



Human Rights Violations on the Basis of Sexual Orientation, Gender Identity, and Homosexuality in the Philippines

Submitted for Consideration at the 106th Session of the Human Rights Committee for the Fourth Periodic Review of the Philippines



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LGBT and Human Rights Groups

Babaylanes, Inc.
Amnesty International Philippines - LGBT Group (AIPh-LGBT)
Bacolod and Negros Gender Identity Society (BANGIS)
Bisdak Pride – Cebu
Cagayan De Oro Plus (CDO Plus)
Changing Lane Women's Group
Coalition for the Liberation of the Reassigned Sex (COLORS)
Elite Men's Circle (EMC)
EnGendeRights, Inc.
Filipino Freethinkers (FF)
Fourlez Women's Group
GAYAC (Gay Achievers Club)
KABARO-PUP
LADLAD Cagayan De Oro
LADLAD Caraga, Inc.
LADLAD Europa
LADLAD LGBT Party
LADLAD Region II
Lesbian Activism Project Inc. (LeAP!), Inc.
Lesbian Piipinas
Link Davao
Metropolitan Community Church – Metro Baguio City (MCCMB)
Miss Maanyag Gay Organization of Butuan
OUT Exclusives Women's Group
OUT Philippines LGBT Group
Outrage LGBT Magazine
Philippine Fellowship of Metropolitan Community Churches (MCC)
Philippine Forum on Sports, Culture, Sexuality and Human Rights (TEAM PILIPINAS)
Pink Watch (formerly Philippine LGBT Hate Crime Watch (PLHCW))
Pinoy Deaf Rainbow – Philippines
ProGay Philippines
Queer Pagan Network (PQN)
Rainbow Rights Project (R-Rights), Inc.
Redbridge Books Publishing Co. (LGBTQ Publishing House)
Society of Transsexual Women Advocates of the Philippines (STRAP)
The Order of St. Aelred Friendship Society (OSAe)
TLF Share Collective, Inc.
TMC Globe Division League
Tumbalata, Inc.
UP Babaylan

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Executive Summary

Widespread and systematic human rights violations on the basis of sexual orientation, gender identity, and homosexuality persist in the Philippines. The arrests, harassment, and discrimination faced by lesbian, gay, bisexual, and transgender (LGBT) people in the Philippines demonstrate the urgent need for the Government of the Philippines to act.

Though an Anti-Discrimination bill was first introduced to Congress twelve years, the Philippines does not have Anti-Discrimination legislation. The State also fails to address the overwhelming amount of hate crimes and murders of LGBT individuals in the Philippines and the number of hate crimes against LGBT people in the Philippines is increasing.

State-actor violence against LGBT Filipinos is pervasive. Police raids on LGBT venues occur regularly and without warrants. During these raids, police regularly illegally detain, verbally abuse and extort money from clients. Police will also frequently charge LGBT individuals with violating the “Public scandal” provision of the Revised Penal Code which is a broadly worded public morality law discriminatorily applied against the LGBT community.

There are glaring instances of discrimination, marginalization and exclusion of sexual orientation and gender identity issues from various legislative bills. The President of the Philippines, Benigno Aquino, removed sexual orientation as a protected category from a congressional bill on sexual and reproductive health after after Congress attempted to include it. The Philippines also intends to pass legislation that will make changing one’s first name and sex on a birth certificate illegal for transsexual and intersex individuals.

The State has also been responsible for inciting homophobia. In January 2012 during the Philippine National AIDS Council plenary meeting, the Philippine Secretary of Health Enrique Ona stated that “parents should rein in their homosexual children and get them tested” to address the rapid rise of HIV cases in the country; his statements only contributing to a general ignorance and hostility toward LGBT people already pervasive within the country.

LGBT persons are entitled to their full rights under the International Convention on Civil and Political Rights (ICCPR.) In order to protect access and enjoyment of these rights the Government of the Philippines must take positive steps to repeal discriminatory laws and combat violence targeted at LGBT individuals. There is urgent need for the Committee to take appropriate action to ensure LGBT people can enjoy the rights within the Convention to which they are entitled.

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Non-discrimination, Equality between Men and Women (Arts. 2, Para (1), 3 and 26)

Articles 2(1), 3 and 26 of the Convention provide for the respect, equality and non-discrimination of all individuals on the grounds of, inter alia, race, colour and sex. In the landmark decision of *Toonen v Australia* in 1994, the Committee found not only that the reference to “sex” in Articles 2(1) and 26 must be taken to include sexual orientation, but also that laws which criminalize consensual homosexual acts expressly violate the privacy protections of Article 17.¹ In the past twelve months alone, the Committee has called upon States on five occasions to take positive steps to end national prejudice and discrimination against lesbian, gay, bisexual and transgender (LGBT) people.²

Scope and Status of the Anti-Discrimination Bill in Congress

Despite arduous lobbying by LGBT activists, the Philippines still does not have anti-discrimination legislation. In its *List of Issues*, the Committee asked the Filipino State to provide information on measures to eliminate discrimination specifically regarding the scope and status of the Anti-Discrimination Bill(s) presented in Congress.³ An Anti-Discrimination Bill (ADB) was first introduced in 2000 during the 11th Congress. However, after twelve years the bill has still not been passed. The Anti-Discrimination Bill that has been lobbied for by LGBT activists was re-filed in the Senate⁴ and in the Lower House of Congress⁵ during the 15th Congress. The Anti-Discrimination

