:

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(b) Designate one (1) commissioner and/or its Women’s Human Rights Center to be **primarily responsible** for formulating and implementing programs and activities related to the promotion and protection of the human rights of women, including the **investigations and complaints of discrimination and violations of their rights brought under this Act and related laws and regulations;**

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(e) Recommend to the President of the Philippines or the Civil Service Commission any possible administrative action based on noncompliance or failure to implement the provisions of this Act.² (emphasis added)

Thus, this Resolution on the case at bar.

ANTECEDENT FACTS

On 20 April 2016, the Commission received a Letter-Complaint from the following persons who claim to be representatives of “women insulted, shocked and outraged,” *viz.*:

1. Jean Enriquez, Filipino, a registered voter, and representing the Coalition Against Trafficking in Women - Asia Pacific and the World March of Women - Pilipinas;
2. Edna Aquino, Filipino, a registered voter;
3. Judy Pasimio, Filipino, a registered voter, and representing Lilak or Purple Action for Indigenous Women’s Rights;
4. Ana Maria Nemenzo, Filipino, a registered voter, and representing WomanHealth Philippines;
5. Myrna Jimenez, Filipino, a registered voter, and representing Kasarian-Kalayaan or SARILAYA;
6. Severino Galindo, Filipino, a registered voter, and representing Sagip-Ilog Pilipinas;
7. Josua Mata, Filipino, a registered voter, and representing Sentro ng Manggagawa ng Pilipinas or Sentro;
8. Jennifer Albano, Filipino, a registered voter, and representing Labor Education and Research Network or LEARN; and
9. Elizabeth U. Yang, Filipino, a registered voter, and representing PILIPINA - Ang Kilusan ng Kababaihang Pilipino.³

The Letter-Complaint

In their Letter-Complaint, dated 20 April 2016, the above-mentioned men and women alleged that there was a “string of actuations as shown in print and video by Mayor Duterte, showing his callous, derogatory and

insulting treatment of women.”⁴ The Complainants cited the following actions as evidence thereof.

First Charge: Violation of the Magna Carta of Women on account of the ‘Rape Joke’

Based on the Letter-Complaint, on 16 April 2016, *Rappler*, an online news outfit, reported that a video was posted on YouTube the previous day, which showed Mayor Duterte narrating the following:

*Nirape nila lahat ng mga babae so yung unang asolte, kasi nag-retreat sila, naiwan yung ginawa nilang cover ang isa doon yung lay minister na Australyana. Tsk, problema na ito. Paglabas edi binalot. Tiningnan ko yung mukha, ‘tangina parang artista sa Amerika na maganda. Putangina sayang ito. Ang nagpasok sa isip ko, nirape nila, pinapilahan nila doon. Nagalit ako kasi nirape, oo isa rin yun. Pero napakaganda, dapat ang mayor muna ang mauna.*⁵

(All the women were raped so during the first assault, because they retreated, the bodies they used as a cover, one of them was the corpse of the Australian woman lay minister. Tsk, this is a problem. When the bodies were brought out, they were wrapped. I looked at her face, son of a bitch, she looks like a beautiful American actress. Son of a bitch, what a waste. What came to mind was, they raped her, they lined up. I was angry because she was raped, that's one thing. But she was so beautiful, the mayor should have been first.) (translation ours)

The Letter-Complaint added that, when the video became viral, and calls were made for Mayor Duterte to apologize for “making rape a joke,” he refused to do so, saying that his gutter language was due to his lowly and poor background. The Complainants lamented this as an unfortunate image of one insulting a rape victim who was killed by her assailants. This incident has caught the international community’s attention. For instance, the matter of the rape-killing of the victim, AA,⁶ and Mayor Duterte’s recent remarks have been reported by Australian news outfits, and Australian Ambassador Amanda Gorely has been quoted as saying that, “[R]ape and murder should never be joked about and be trivialized.”⁷

Second Charge: ‘Disregard for Women’ as Evidenced by Reports and Videos, also in violation of the Magna Carta of Women

The Letter-Complaint, in addition to the first charge, stated that there were other instances when Mayor Duterte flaunted his disregard for women.

⁴ *Id.*, at p. 2.

⁵ *Id.*, at pp. 2-3.

⁶ The Commission deems it necessary, and to the best interest of the family of the rape victim, not to reveal the identity of the victim in this Resolution.

The Commission reproduces below the said incidents as described in the Letter-Complaint, to wit:

a. Uploaded on April 6, 2016: a video shown on YouTube with [Mayor] Duterte narrating in front of a laughing audience how he confessed to a priest a “venial sin” when he was a student at the Ateneo de Davao. He told the priest that he would go inside the room of their household help and lift the blanket of the (sleeping) help, and then would later proceed to the bathroom, go back to repeat the act of lifting the blanket and return to the bathroom again. (<https://www.youtube.com/watch?v=W8KPZsXhsOc>)

b. Rappler, an online news outfit reported on 5 February 2016 a picture of [Mayor] Duterte kissing an unknown supporter with a caption that he won't mind losing the presidential race as long as he's able to kiss beautiful ladies. Note that the photo appear (sic) as if he was kissing the lady on the mouth. (<http://www.rappler.com/nation/politics/elections/2016/121490-duterte-showing-too-much-love-for-pampanga-supporters>)

c. Philippine Daily Inquirer reported on 30 November 2015 a picture of [Mayor] Duterte kissing and having on his lap a female supporter. The article said that the women were surprised when [Mayor] Duterte started doing these acts. (<http://newsinfo.inquirer.net/743718/look-duterte-kisses-sits-with-women-in-taguig-event>)

These acts were committed in front of crowds which, in most cases, would laugh at what [Mayor] Duterte was doing or saying.

To make the rape of a woman who was later killed a laughing matter, and to treat women as playthings to be taken advantaged (sic) of constitute an affront to us and all women.

As a public official, an incumbent Mayor of Davao City... Mr. Duterte is expected to be an example of a respectable, law-abiding citizen. Instead, he arrogantly flaunts his power over these women and diminishes the worth as human beings.⁸

From the above, the Letter-Complaint concluded that Mayor Duterte committed actions in violation of the spirit and letter of the Magna Carta of Women. As an incumbent local chief executive who was expected to promote women's rights, he blatantly violated the same. He had no regard or respect for women, as evidenced by his demeaning language and insulting treatment of women. Aside from disregarding the gains in advancing women's rights, he also was described as putting in peril the future of many children and young women who are potential victims of violence against women.⁹

Actions by the Commission on the Letter-Complaint

On 20 April 2016, in compliance with its duty under the Magna Carta of Women to investigate violations thereof, the Commission took cognizance

of the Letter-Complaint as Gender and Development Ombud. Under Rule 8 (Investigation and Monitoring of Human Rights Violations committed against Women) of the *Guidelines and Procedures in the Investigation and Monitoring of Human Rights Violations and Abuses, and the Provision of CHR Assistance*, otherwise known as *The Omnibus Rules of Procedure of the Commission on Human Rights*, the Commission, in its capacity as Gender and Development Ombud, is endowed with the authority to investigate and provide other assistance to women who are victims of human rights violations and other abuses committed against them by State agents and/or by private persons or groups.¹⁰

In a Memorandum, pursuant to Sec. 39(b) of the Magna Carta of Women, Commission Chairperson Jose Luis Martin Gascon designated the Women's Human Rights Center of the Commission (now, Gender Equality and Women's Human Rights Center or GEWHRC), in cooperation with special investigators who were appropriately trained on women's rights and in handling the investigation of cases involving women, to submit an investigation report on the matter.¹¹

On 22 April 2016, Commissioner Karen S. Gomez Dumpit, the Focal Commissioner for Women and Gender Concerns,¹² in order to afford due process of law to Mayor Duterte, sent a Letter-Invitation to him to comment on the Letter-Complaint, after which the matter shall be submitted for resolution by the Commission.¹³ The response of Mayor Duterte was considered by the investigating team, composed of officials of the Center for Gender Equality and Women's Human Rights, and the special investigators.

The Answer of Mayor Duterte

On 2 May 2016, the Commission received the Letter-Reply from the law office of Medialdea, Ata, Bello & Suarez, Counsel for Mayor Duterte, as a response to the Letter-Invitation of Focal Commissioner Dumpit. The letter, marked on top as "confidential," states the following at the beginning, to wit:

Gentlemen:

Our client, Mayor Rodrigo R. Duterte of Davao City, has referred to us your letter dated 22 April 2016 (copy received by his office on 26 April 2016) inviting his comment on the letter-complaint docketed as CHR-NCR 2016-078 regarding his alleged violations of R.A. 9710 or The Magna Carta of Women.

¹⁰ Guidelines and Procedures in the Investigation and Monitoring of Human Rights Violations and Abuses, and the Provision of CHR Assistance, The Omnibus Rules of Procedure of the Commission on Human Rights, Rule 8, Sec. 1.

¹¹ Memorandum, dated 29 April 2016

¹² Designated by the Commission *En Banc* as Focal Commissioner, as mandated by Sec. 39(b) of the Magna Carta of Women

Preliminarily, our client has instructed us to respond to the letter as a matter of official courtesy. **With utmost respect, Mayor Duterte takes the view that he is under no legal obligation to comment on the matters raised in the letter.** He expresses his serious concern about the failure of your Office to uphold independence and nonpartisanship most especially during this election campaign period, as to which civil servants were recently reminded of by the Civil Service Commission (CSC) and the Commission on Elections (COMELEC) under Joint Circular No. 001-2016.

We kindly call your attention on (1) Section 2(4), Article IX (B) of the 1987 Philippine Constitution; (2) Section 55, Chapter 7, Title I, Book V of the Revised Administrative Code; and (3) Section 261(i) of the Omnibus Election Code, all of which prohibit Civil Service officers from engaging directly or indirectly in any partisan political activity and using one's official authority or influence to coerce the political activity of any other person or body.¹⁴ (emphasis ours)

The Letter-Reply stated that Mayor Duterte lamented Chairperson Gascon's "flagrant partisanship" which allegedly showed in an interview that denounced any level of violence and cyber bullying. The letter then remarked that, "[o]ur client believes that Chairman Gascon has taken the side of those who take a negative view of Mayor Duterte's candidacy – a manifest act of partisanship... Further showing his partisanship, Chairperson Gascon has been actively 'liking' and 'commenting' on Facebook posts of complainants soliciting support against Mayor Duterte."¹⁵

The comment of the Chairperson on social media, which allegedly consisted in partisanship, was as follows:

*Pilitin Po Namin, Sa Abot Ng Makakayanan Na Makatulong Sa Gampanin Natin Lahat Na Maging Ligtas Ang Mga Kababaihan At Bata Sa Ating Lipunan Mula Sa Anumang Karahasan... Paalalahan Ninyo Po Kami Lagi! Ipagpatuloy Niyong Ang Laban Ninyo Para Sa Mga Mabuting Adhikain At Pagbabago!*¹⁶

(We will try, to the best of our abilities, to help in the endeavor of ensuring that women and children in our society are free from any form of violence... Remind us always! Continue the good fight towards noble aspirations and change!) (translation ours)

The Letter-Reply then contained the penalties for engaging in partisan political activities by members of the Civil Service.¹⁷

The Letter-Reply took "strong exception to the authority of the Commission (your Office) to dictate upon (Mayor Duterte's) conduct and the language he uses" in exercising his right to freedom of speech and expression. It further emphasized Mayor Duterte's right to ventilate his sentiments, which "may not be prohibited nor sanctioned simply because

¹⁴ Letter-Reply, dated 2 May 2016, p. 1-2.

¹⁵ *Id.*, at pp. 2-3.