¹ *Toonen v. Australia*, CCPR/C/50/D/488/1992, UN Human Rights Committee (HRC), 4 April 1994, *available at*: <http://www.unhcr.org/refworld/docid/48298b8d2.html> [accessed 14 September 2012]

² CCPR/C/GTM/CO/3 March 19, 2012 at para. 11, CCPR/C/DOM/CO/5 Mar. 12, 2012 at para. 16, CCPR/C/JAM/CO/3 October 19, 2011 at para. 8, CCPR/C/KWT/CO/2 October 20, 2011 at para. 30, CCPR/C/ARM/CO/2-3 July 16, 2012 at para. 10.

³ “Please provide information on the measures taken to eliminate all forms of discrimination in the State party. What is the scope and status of the Anti-Discrimination bill(s) that have been presented to the Congress? Please explain the measures being taken to ensure that homosexuality is not subjected to criminal sanctions under the Revised Penal Code. What measures are being taken to eliminate discrimination on the ground of sexual orientation and gender identity.” *List of issues to be taken up in connection with the consideration of the fourth periodic report of the Philippines* ¶ 5, U.N. Doc. CCPR/C/PHL/Q/4 (April 26, 2012).

⁴ The revised title of the consolidated Senate Bill Nos. 19, 1213 and 1342, SB 2814 or the, “An act prohibiting discrimination, profiling, violence and all forms of intolerance against persons based on ethnicity, race, religion or belief, sex, gender, sexual orientation, gender identity, language, disability, or other status;” An Act Prohibiting Discrimination Against Persons on Account of Ethnic Origin and/or Religious Belief, SB No. 19(2010), *available at* [http://www.senate.gov.ph/lis/bill_res.aspx?congress=15&q=SBN-19;_An Act Prohibiting Discrimination Against Persons on Account of Ethnic Origin and/or Religious Belief, SB No. 1213\(2011\), available at](http://www.senate.gov.ph/lis/bill_res.aspx?congress=15&q=SBN-19;_An Act Prohibiting Discrimination Against Persons on Account of Ethnic Origin and/or Religious Belief, SB No. 1213(2011), available at) http://www.senate.gov.ph/lis/leg_sys.aspx?congress=15&type=bill&p=1; Anti-Religious and Racial Profiling Act of 2010, SB No. 1342, *available at* http://www.senate.gov.ph/lis/leg_sys.aspx?congress=15&type=bill&p=1; Anti-Ethnic or Racial Profiling and Discrimination Act of 2011, SB No. 2814(2011), *available at* http://www.senate.gov.ph/lis/leg_sys.aspx?congress=15&type=bill&p=1.

⁵ HB 1483 and HB 515, “An Act Prohibiting Discrimination on the Basis of Sexual Orientation and Gender Identity and Providing Penalties Therefore” seeks to prohibit a wide-range of discriminatory policies and practices against Filipino lesbians, gays, bisexuals and transgender (LGBT) persons in schools, workplaces, commercial establishments, public service, police and the military. An Act Defining Discrimination on the Basis of Sexual Orientation and Gender Identity and Providing Penalties Therefor, HB No. 01483(2011) and HB. No. 515, *available at* http://www.congress.gov.ph/download/index.php?d=billstext_results.

bill seeks to prohibit and penalize a wide-range of discriminatory policies and practices against Filipino LGBT persons in schools, workplaces, commercial establishments, public service, health institutions, police and the military.

The Senate was able to approve the bill on the third reading as part of a comprehensive Anti-Discrimination legislation that covers sexual orientation and gender identity as well as race, religion, ethnicity, and other statuses. In order to be enacted into law, the bill must be approved by the bicameral conference committee and submitted for approval to the president. Though the bill's passage through the Senate is a positive step, as the national elections approach in May of 2013 and the close of the 15th Congress draws near, the window of opportunity to pass this national anti-discrimination legislation becomes narrower. The State must act quickly in order to pass this Anti-Discrimination legislation that has been pending for more than 12 years. Comprehensive Anti-Discrimination legislation is a vital part of adequate protection of the LGBT community.

Recommendations

- The State should prioritize passage of a comprehensive anti-discrimination legislation pending in Congress that includes protection of LGBT persons in the Philippines as a way to prevent harassment, discrimination or violence against persons because of their sexual orientation or gender identity.
- The State party should also take all necessary legislative, administrative and other measures to eliminate and prohibit discrimination on the basis of sexual orientation and gender identity, including with respect to access to employment, housing, education and health care, and to ensure that individuals of different sexual orientation or gender identity are protected from violence and social exclusion within the community.

Criminalization of Homosexuality under the Revised Penal Code

Police raids⁶ on LGBT venues occur regularly and without warrants. During these raids police unlawfully detain individuals then verbally abuse and extort money from them.