¹⁶ *Id.*, at pp. 2

some found his language distasteful, offensive, and abrasive or because it caused discomfort or anger.”¹⁸

In addition, the Letter-Reply argued that his: “questioned language neither threatened nor intended to abuse any particular group or individual. It was a passing remark made in the course of his narrative about a tragic incident that happened way back in 1989. By making the remark, Mayor Duterte did not violate any rule of law or human right of civilians and criminals alike.”¹⁹

Lastly, it alleged failure on the part of the Complainants to substantiate Mayor Duterte’s violation of the Magna Carta of Women, and enumerated some of his pro-women legislation, projects, and initiatives.²⁰ It ended, thusly, “Mayor Duterte trusts that he has made his position clear on the matter.”²¹

The Investigation and its Report

The Commission, in the conduct of its investigation, collected affidavits and sworn statements, considered reports, videos, and statements submitted to the Commission, and conducted interviews. As earlier mentioned, the Commission sent a Letter-Invitation to Mayor Duterte in respect of his constitutional right to due process of law in the proceedings before the Commission. It must be stressed that this Commission, in giving due course to the subject complaint, does so in the exercise of its mandate under the Constitution and relevant laws to defend, promote and fulfill human rights, in this instance, those pertaining to women. Notwithstanding the assertions of partisanship of Chair Gascon, the actions and statements taken by the Commission are consistent with its mandate for the protection and the promotion of human rights.

On 4 May 2016, Atty. Krissi Shaffina Twyla A. Rubin of the GEWHRC, together with designated special investigators who are Gender Focal Persons of the Commission, concluded their fact-finding investigation and submitted their Report to the Commission, confirming and validating the allegations of facts in the Letter-Complaint.²²

The Report gathered documents, media issuances, press statements, and media reports relevant to the Letter-Complaint. Additionally, in compliance with Rule 8 of *The Omnibus Rules of Procedure of the Commission on Human Rights*, the investigators conducted interviews with the following persons, to wit:

¹⁸ *Id.*, at p. 4.

¹⁹ *Id.*

²⁰ *Id.*, at pp. 4-5.

²¹ *Id.*, at p. 6.

1. Complainants
 - a. Jean Enriquez
 - b. Judy Pasimio
 - c. Elizabeth Yang
 - d. Jennifer Albano
 - e. Myrna Jimenez
 - f. Ana Maria Nemenzo
 - g. Josua Mata

2. Victims-Survivors of Sexual Crimes, including Rape
 - a. Rosario (not her real name)
 - b. Risse (not her real name)
 - c. Beng (not her real name, a rape survivor who was deeply affected by the words of Mayor Duterte)

3. Women Public Officers in Davao City
 - a. Lorna Mandin
Head, Integrated Gender Development Office, Office of the Mayor of Davao City
 - b. PSI Eliza Ramirez
Head, Women's and Children's Protection Desk (WCPD), Davao City
 - c. Maria Luisa Bermudo
City Social Welfare Officer, City Social Services and Development Office

4. Other Representatives of Womens' Organizations
 - a. Jelen Paclarin
Women's Legal Bureau (WLB)
 - b. Risse (not her real name)

5. Representative of Responders to Women in Especially Difficult Situations
 - a. Richelle Verdeprado
Social Worker

6. Philippine Commission on Women
 - a. Emmeline Verzosa
Executive Director²³

The interviews focused on ascertaining whether discriminatory words or actions were uttered or committed, as complained about; their effect on women and women's organizations; and other matters occurring after the filing of the Letter-Complaint with the Commission.²⁴

The Report offered the following as the summary of its findings, to wit:

Summary of findings and recommendations:

1. There is a **collective condemnation of the statement made by [Mayor] Duterte by government agencies and non-government organizations, women's and feminist organizations, human rights organizations, and even church organizations.** The collective condemnation of the statement were anchored on respect for **women's human rights, the right to equality and dignity, and in recognition of the seriousness of the crime of rape** which should never be trivialized and made the subject of a joke. Statements also stressed the **trauma that rape and other forms of violence against women inflict on women-survivors, their families, and the organizations that support them.**
2. There is **support for [Mayor] Duterte from an organization of women called ForwaRD, but even the said organization stressed that they do not condone sexism.** They instead frame their continued support for [Mayor] Duterte on his track record in advancing women's agenda in Davao and on the City's success on Gender Mainstreaming, having been recognized by the Philippine Commission on Women as a Learning Hub on Gender and Development for 2015.
3. Interviews with the key government officials in Davao tasked on addressing violence against women reiterate the accomplishments of Davao in advancing women's agenda and providing gender-responsive programs and policies. They admit as well that while the support of the Mayor and his imprimatur in all these policies and programs is indispensable, the success of Davao's gender and development efforts, and their responsive systems and mechanisms in addressing sexual violence and violence against women were also the result of the strong women's movement in Davao and of the active participation of women in the City's development councils. When asked on their reaction to the "rape joke," they respond that the Mayor has amply addressed it, that it was said in the heat of anger, that he already apologized, and that it was not a joke. One explained [Mayor] Duterte's statement as being **a product of his patriarchal upbringing and that it is good that he admits the same.** They also added that more than what is said, they focus on what has been done by [Mayor] Duterte for the women of Davao.
4. Interviews with complainant provided concrete accounts of how the statement/"rape joke" of [Mayor] Duterte, and his prior and subsequent actions affected them personally as well as organizationally. **These accounts show how they are disproportionately affected by the statement, how they are harmed and how such statement affects as well the rights of other women, especially women who are victim-survivors of rape.** The interviews also highlight the effect of [Mayor] Duterte's statement and behavior on the perpetuation of a culture of rape, the silencing of rape victim-survivors, and the entrenchment of patriarchy, hyper-masculinity, misogyny and the objectification of women. For most of the complainants and persons interviewed, the acts and statements of [Mayor] Duterte constitute as a set back to all the achievements and efforts towards gender equality and the struggle for women's human rights. (emphasis added)

HUMAN RIGHTS ISSUES AND DISCUSSION

A Preliminary Note on the Role of the Commission in Society

The 1987 Constitution was unequivocal in its language when it created the Commission on Human Rights as an independent office.

Section 17 (1) of Article XIII of the Constitution provides, to wit:

There is hereby created an **independent office** called the Commission on Human Rights.²⁶ (emphasis supplied)

The independence of the Commission has enabled it to assume the critical role of watchdog of the fundamental rights and freedoms of our people. As watchdog **of the people's rights and freedoms**, which encompasses the constitutional mandate to investigate, on its own or on complaint by any party, all forms of human rights violations,²⁷ as well as to monitor our State's compliance with our Human Rights treaty obligations²⁸ (i.e., the Convention on the Elimination of All Forms of Discrimination Against Women or CEDAW), the Commission has the duty to demand accountability from government officials and agencies.

Further, the Philippines is a Member-State of the United Nations and adheres to the *Principles relating to the Status of National Institutions (The Paris Principles)*, which was adopted by the United Nations General Assembly in 1993 as U.N. General Assembly Resolution 48/134.²⁹ The Commission is the Philippines' national human rights institution. *The Paris Principles* provide, among others, that national human rights institutions have the responsibility to "submit to the Government, Parliament and any other competent body... reports on any matters concerning the promotion and protection of human rights" with regard to "any situation of violation of human rights which it decides to take up."³⁰

Indeed, the Commission is empowered by law, particularly under the Magna Carta of Women, as Gender and Development Ombud of the Philippines, and international instruments, to ensure that women's rights are protected, respected, and fulfilled through its investigatory powers.³¹

²⁶ Art. XIII, Sec. 17(1), 1987 Constitution.

²⁷ Art. XIII, Sec. 18, 1987 Constitution.

²⁸ *Id.*

²⁹ Principles relating to the status of national institutions, Adopted by General Assembly resolution 48/134 of 20 December 1993.

³⁰ *Id.*

Human rights are beyond any partisan political activity.³² The investigatory role of the Commission is held sacrosanct in every situation and transcends political boundaries and opinions. Should this Commission be accused of bias, it will always be towards the realization of people's human rights and the empowerment of everyone in society.

Therefore, the Commission reminds everyone of this most relevant statement in *Gonzales v. Office of the President, et al.*,³³ viz.:

[W]e all know how political fortunes come and go. Those who are in power yesterday are in opposition today and those who are in power today may be in the opposition tomorrow. Therefore, if we have a Commission on Human Rights that would investigate and make sure that the rights of each one is protected, then we shall have a body that could stand up to any power, to defend the rights of individuals against arrest, unfair trial, and so on.

These deliberative considerations abundantly show that the independent constitutional commissions have been consistently intended by the framers to be independent from executive control or supervision or any form of political influence. At least insofar as these bodies are concerned, jurisprudence is not scarce on how the "independence" granted to these bodies prevents presidential interference. (emphasis supplied)

Issues

Two issues remain for resolution:

- I. Whether Mayor Duterte violated the Magna Carta of Women when he issued the "rape joke," concerning an Australian kidnapping victim.
- II. Whether Mayor Duterte violated the Magna Carta of Women when he kissed and held female supporters on his lap in public, without their consent, as complained about in the Letter-Complaint.

Discussion

- I. **Rights of women under the Magna Carta of Women and the utterance of the so-called "rape joke"**

³² *Palacio v. Commission on Elections*, 2001 SCRA 1000, 1001 (2001).

Women's protection from violence and freedom from discrimination under the Magna Carta of Women

Under Sections 8 and 9 of the Magna Carta of Women, women have human rights, and women have the right to be protected from all forms of violence, as provided for in existing laws. Pertinently, the Magna Carta states that:

**CHAPTER IV
RIGHTS AND EMPOWERMENT**

Section 8. Human Rights of Women. - All rights in the Constitution and those rights recognized under international instruments duly signed and ratified by the Philippines, in consonance with Philippine law, shall be rights of women under this Act to be enjoyed without discrimination.

Section 9. Protection from Violence. - The State shall ensure that all women shall be protected from all forms of violence as provided for in existing laws. Agencies of government shall give priority to the defense and protection of women against gender-based offenses and help women attain justice and healing.

Towards this end, measures to prosecute and reform offenders shall likewise be pursued.

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Section 4(k) of the Magna Carta of Women defines violence against women as follows, *viz.*:

(k) "Violence Against Women" refers to any act of gender-based violence that results in, or is likely to result in, **physical, sexual, or psychological harm or suffering to women, including threats of such acts, coercion, or arbitrary deprivation of liberty, whether occurring in public or in private life.** It shall be understood to encompass, but not limited to, the following:

(1) Physical, sexual, psychological, and economic violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, and other traditional practices harmful to women, non-spousal violence, and violence related to exploitation;

(2) Physical, sexual, and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment, and intimidation at work, in educational institutions and elsewhere, trafficking in women, and prostitution; and

(3) Physical, sexual, and psychological violence perpetrated or condoned by the State, wherever it occurs.

It also includes acts of violence against women as defused in Republic Acts No. 9208 and 9262.³⁵ (emphasis supplied)

The related case of *Imbong v. Ochoa* characterized the Magna Carta of Women as ensuring that women have equal rights with men.³⁶

The Magna Carta of Women is animated by the Philippines' commitment to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which was signed by the Philippines on 15 July 1980, and ratified on 5 August 1981. The Philippines was the first South East Asian country to have been a party to the CEDAW.³⁷ The CEDAW provides, among others, that the States shall "condemn discrimination against women in all its forms... and, to this end, undertake: ... (d) [t]o refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation."³⁸

In the case at bar, that the Mayor uttered the following statement, largely viewed as a "rape joke" is beyond cavil, *viz.*:

*Nirape nila lahat ng mga babae so yung unang asolte, kasi nag-retreat sila, naiwan yung ginawa nilang cover ang isa doon yung lay minister na Australyana. Tsk, problema na ito. Paglabas edi binalot. Tiningnan ko yung mukha, 'tangina parang artista sa Amerika na maganda. Putangina sayang ito. Ang nagpasok sa isip ko, nirape nila, pinapilahan nila doon. Nagalit ako kasi nirape, oo isa rin yun. **Pero napakaganda, dapat ang mayor muna ang mauna.***³⁹