Police will also frequently charge those unlawfully detained with violating the public scandal⁷ provision of the Revised Penal Code. An individual may be charged under the "Grave scandal"

⁶ The Club Bath Raid of April 2012,

MISSOLOGY <http://missosology.info/forum/viewtopic.php?f=8&t=134977&sid=5a1fd1aa945d96519b9234c6d097d637>

Phil Gay raid of 2008, MANILA GAY GUIDE,

<http://manilagayguide.blogspot.com/2008/07/fahrenheit-cafe-and-fitness-center.html?zx=130729c52b18678a>

Jonas Bagas, Raids in Gay/Bi/Trans Venues, FULLMAN (Aug. 29, 2009), <http://fullman.com.ph/2009/08/29/raids-in-gaybitrans-venues/>, <http://www.youtube.com/watch?v=JbhszAE7zzQ>.

⁷ Revised Penal Code, Article 200(Phil.).

provision of the penal code if the person “offend[s] against decency or good customs” by engaging in “highly scandalous conduct.” Because the provision does not clearly define the conduct for which it requires, police are given broad discretion for its implementation resulting in disproportionate and discriminatory application against LGBT individuals.

One July 18, 2012 the Presidential Human Rights Committee (PHRC),⁸ headed by Undersecretary Severo Catura, approved a request by gay activists to organize a dialogue between the PHRC and the Philippines National Police (PNP) in order to put a stop to illegal raids by errant police officers. As a result of this discussion, the PHRC committed to ensuring the PNP adheres to the legal process in conducting raids. The PNP promised to provide training to police on the legal procedure during raids and to emphasize the recent police policy prohibiting arbitrary arrest.

Recommendations

- The State party should repeal or amend all legislation, which provides for or could result in discrimination against, and prosecution and punishment of, people because of their sexual orientation or gender identity.
- The State should seek policy reform in the Philippines National Police (PNP) by including a non-discrimination provision for LGBT persons and require the Presidential Human Rights Commission (PHRC) to include the rights of LGBT persons in the National Human Rights Plan by having concrete programs in the National plan to address and prevent violence and discrimination of LGBT persons.

The State should also require the PNP to provide training to police on the legal procedure of raids, incorporating SOGI issues into the training and expressly prohibiting arbitrary arrests of individuals based on their sexual orientation and gender identity.

Discrimination on the Basis of Sexual Orientation and Gender Identity

While some legislators and state agencies have proven supportive of LGBT rights, there are also glaring instances of discrimination, marginalization and exclusion of sexual orientation and gender identity issues from various State branches and departments.

⁸ The Presidential Human Rights Committee (PHRC) was created in 2003 to act as the “advisory body to the President in effectively addressing all human rights issues in the Philippines. Focus March 2010 Volume 59, Hurights Osaka, <http://www.hurights.or.jp/archives/focus/section2/2010/03/human-rights-in-the-philippines-government-response.html> On December 2011, the PHRC conducted an LGBT forum and invited members of the government from the different department and institutions of government to learn about SOGI issues and to guide the PHRC in incorporating SOGI issues in the National Human Rights Plan that they are obligated to produce for the Philippines. The LGBT forum forged a direct and open partnership with the PHRC.

Local government units from different cities all over the Philippines have been proactive in passing and filing city ordinances banning LGBT discrimination. In Quezon City, anti-discrimination in employment was enacted in 2004⁹ and LGBT-friendly provisions are supplemented in the Quezon City Gender and Development Ordinance. Albay Province and Bacolod City¹⁰ passed an anti-discrimination ordinance.¹¹ Angeles City not only passed anti-discrimination legislation but created a Gay Rights Desk as well.¹² In Cebu City while an anti-discrimination ordinance is being deliberated,¹³ a city resolution was filed urging the Department of Interior and Local Government (DILG) to issue a memorandum to all government agencies to include the LGBT sector in their Gender and Development (GAD) Programs.¹⁴

In the House of Representatives, Representative Raymond Palatino of the Kabataan Partylist filed House Resolution No.1333, which seeks to investigate prejudicial, discriminatory, and unjust practices and policies against LGBT students implemented and tolerated in schools¹⁵ and will be partnering with the Department of Education (DepEd) and other government agencies to explore the inclusion of a Comprehensive Gender Curriculum on basic and secondary education and in vocational and technical school to incorporate discussion on issues of LGBT persons.¹⁶ In May of 2012, the Department of Education issued DepEd Order No. 40 or, “The DepEd Child Protection Policy” to guarantee the protection of children in schools from any form of violence, abuse or exploitation regardless of sexual orientation and gender identity.

Despite the passage of these government actions addressing LGBT violence and discrimination, the State has failed to address the overwhelming amount of hate crimes and murders of LGBT

⁹ *Paint your town pink*, THE LESBIAN AND GAY LEGISLATIVE ADVOCACY NETWORK (LAGABLAB) (Apr. 18, 2012), <http://lagablab.wordpress.com/resources/>; Oliver M. Pulumbarit, *Gay Filipinos and Rainbow*, PHILIPPINE DAILY INQUIRER (Apr. 23, 2012).

¹⁰ <http://www.ndb-online.com/070712/local-news/local-news-anti-discrimination-ordinance-approved-first-reading>

¹¹ Laurindo Garcia, *Manila Beams With Pride, Despite Debut of Anti-gay Protesters*, FRIDAE (Dec 2008), <http://www.fridae.asia/newsfeatures/2008/12/08/2168.manila-beams-with-pride-despite-debut-of-anti-gay-protesters>.