(All the women were raped so during the first assault, because they retreated, the bodies they used as a cover, one of them was the corpse of the Australian woman lay minister. Tsk, this is a problem. When the bodies were brought out, they were wrapped. I looked at her face, son of a bitch, she looks like a beautiful American actress. Son of a bitch, what a waste. What came to mind was, they raped her, they lined up. I was angry because she was raped, that's one thing. **But she was so beautiful, the mayor should have been first.**) (translation ours)

Whether it was made in jest or in righteous indignation, the utterance of the said statement **violates women's rights to be protected from violence and to be free from discrimination.**

Not only did it tend to trivialize the fate of the woman rape victim, thus adding to the violence that had already been suffered by her, but the joke was also a type of speech outlawed under human rights law for being offensive to the woman and her gender. By itself, the joke constitutes violent speech. In line with the definition of violence against women in the Magna Carta of Women, it alludes to the "physical, sexual, or psychological harm or suffering to women" similarly experienced during rape.

³⁶ *Imbong v. Ochoa*, G.R. No. 204819, 8 April 2014.

³⁷ Philippine Commission on Women, Philippine participation to CEDAW, available at: <http://pcw.gov.ph/international-commitments/cedaw/philippine-participation>.

³⁸ Convention on Elimination of All Forms of Discrimination against Women, Art. 2(d).

Mayor Duterte, through his counsel, admitted uttering the above remarks, defiantly stating that the Commission cannot “dictate upon his conduct and the language he uses” in the exercise of his freedom of speech and expression; that the same cannot be prohibited nor sanctioned simply because some found it “distasteful, offensive, abrasive or because it caused discomfort or anger;”⁴⁰ and that it was “a passing remark made in the course of his narrative about a tragic incident that happened way back in 1989.”⁴¹

The fact of the utterance is the violation, itself, regardless of the Mayor’s intent and socio-cultural upbringing. It is precisely the kind of conduct which the Magna Carta of Women abhors. It is axiomatic that in special laws, such as the Magna Carta of Women, intent is not material.

Mayor Duterte, in uttering those words, albeit without intent to cause harm, committed an act which went against the security and physical integrity of women.

That there is no specific victim brought about by his words or actions is also immaterial. The CEDAW, in Article 5 thereof, recognizes the importance of modifying social and cultural patterns of conduct of men and women, and of education as a measure to address this problem, *viz.*:

Article 5

States Parties shall take all appropriate measures:

(a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women;

(b) To ensure that family education includes a proper understanding of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing and development of their children, it being understood that the interest of the children is the primordial consideration in all cases.⁴²

⁴⁰ *Supra* note 14, at p. 4.

⁴¹ *Id.*

⁴² *Supra* note 38, Art. 5.

In *Garcia v. Drilon*, G.R. No. 179267, 25 June 2013, a case involving spousal violence, where the Supreme Court upheld the constitutionality of *Republic Act No. 9262 or the Anti-Violence Against Women and Their Children Act*, the Supreme Court held that there has been a paradigm shift in changing violence from a private affair to a public offense that would require the development of a distinct mindset on the part of the police, the prosecution, and the judges. The Court has mentioned that CEDAW called for the State to address or correct “to modify the social and cultural patterns of conduct of men and

A 'Balancing Act': Freedom of speech and expression is not absolute

Mayor Duterte asserts that the words were a passing remark as he recounted events attendant to the rape of the victim, and that the same was perfectly well within his freedom of speech and expression.⁴³

Indeed, Article III, Section 4, of the 1987 Constitution states that:

No law shall be passed abridging the freedom of speech, of expression, or of the press, or the right of the people peaceably to assemble and petition the government for redress of grievances.⁴⁴

The right to free speech and expression is further guaranteed under the International Covenant on Civil and Political Rights (ICCPR), Article 19 of which provides:

1. Everyone shall have the right to hold opinions without interference.

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others;

(b) For the protection of national security or of public order (order public), or of public health or morals.⁴⁵ (emphasis added)

However, the guarantee to free speech and expression, while accorded a high position in the hierarchy of rights, is not without its limits—both in international and Philippine domestic law.

Freedom of Speech under International Law

Under Article 19 of the ICCPR, to which the Philippines is a State-party, the freedom of expression carries with it special duties and responsibilities. It is subject to certain restrictions, such as respect for the rights or reputations of others, national security, public order, public health, and public morals.⁴⁶

practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.”

⁴³ *Supra* note 14, at p. 4.

⁴⁴ Art. III, Sec. 4, 1987 Constitution.

As explained by the U.N. Human Rights Committee in General Comment No. 10, "the exercise of the right to freedom of expression carries with it special duties and responsibilities and for this reason certain restrictions on the right are permitted which may relate either to the interests of other persons or to those of the community as a whole."⁴⁷

Freedom of Speech under Philippine Law

Under Philippine law, the right of the State to regulate certain types of speech in the public discourse has been upheld by the Supreme Court in a long line of cases. They belong to the genre of "unprotected speech," or those that have no room in the public affairs and the public discourse of the people. In *Fernando and Estorninos v. Court of Appeals*, the Court stated that, "[a]s obscenity is an unprotected speech which the State has the right to regulate, the State in pursuing its mandate to protect, as *parens patriae*, the public from obscene, immoral and indecent materials, must justify the regulation or limitation."⁴⁸ In *Chavez v. Gonzales*, Chief Justice Puno enumerated obscenity, national security, seditious and inciting speech as examples of speech to be avoided.⁴⁹

Words, whether uttered in farce or bouts of righteous indignation, have no room in the public square, where the public has reasonable expectation that the discourse would be free from obscene and inciting words.

The remarks of the Mayor, having been made in a public gathering, particularly in the Amoranto Stadium, Quezon City, and the same tests in *Soriano v. Laguardia* may be applied, thusly:

In net effect, some forms of speech are not protected by the Constitution, meaning that restrictions on unprotected speech may be decreed without running afoul of the freedom of speech clause. A speech would fall under the unprotected type if the utterances involved are **"no essential part of any exposition of ideas, and are of such slight social value as a step of truth that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality."** Being of little or no value, there is, in dealing with or regulating them, no imperative call for the application of the clear and present danger rule or the balancing-of-interest test, they being essentially modes of weighing competing values, or, with like effect, determining which of the clashing interests should be advanced.

Petitioner asserts that his utterance in question is a protected form of speech.

The Court rules otherwise. It has been established in this jurisdiction that **unprotected speech or low-value expression refers to libelous statements, obscenity or pornography, false or misleading advertisement, insulting or "fighting words", i.e., those which by**

⁴⁷ ICCPR General Comment 10 (Nineteenth session, 1983): Article 19: Freedom of Expression, A/38/40 (1983) 109 at paras. 1-4.

their very utterance inflict injury or tend to incite an immediate breach of peace and expression endangering national security.

The Court finds that petitioner's statement can be treated as obscene, at least with respect to the average child. Hence, it is, in that context, unprotected speech. (emphasis added)

Applying the test above, it is very clear that a joke about being given the first opportunity to rape a woman, especially one who has just been the victim of a heinous crime, not only relives the violation against the victim, but objectifies and assails the dignity of women, in general.

Effects of the remark on women and rape victims-survivors

The snide remarks of Mayor Duterte caused harm on the part of victims-survivors of rape. Their experiences, hurtful and shameful, were opened anew by the remarks of Mayor Duterte.

One of the complainants disclosed that she herself was a victim-survivor of sexual violence, and that when the video of Mayor Duterte and his "rape joke" became viral in social media, it affected her personally as a victim-survivor. She pointed out that, "when the video came out, victims-survivors were unable to sleep, they were subjected to trauma and the years spent in counselling, therapy, and healing conversations were laid to waste." Another expressed her fear that "the statements of Mayor Duterte, his trivialization of rape will further silence indigenous women from reporting and speaking out about rape." She also mentioned that, "[w]ith the prevailing treatment of rape as 'joke' and a laughing matter all the more that IP (indigenous people) women will not come out." One complainant alluded to the inciting effect of the remark and how it reinforces male domination, misogyny and inequality, in that, "in recent union meetings, it seemed to her that men are once again emboldened in making sexist jokes."⁵⁰

Remark also tends to discriminate against the woman victim of rape and other women

Under the Magna Carta of Women, discrimination against women has been defined, to wit:

(b) "Discrimination Against Women" refers to **any gender-based distinction, exclusion, or restriction which has the effect or purpose of impairing or nullifying the recognition, enjoyment, or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms** in the political, economic, social, cultural, civil, or any other field.

It includes any act or omission, including by law; policy, administrative measure, or practice, that directly or indirectly excludes or restricts women

in the recognition and promotion of their rights and their access to and enjoyment of opportunities, benefits, or privileges.

A measure or practice of general application is discrimination against women if it fails to provide for mechanisms to offset or address sex or gender-based disadvantages or limitations of women, as a result of which women are denied or restricted in the recognition and protection of their rights and in their access to and enjoyment of opportunities, benefits, or privileges; or women, more than men, are shown to have suffered the greater adverse effects of those measures or practices.

Provided, finally, That **discrimination compounded by or intersecting with other grounds, status, or condition, such as ethnicity, age, poverty, or religion shall be considered discrimination against women under this Act.**⁵¹ (emphasis supplied)

Section 35 of the Magna Carta of Women outlaws discrimination against women, and calls public officials, such as Davao City Mayor Duterte, to account for their misdeeds, as follows:

Section 35. Discrimination Against Women is Prohibited. - Public and private entities and **individuals found to have committed discrimination against women shall be subject to the sanctions** provided in Section 41 hereof. Violations of other rights of women shall be subject to sanctions under pertinent laws and regulations.⁵²

To reiterate, the pertinent remark of Mayor Duterte is as follows, to wit:

Nirape nila lahat ng mga babae so yung unang asolte, kasi nag-retreat sila, naiwan yung ginawa nilang cover ang isa doon yung lay minister na Australyana. Tsk, problema na ito. Paglabas edi binalot. Tiningnan ko yung mukha, 'tangina parang artista sa Amerika na maganda.' Putangina sayang ito...

(All the women were raped so during the first assault, because they retreated, the bodies they used as a cover, one of them was the corpse of the Australian woman lay minister. Tsk, this is a problem. When the bodies were brought out, they were wrapped. I looked at her face, son of a bitch, she looks like a beautiful American actress. Son of a bitch, what a waste.)⁵³

The Supreme Court, in many cases, has held that: "It has been truly said that rape is so easy to charge and so difficult to defend. The logic is not quite difficult to apprehend. It is usually committed when nobody is present to witness the same. However, **Filipino culture attaches an indelible stigma to the reputation of one who has been raped.** An accusation for rape is thus not made with indifference, but with much deliberation, usually only after consultation with relatives and the family council."⁵⁴ (emphasis added)

⁵¹ *Supra* note 2, at Sec. 4(b).

⁵² *Id.*, at Sec. 35.

⁵³ *Supra* note 2, at Sec. 4(b).

This remark may send chilling effects against women who may have identified with the rape victim, and therefore, suffer from the discriminatory practices perpetuated by the statement. In this regard, the U.N. CEDAW Committee has opined that, indeed, “[c]ertain groups of women, in addition to suffering from discrimination directed against them as women, may also suffer from multiple forms of discrimination based on additional grounds such as race, ethnic or religious identity, disability, age, class, caste or other factors. Such discrimination may affect these groups of women primarily, or to a different degree or in different ways than men.”⁵⁵

II. Rights of women under the Magna Carta of Women and the other actions complained about in the Letter-Complaint, which consisted of kissing and holding female supporters on his lap in public, without their consent

Actions showing “disregard of women”

Section 4(k) of the Magna Carta of Women categorizes violence against women as consisting in physical, sexual, psychological, and economic violence occurring, *inter alia*, in the household or within the general community.⁵⁶

The Letter-Complaint further alleges certain acts committed by Mayor Duterte against some other women, which were not belied or denied by Mayor Duterte in his submission to the Commission.