¹² The Gay Rights Desk (GRD) will act like the Angeles City Multi-Sectoral Consultative Council (ACMCC), a citizen consultative mechanism where vital programs and decisions of the city government are consulted, processed and discussed. With the GRD, LGBT persons in the city can expect various types of services and projects for the promotion of their rights and welfare; Angeles City mayor backs gay ordinance. Punto Central Luzon, Angeles Mayor backs gay ordinance, philSTAR (Nov. 29, 2011, 9:08 AM), <http://www.philstar.com/nation/article.aspx?articleid=753223>.

¹³ *Cebu Anti-Discrimination Ordinance Pushed*, CEBU DAILY. (2012, April 23). Cebu Daily News, http://www.cdn.ph/news_details.php?id=13242, <http://newsinfo.inquirer.net/133797/anti-discrimination-ordinance-in-cebu-city-public-hearing-today> (last visited Apr. 25, 2012).

¹⁴ Jujemay G. Awit and Princess Dawn H. Felicitas, *LGBTs Fight for Respect, Acceptance*, Sun Star Cebu (last visited Sep. 14, 2012, 1:20 PM), <http://www.sunstar.com.ph/cebu/local-news/2011/12/10/lgbts-fight-respect-acceptance-195192>.

¹⁵ *State of LGBTQs Under Aquino, Progressive Organization of Gays in the Philippines* <http://progay.multiply.com/> (last visited July 2011).

¹⁶ Aside from DepEd, partnering government agencies are the Commission on Higher Education (CHED) Government agencies such as the Technical Education and Skills Development Authority (TESDA), Philippines Commission on Women (PCW) and CHR. Video news can be seen online: Youtube: Ilang LGBT, nakaranas ng diskriminasyon sa paaralan (Numerous LGBT students experience discrimination in school), published by GMANEWS (Jun. 26, 2012), *available at* <http://www.youtube.com/watch?v=p3XXwpgRifs&feature=youtu.be>; <http://www.gmanetwork.com/saksi>.

individuals in the Philippines. For example, the report the Filipino State submitted to the this Committee for the Philippines' fourth periodic review¹⁷ did not confront the gravity and gruesomeness of LGBT killings that have occurred in recent years within the State nor the fact that the number of hate crimes is continually increasing.¹⁸ The report discussed proposed anti-discrimination legislation but failed to discuss the importance of including LGBT people in the legislation. Furthermore, as mentioned above, Anti-Discrimination legislation for LGBT persons was introduced twelve years ago and is still pending in Congress.

Marginalization and Exclusion of SOGI Issues by the State

The President of the Philippines specifically excluded LGBT individuals from equal protection in a reproductive health law in 2011. Although the original draft of the Reproductive Health Bill included sexual orientation as a protected class under section two of the bill,¹⁹ President Benigno Aquino²⁰ intentionally removed sexual orientation from that protected status, singling out LGBT people and depriving them of having equal rights among other sectors enumerated in that section.

If the President of the Philippines signs the proposed "Clerical Error Law of 2001" of the Philippines in its current status,²¹ the Philippines will make changing one's first name and sex on a birth certificate illegal for transsexual and intersex persons. LGBT groups headed by the Society of Transsexual Women of the Philippines (STRAP)²² actively engaged with the

¹⁷ Department of Justice (DOJ) prepared the report in coordination with the Department of Foreign Affairs (DFA) and PHRC. The report incorporated various reports from Philippines agencies, with the CHR and selected civil society organizations (CSOs) CCPR/C/PHL/4 U.N. Int'l Covenant on Civil and Political Rights, Human Rights Commission, 104th Sess., Mar. 12-30, 2012, CCPR/C/PHL/4 (Apr. 26, 2012).

¹⁸ Since 1996 till May 2012, a total of 163 have been murdered. Since the country has no clear definition of hate crimes, the victims could be more. Benedicto Q. Sánchez, *Muderous Social Media*, SUN STAR (last visited Sep. 14, 2012, 1:29 PM), <http://www.sunstar.com.ph/bacolod/opinion/2012/05/18/sanchez-murderous-social-media-222087>.

¹⁹ "The Responsible Parenthood, Reproductive Health and Population Development Act of 2011" Section 5 provision reads: "The State recognizes and guarantees the exercise of the universal basic human right to reproductive health by all persons, particularly of parents, couples and women, consistent with their religious convictions, cultural beliefs and the demands of responsible parenthood. To this end, there shall be no discrimination against any person on grounds of sex, age, religion, sexual orientation, disabilities, political affiliation and ethnicity. In substitution of House Bill Nos. 96, 101, 513, 1160, 1520 and 3387. www.congress.gov.ph/download/basic_15/HB04244.pdf, <http://www.rappler.com/nation/9827-full-text-house-bill-4244>.

²⁰ Sexual orientation was in the draft combining Congressional revisions but through the Legislative-Executive Development Advisory Council (LEDAC), the draft bill showed notes from President Aquino where "sexual orientation" was put in brackets and removed. Sharyn Jackson, *Philippine President Aquino Tries to Strike Out LGBT Protections from Health Care Bill*, Queerty (August 7, 2012), <http://www.queerty.com/philippine-president-aquino-tries-to-strike-out-lgbt-protections-from-health-care-bill-20120807/#ixzz2466fgXn8>, http://www.congress.gov.ph/download/basic_15/HB04244.pdf, Palace deletion of pro-gay RH provision jolts LGBT Chito C. Chavez, *Group Protests RH Bill Change*, Manila Bulletin Publishing Corporation (Aug. 5, 2012, 5:45 PM), <http://www.mb.com.ph/articles/368623/group-protests-rh-bill-change>.

²¹ Section 5 Republic Act No. 9048 reads "no petition for correction of erroneous entry concerning the date of birth or the sex of a person be entertained except if the petition is accompanied by earliest school record or earliest civil documents such as, but not limited to, medical records, baptismal certificate and other documents issued by religious authorities; nor shall any entry involving change of gender corrected except if the petition is accompanied by certification issued by an accredited government physician attesting to the fact that the petitioner has not undergone sex change or sex transplant". This section was retained in the final approved HB 4530 and SB 3113.

²² Society of Transsexual Women of the Philippines, <http://www.tsphilippines.com/> (last visited 1:49 PM).

Senators who authored the bills²³ in March 2012 about Section 5 of the bill. Section 5 expressly states that the government will not grant a petition made for change of gender by a person who has undergone sex change or sex transplant. In their initial discussions, the Senators assured the activists that they were not intending to violate their rights and agreed to consult with LGBT groups to change the provision of the bill.²⁴ Then, in June of 2012, one of the Senators changed his position.²⁵ At present, the consolidated version of the bill has been signed by the Speaker of the House and the Senate President and is now with the President waiting for his approval and signature.²⁶

The State has also been responsible for inciting homophobia. In January 2012 during the Philippine National AIDS Council plenary meeting, the Philippine Secretary of Health Enrique Ona suggested “parents should rein in their homosexual children and get them tested”²⁷ to address the rapid rise of HIV cases²⁸ in the country. His discriminatory statement not only demonstrates a general ignorance and hostility toward LGBT people but contributes to the growing cases of HIV/AIDS in the Philippines as well. Both HIV/AIDS and LGBT activists called for the Health Secretary’s resignation²⁹ for his malicious and dangerous remark.

Aside from the fact that the Philippines is one of only seven countries in the world where HIV rates are rapidly rising,³⁰ men who have sex with men (MSM) are identified as major driver of the

²³ Senate Bill No. 3113 and House Bill No. 4530, An act further authorizing the city of municipal civil registrar or the consul general to correct clerical or typographical errors in the date of birth or sex or a person appearing in the civil register without need of a judicial order amending for this purpose the pertinent provisions of Republic Act No. 9048, SBN No. 3113(2012), *available at*, http://www.senate.gov.ph/lis/bill_res.aspx?congress=15&q=SBN-3113; HB No. 4530(2012), *available at*, http://www.congress.gov.ph/download/index.php?d=billtext_results.

²⁴ Patrick King Pascual, *Lawmakers to Address Concern of Transgender on Clerical Error Law*, Yahoo! News Philippines (March 6, 2012), <http://ph.news.yahoo.com/blogs/the-inbox/lawmakers-address-concern-transgender-clerical-error-law-153909349.html>.

²⁵ Sen. Francis "Chiz" Escudero responds to STRAP's open letter. June 2012. <https://www.facebook.com/notes/strap/sen-francis-chiz-escudero-responds-to-straps-open-letter/10150927835782978>

²⁶ An Act Further Authorizing The City Or Municipal Civil Registrar Or The Consul General To Correct Clerical Or Typographical Error In The Date Of Birth Or Sex Of A Person Appearing In The Civil Register Without Need Of A Judicial Order, Rep. Act. No. RA10172, *available at*, http://www.congress.gov.ph/legis/search/hist_show.php?congress=15&save=1&journal=&switch=0&bill_no=HB04530.

²⁷ Michael Tan, *AIDS and TB*, Inquirer (Dec. 8, 2011, 9:54 PM), <http://opinion.inquirer.net/18759/aids-and-tb>.

²⁸ Victor Hoff, *The Philippines' Ticking HIV Time Bomb*, Queerty (Jul. 26, 2012). <http://www.queerty.com/report-the-philippines-ticking-aids-time-bomb-20120726/#ixzz2467gSbOV>. A new report coming out of the Philippines indicates HIV rates are on the rise in the Southeast Asian country. While the fewer than 10,000 confirmed cases (almost all among gay men) is a relatively small number in a country of almost 100 million, that rate has tripled in the past few years. Of the 9,669 reported cases from 1984 to May 2012, 20-29 year old age group has had the most number of cases.

Pots de Leon, *Church Confronts HIV-AIDS Challenge*, Sets Workshops Next Week, Philippine National AIDS Council (Aug. 14 2012, 5:16 PM), <http://www.pnac.org.ph/index.php?mact=News,cntnt01,detail,0&cntnt01articleid=417&cntnt01origid=266&cntnt01returnid=39>.

24% of all cases coming from the 15-25 year-old age group ‘Youth, most threatened by rise in HIV-AIDS cases. *August 9, 2012*.

Youth, Most Threatened By Rise in HIV-AIDS Cases, Philippines National AIDS Council (Aug. 9, 2012),

<http://www.pnac.org.ph/index.php?mact=News,cntnt01,detail,0&cntnt01articleid=416&cntnt01origid=266&cntnt01returnid=39>.