Other acts complained about consisted of (a) narrating in his campaign sortie that when he was a minor, he ‘lifted the blanket’ of a sleeping female helper, without the latter’s knowledge and consent; (b) kissing supporters in public, much to their surprise and without their consent; and (c) kissing and holding female supporters on his lap in public, again much to their surprise and without their consent.⁵⁷

Based on the above and the preceding discussions, the first act amounts to violence against women. The second and third acts, which have been proven by substantial evidence, are acts of violence committed within the general community, having been performed in public spaces.

⁵⁵ CEDAW General Recommendation 25 (Thirtieth session, 2004): Article 4, Paragraph 1: Temporary Special Measures, A/59/38 part I (2004) 78 at paras. 1-39.

⁵⁶ Supra note 2, at Sec. 4(k).

Other issuances and regulations, in connection with the Magna Carta of Women

Under Section 39(b) of the Magna Carta of Women, the Commission, as Gender and Development Ombud, is empowered to consider also other related laws and regulations.⁵⁸

Gender and Development Code of Quezon City

Ordinance No. SP-1401, Series of 2004, promulgated by the 15th City Council of Quezon City, entitled *An Ordinance providing for a City Gender and Development Code and for Other Purposes*, was approved on 1 April 2004. Pursuant to Book I, Chapter I, Article I, Section 3 thereof, to wit:

ARTICLE I Related Principles

Section 3. Rights of Women Defined. – Women’s rights are the rights of women that are defined and declared by the United Nations under the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) which are hereby adopted as follows:

a. Women have **the right to the prevention of, and protection from all forms of violence** and coercion against their person, their freedom, their sexuality, and their individuality.

xxx xxx xxx

i. Women have the **right to equality** before the law in principle, as well as in practice.⁵⁹

The Gender and Development Code of Quezon City (GAD Code) contains substantially similar definitions of violence against women and discrimination,⁶⁰ as those found in national laws. Having delivered the utterance in Quezon City, these are also violations of the GAD Code of the city. However, the said Code provides that the act shall be dealt under the “applicable provisions of the Revised Penal Code.”⁶¹

The Code of Conduct and Ethical Standards for Public Officers and Employees

The Commission takes this moment to remind Mayor Duterte of his solemn duty to observe Republic Act No. 6713, otherwise known as the Code of Conduct and Ethical Standards for Public Officers and Employees, section

⁵⁸ *Supra* note 2, at Sec. 39(b).

⁵⁹ Ordinance No. SP-1401, Series of 2004, *An Ordinance providing for a City Gender and Development Code and for Other Purposes*, Chap. I, Art. 1, Sec. 3.

⁶⁰ *Id.* at Book I, Chapter II, Article I, Section 3.

⁶¹ *Id.* at Book I, Chapter II, Article I, Section 3.

4(c) of which provides that public officials and employees have the duty to respect the rights of others, including men, women, and everyone else, to wit:

(c) Justness and sincerity. - Public officials and employees shall remain true to the people at all times. **They must act with justness and sincerity and shall not discriminate against anyone**, especially the poor and the underprivileged. They shall at all times **respect the rights of others**, and shall refrain from doing acts contrary to law, good morals, good customs, public policy, public order, public safety and public interest. They shall not dispense or extend undue favors on account of their office to their relatives whether by consanguinity or affinity except with respect to appointments of such relatives to positions considered strictly confidential or as members of their personal staff whose terms are coterminous with theirs.⁶² (emphasis added)

CONCLUSION

No person may be countenanced to so openly and vulgarly trifle with the dignity of individuals or a class of people – certainly not those who, by virtue of the high positions they occupy in government, are expected to serve as exemplars in respecting the rights of others.

Especially, the dignity of women cannot be trivialized.

The complained-about jokes, utterances, and actions of Mayor Duterte not only violated well-established norms, both in international and domestic law, on the use of and conformity with gender-sensitive language and actions. They were also contributive to a culture of violence against women.

The Mayor needs to be strongly reminded that he has the obligation to effect value changes in society, especially on how women are viewed in society in a gender-sensitive manner and refrain from uttering gutter and obscene language.

The use of obscene gutter language, rape jokes, and other obscene acts is endemic of a societal pattern of conduct of men objectifying women. We see this in candidates for public office bringing in scantily clad women in public rallies to draw in the crowd, in television shows to entertain the audience, in billboards and advertisements that entice the salacious side of men, and so on, on the justification that this is just part of “clean fun”, with “no one getting hurt” or “being forced to it.” Sadly, they do not realize that their actions, regardless of how innocent they believe it to be, have a counter-productive effect on the efforts to protect the human rights of women to be treated equally.

This needs to be addressed as provided for under the Convention on the Elimination of Discrimination Against Women (CEDAW), which reads –

⁶² Republic Act No. 6712, Code of Conduct and Ethical Standards for Public Officers and

“Article 5

States Parties shall take all appropriate measures:

(a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.”⁶³

Education is the true answer to eliminating rape culture in our society. Requiring the different sectors in our society to undergo, where feasible, gender sensitivity seminars will be a step forward to building a new culture of equality and sensitivity that is long-term and sustainable. It provides a venue for both men and women to recognize the mistakes made and the need for change.

This Commission shall continue to pursue its mandate of seeking to uphold all human rights, no matter how trivial they might seem to others. It shall not be deterred from calling out violations wherever it sees them and against whoever defy and defile them – certainly not by the puny, hollow, and expedient tactic of hurling baseless allegations of political partisanship against its members.