²⁹ LADLAD Calls for the Resignation of DOH Head. January 2012 <http://ladladpartylist.blogspot.com/search?updated-max=2012-02-20T06:35:00-08:00&max-results=7&start=14&by-date=false>, <http://www.samarnews.com/news2011/dec/b410.htm>

³⁰ *Gay Sex Fuels HIV Rise in Catholic Philippines*, Asia One (Jul. 26, 2012),

<http://www.asiaone.com/News/AsiaOne%2BNews/Asia/Story/A1Story20120726-361464.html>.

epidemic.³¹ Among the factors contributing to the rise of HIV/AIDS cases in the Philippines are having unprotected sex and sex with multiple partners. The Catholic Church's ban on condom use, the lack of public education about HIV, the shame of living with the disease prevent many from acknowledging infections and seeking help. The absence of public-awareness campaigns and cultural taboos against homosexuality, HIV/AIDS and sex are other contributing factors. Because data demonstrates that countries where discrimination against gays or other groups exacerbates the epidemic,³² the State must work on combating homophobia in order to be successful in decreasing the rate of HIV/AIDS transmission. This includes holding government officials accountable for homophobic statements like the one made by the Health Secretary in 2012.

Recommendations

- The State party should repeal or amend all legislation, which provides for or could result in discrimination against, and prosecution and punishment of, people because of their sexual orientation or gender identity.
- The State party should veto Republic Act 9048 (RA 9048) or the "Clerical Error Law of 2001" and amend RA 9048 by repealing section five that specifically prevent transgender persons from changing their name and sex in their legal papers.

Effect of State Discrimination on Society

The State's morose treatment of LGBT individuals intensifies discrimination of LGBT persons within Philippines society and social institutions.

A recent study on bullying in middle school showed that Filipino children have a higher rate of being "made fun of" by other children (57 percent to 58 percent) than schoolchildren in Australia, Hong Kong, Indonesia, Japan, Malaysia, New Zealand, Singapore and Taiwan³³ and a report by the Sydney Morning Herald showed that 50% of nine-year-old Filipino children surveyed said they were bullied regularly.³⁴

³¹ 2011 Philippine Estimates of the Most At-Risk Population and People Living with HIV, PHILIPPINE NATIONAL AIDS COUNCIL, <http://www.pnac.org.ph/index.php?page=2011-mar-and-plhiv-estimates>.

³² See Hoff, *supra* note 28.

³³ In all categories, the Philippines ranked higher than the rest: 39 percent experienced theft; 36 percent were physically hurt; 45 percent were forced to do things they didn't want; and 30 percent were left out of groups. Shu-Ling Lai, *Bullying in Middle Schools: An Asian Pacific Regional Study*, Renmin Ye and Kuo-Pao Chang, 9 Asia Pacific Education Review Pages 503-515(2008), <http://www.springerlink.com/content/327g2243g9112871/>.

³⁴ Joel Pablo Salud, *Grabbing the Bully by the Horns: Violence in Schools*. ABS-CBN NEWS(Sept. 2009), <http://www.abs-cbnnews.com/features/09/11/09/grabbing-bully-horns-violence-schools>.

Being young and not conforming to the gender roles assigned to one's sex increases the risk of discrimination and abuse for LGBT persons. This double-victimization³⁵ is aggravated by the absence of support mechanisms and school policies addressing this concern as well as the failure of schools to safeguard students from being abused by other students, staff, administrators and teachers. The absence of support forces LGBT students to endure the abuse, transfer to another school or, in some cases, stop attending school altogether.³⁶ The discrimination LGBT students face in schools not only violates the right to be free from discrimination but prevents these individuals from the enjoyment of numerous other rights in the Covenant as well.

Homophobia, stigma and prejudice toward LGBT persons are very present within Filipino society creating a dangerous climate of hostility toward LGBT people. LGBT youth are often targeted by parents who upon discovering their child's sexual orientation and/or gender identity feel compelled to inflict physical harm on them out of frustration or in an attempt to prevent their child from expressing their sexuality. In June of 2012, when a sixteen-year-old young woman disclosed her relationship with a female lover to her grandmother, her grandmother threatened to cut her throat with a knife.³⁷ In January of 2012, a father poured boiling water over his nineteen-year-old gay son after he found out that he is also gay like his two other brothers.³⁸

Recommendations

The State party should also take all necessary legislative, administrative and other measures to eliminate and prohibit discrimination on the basis of sexual orientation, including with respect to access to education to ensure that individuals of different sexual orientation or gender identity are protected from violence and social exclusion within the community.

LGBT Discrimination by the Catholic Church

It is important to note the Philippines Catholic Church's blatant campaign against LGBT persons and how it contributes to the rampant discrimination and violence experienced by LGBT persons in the Philippines.

³⁵ Celeste Ann Castillo Llaneta, *Rainbow Connections: Making UP Safe for LGBTs*, UNIVERSITY OF THE PHILIPPINES (Mar. 1, 2012), <http://www.up.edu.ph/index.php/read-more/22-forum/151-making-up-safe-for-lgbts> (last visited Sept. 14, 2012).