WHEREFORE, by virtue of its duty as Gender and Development Ombud under Republic Act No. 9710, otherwise known as the Magna Carta of Women, the Commission finds evidence that Mayor Rodrigo Roa Duterte of Davao City committed acts amounting to violence against women, as defined in Section 4(k), in relation to Sections 8 and 9, of the Magna Carta of Women, which articulates the human rights principles under the Convention on the Elimination of All Forms of Discrimination against Women.

In accordance with RA 9710, sanctions under administrative, civil service and other laws as may be determined appropriate by the Civil Service Commission and the Department of the Interior and Local Government are hereby recommended for imposition against Mayor Duterte.

The Commission **FURTHER RESOLVES** to adopt the following recommendations, to wit:

1. For the Congress to revisit the Magna Carta of Women and to include other punitive sanctions for direct violations by individuals of the rights enumerated therein;
2. For the Commission on Elections to ordain and institute a code of conduct for candidates for public office and political parties to adhere to gender-sensitive language and conduct during campaigns, and to promote the rights of women;

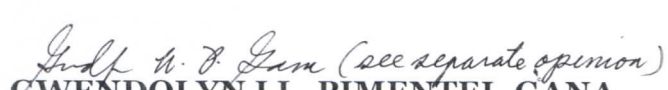
3. For the Department of Education and the Commission on Higher Education, and other educational institutions, to incorporate gender mainstreaming and gender sensitivity education in their curricula in order to foster a culture of respect for the rights of women;
4. For the Civil Service Commission to study the passage of a resolution requiring all government officials to undergo yearly gender sensitivity seminars pursuant to Philippine obligations under the Magna Carta of Women and the Convention on the Elimination of All Forms of Discrimination against Women, and to adopt measures to eliminate prejudices and customary practices that are anchored on the idea of the inferiority of either of the sexes or their stereotypical roles; and
5. For the Congress to amend Republic Act No. 7877, otherwise known as the Anti-Sexual Harassment Act, in order to require all employers to conduct yearly gender sensitivity seminars for all its employees.

SO RESOLVED.

Done this 20th day of May 2016, Quezon City, Philippines.

JOSE LUIS MARTIN C. GASCON
Chairperson


KAREN S. GOMEZ DUMPIT
Commissioner


GWENDOLYN LL. PIMENTEL-GANA
Commissioner


LEAH C. TANODRA-ARMAMENTO
Commissioner


ROBERTO EUGENIO T. CADIZ
Commissioner

COMMISSION ON HUMAN RIGHTS
U.P. Complex, Commonwealth Avenue
Diliman, Quezon City

In The Matter Of:

**Letter-Complaint against
Davao City Mayor Rodrigo
Roa Duterte for Violations
of Republic Act No. 9710,
otherwise known as the
"Magna Carta of Women"**

Case No. 2016-078

x ----- x

SEPARATE OPINION

Pimentel-Gana, Comm.:

I am inclined to give Mayor Rodrigo Duterte the benefit of the doubt that he did not utter the rape comment in question with malice or intent to offend or cause suffering to women and that his use of gutter language was but a by-product of the societal culture that he grew up in.

Placing the controversial comment in its proper perspective, the Mayor uttered it in an April 2016 political rally as part of his retelling of all the sordid details about the rape of an Australian missionary during the 1989 hostage taking in Davao City. He did not intend it as a joke, neither did he smile nor laugh when he recounted all the sordid details, including the rape comment, in his apparent desire for accuracy. The remark uttered was part of a reaction - not to condone the horrible crime that was perpetrated upon the Australian lady missionary - but to express his disgust and anger using gutter language. In fact, his retelling of this incident at a public rally was to demonstrate his willingness, as a leader, to offer his life in exchange for the hostages.

I also acknowledge the various gender mainstreaming programs in Davao City advocated by the Mayor.

But despite Mayor Duterte's lack of intent, the rape comment uttered "*dapat ang mayor muna ang mauna*" was made in bad taste. Such a rape comment, in whatever context issued, is offensive, much more coming as it did from the mouth of a prominent local leader.

The Magna Carta of Women, R.A. No. 9710 condemns "any act of gender based violence that results in or is likely to result in physical, sexual or psychological harm or suffering to women."

Even if the Mayor did not intend it as a joke, the laughter that it evoked from the audience in the public rally, as seen in the video clip, resulted in the audience taking it as a joke.



We do not go so far as to say that the rape comment would incite others to commit rape or any other forms of physical violence against women, but treated as a joke by others, it tends to objectify women as fair targets for the carnal pleasure of men, no matter what their situation might be: alive or dead.

Likewise, the Mayor's use of the offensive words complained of aggravates the pain and suffering that rape victims, in general, feel and endure. The rape comment heard by rape victims through the internet, dehumanizes their ordeal and even makes them relive the horrors of their experience.

Sadly, the treatment of the rape comment as a joke by the audience also shows their lack of understanding of the sexist character of the comment in objectifying women - as objects of pleasure that puts women in a lower standing than men. It reinforces the fallacy that men are the stronger sex. It encourages others to engage in casual rape jokes in the workplace or in public fora. Jokes of this nature demean women, create a hostile environment and violate their right to be treated equally.

This is a social malady that the Commission acknowledges. The Convention on the Elimination of Discrimination Against Women (CEDAW), recognizes this under Article 5, which reads -

States Parties shall take all appropriate measures: (a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women;


And as emphasized by the Commission, education is the key to modifying this social and cultural pattern to bring forth lasting societal change.

In the light of the above CEDAW provision and the recognition by the Commission of the need for education to bring about societal-cultural change, it is only but fair that we consider for now "intent" or the "lack thereof" in determining whether or not the complained act amounted to a violation of the Magna Carta of Women.

Given Mayor Duterte's explanation that he did not utter the rape comment as a joke and his lack of intent to cause any harm or suffering to women, it cannot be said, at this point, that his use of gutter language in a political rally amounted to a violation of the Magna Carta of Women.

However, let this serve as a strong reminder to the Mayor that he has to conduct himself at all times in a gender sensitive manner.

Done this 23rd day of May, 2016, Quezon City, Philippines.


GWENDOLYN LL. PIMENTEL-GANA
Commissioner