³⁶ Ilang LGBT, nakaranas ng diskriminasyon sa paaralan (Numerous LGBT students experience discrimination in school). <http://www.youtube.com/watch?v=p3XXwpgRifs&feature=youtu.be>, <http://www.gmanetwork.com/saksi>, If you were in my Shoes - video about Andrew Cruz and his experience with Homophobic Bullying. May 2012. <http://www.youtube.com/watch?v=nrKRVIr8tdg>.

³⁷ The incident was captured entirely on camera and was shown on TV when the police rescued the woman in GMA reality-drama program "Rescue." *Woman Threatens Gay Granddaughter with Knife on 'Rescue'*, GMA News (June 27, 2012, 12:41 PM), <http://www.gmanetwork.com/news/story/263304/newstv/rescue/woman-threatens-gay-granddaughter-with-knife-on-rescue>.

³⁸ Gay burned from hot water from father <http://www.youtube.com/watch?v=T0UVDa3jz0w&feature=share>; Edmund Padilla, *Gay Filipino Teen Scalded with Boiling Water by Father Erano*, Huffington Post Gay Voices (Jan. 5, 2012 3:43 PM), http://www.huffingtonpost.com/2012/01/05/edmund-padilla-gay-filipino-teen-scalded_n_1187046.html.

The Catholic Bishops Conference of the Philippines (CBCP) and Episcopal Commission on Family and Life (ECFL) has been fervently demanding Congress for the removal of “sex, gender, sexual orientation and gender identity”³⁹ in the comprehensive anti-discrimination ordinances filed in the Senate⁴⁰ and in the House of Representatives⁴¹ claiming that its inclusion will only “create problems regarding ethics, marriage, the family and religious freedom” and reasons that “the difference in sex or gender does not belong to the same level as the difference in race, color, religion, or ethnicity.”⁴²

Misinformation about the inclusion of sexual orientation and gender identity in the anti-discrimination bills are being circulated to convince legislators and society that LGBT persons are not discriminated against or abused and instead are depicting themselves as being oppressed in order to gain public sympathy.⁴³ Antagonists of the anti-discrimination bill claim that the passage of an anti-discrimination legislation will open the door for same-sex marriages.⁴⁴ A provision allowing for same-sex marriage was not present in the anti-discrimination bill at the time of its introduction first filing in 1999 and has never been added.

³⁹ Although the bill has passed the third reading in the Senate, it still has to go through harmonizing through bicameral discussions. December 2011. Niña Calleja, *CBCP Wants Anti-Discrimination Bill Cleansed of Provisions on Gay Rights*, Inquirer News (Dec. 7, 2011), <http://newsinfo.inquirer.net/106981/cbcp-wants-anti-discrimination-bill-cleansed-of-provisions-on-gay-rights>.

⁴⁰ *supra* note 1.

⁴¹ *supra* note 2.

⁴² *Senate 'Anti-Discrimination Bill' Mandates Religious Intolerance* – Lawyer, CBCP For Life (Dec. 9, 2011), <http://cbcpforlife.com/?p=5234>.

⁴³ “Presenting themselves as victims of oppression is one of the steps in advancing homosexual rights, ultimately to include the recognition of such rights by the law” said Dr. Ligaya Anacta Acosta, regional director of Human Life International (HLI) Asia and Oceania. Addendum on the Position Paper of Courage Philippines on House Bill 956 and Senate Bill 11, <http://cbcpforlife.com/?p=5301>.

⁴⁴ *Lawmaker: No Same-sex Unions under Anti-discrimination Bil*, SUN STAR MANILA (December 8, 2011), <http://www.sunstar.com.ph/manila/local-news/2011/12/08/lawmaker-no-same-sex-unions-under-anti-discrimination-bill-194809>.

Right to Participate in Public Life and Vote in Free and Fair Elections, Equality and Non-discrimination (Art. 25)

Article 25 of the Convention provides for the right of each citizen to participate in public affairs, vote and to have equal access to public service in the country. These rights are provided free of unreasonable restriction and free from distinctions made on the basis of sex, which as mentioned above, includes sexual orientation. In the past twelve months, the Committee has called upon State parties to take affirmative steps to end negative attitudes and stigma surrounding LGBT people in on ten occasions.

Discrimination against LGBT People in the Military

In the List of Issues to the Philippines State, the Committee requested information regarding State sponsored discrimination with respect to participation in the armed forces persists in the Philippines.⁴⁵ During the Twelfth Congress (2001-2004), the Armed Forces of the Philippines (AFP), in its formal position paper at the public hearing of the anti-discrimination bill in Congress stated, “individuals who display and manifest overt acts of their homosexual orientations and the propensity to indulge in homosexual acts shall be excluded in the profession of arms.”⁴⁶ The Philippines National Police (PNP) also warned police officers that they would be relieved from duty, “if they sway their hips while marching, or if they engage in lustful conduct.”⁴⁷

Some progress was made between March 2009 and May 2012 as the AFP,⁴⁸ PNP⁴⁹ and Philippine Military Academy (PMA) have been consistently stating in the media that they will not prevent lesbians, gays and bisexual persons from entering their institutions provided these LGB people will not engage in any indecent behavior or show latent or overt homosexuality while strictly adhering to rules and regulations.”

⁴⁵ “Please respond to reports that in 2009 the AFP issued a statement that it would allow lesbians and homosexuals to serve in the military provided that they adhere to the Code of Ethics, which includes policies against the expression of their homosexuality among military personnel. Furthermore, please respond to reports that the AFP issued a warning to gay police officers that they must not act in a manner that is associated with homosexuality such as „swaying of hips” or engaging in “lustful conduct”, failing which their employment would be terminated. How are such instructions compatible with the Covenant? Please explain what actions are being taken to tackle homophobic attitudes and prejudices in state institutions and society?” U.N. Int’l Covenant on Civil and Political Rights, Human Rights Commission, 104th Sess., Mar. 12-30, 2012, CCPR/C/PHL/4(Apr. 26, 2012).

⁴⁶ *The Philippines: Acceptance of Gays in the Military does not Mean Equality (Yet)*, INTERNATIONAL GAY & LESBIAN HUMAN RIGHTS COMMISSION (Mar. 18, 2009), <http://www.iglhr.org/cgi-bin/iowa/article/takeaction/resourcecenter/876.html#endnote>.

⁴⁷ Andy Towle, *Philippines National Police Warns Officers: Don’t Gay it Up*, TOWERLOAD (Mar. 23, 2007) http://www.towleroad.com/2007/03/philippine_nati.html.

⁴⁸ Alex Romero, *No Discrimination Vs Aspiring Soldiers*, PHILSTAR(May 21, 2012 12:00 AM),<http://www.philstar.com/Article.aspx?articleId=809174&publicationSubCategoryId=63>.

⁴⁹ Romsanne Ortiguero, *Gays Can Be Cops, But Must Follow Strict Protocols: PNP*, INTERAKSYON (May 21, 2012, 5:14 PM), <http://www.interaksyon.com/article/32504/gays-can-be-cops-but-must-follow-strict-protocols-pnp>.

Through their media announcements, it seems on the surface that the Philippine military and the police are adhering to the non-discrimination clause of the Philippine Constitution (Art 2)⁵⁰ and the ICCPR by its declaration of openness to admit gays, lesbians and bisexual persons in military and police service. Upon closer inspection the additional conditions required from gay, lesbian and bisexual applicants and cadets demonstrate lingering prejudices and negative stereotypes toward LGBT persons. Also, the military's apparent strict adherence exclusively towards heterosexist gender binary (masculine and feminine) roles discriminate against those that fall short to this standard they consider as the benchmark of what constitutes being decent, proper and respectful. Furthermore, the PMA publicly admitted that even though they do not prohibit gays in their military school, "having gays was not yet quite accepted in the PMA. As it is in Filipino culture, (gays are) not yet very acceptable outright."⁵¹

The generalized negative stereotyping of LGBT persons and the misconception that a person's sexual orientation defines one's gender expression are most evident on the common position of the APF, PNP and PMA towards gay and effeminate behavior. Cadets who display effeminate or gay behavior, which is against the code of conduct of the police and armed forces, will be punished either with a reprimand and/or a dishonorable discharge. It is also noteworthy that transgendered persons were not invited to join the military nor the police.

If the AFP, PNP and the PMA are serious in their non-discriminatory position they should open their invitation to transgendered persons to join the military and the police and they should formalize their non-discriminatory position by revising their respective Code of Ethics, making it illegal to discriminate persons who enter military and police service regardless of one's sexual orientation and gender identity,

Recommendations

- The State party should indicate clearly and officially that it shall not tolerate any form of social stigmatization with respect to lesbian, gay, bisexual or transgender members of the military by requiring The Armed Forces of the Philippines (AFP), Philippines National Police (PNP) and the Philippine Military Academy (PMA) to formalize their non-discriminatory position towards LGBT persons by amending their respective Code of Ethics, particularly removing any discriminatory provisions on homosexuality.

⁵⁰ Const.(1987), art. III, sect. 1(Phil.), *available at* <http://www.lawphil.net/consti/cons1987.html>.

⁵¹ Dona Pazzibugan and Frances Mangosing, *PMA Now Open to Gays but Don't Show It*, INQUIRER NEWS (July 11, 2012, 4:00 AM), <http://newsinfo.inquirer.net/226686/pma-no-ban-on-gay-lesbian-enrollees>.

Discrimination Against of LGBT Individuals Participation in Elections

The Committee requested information regarding measures the State has taken to create an environment in which all political parties have equal rights and participatory rights in elections.⁵² One issue the Committee was concerned with was the information it received that the Commission on Elections (COMELEC) rejected LGBT group LADLAD's application to participate in the 2010 election on the grounds of morality. Indeed, on November 11, 2009, the Commission on Election (COMELEC) dismissed the petition of LADLAD LGBT Partylist to run in the May 2010 national elections claiming that LADLAD promotes "immorality" and "a threat to the moral and spiritual degradation of the youth."⁵³

LADLAD filed a petition to the Supreme Court on January 4, 2010 to overturn the COMELEC decision, which was supported by the Commission on Human Rights (CHR) when it filed a Motion to Intervene opining that the denial of LADLAD's petition on moral grounds violated the standards and principles of the Philippines Constitution, the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil, Political Rights (ICCPR).

On April 10, 2010 the Supreme Court of the Philippines approved LADLAD's petition to participate as a legitimate party-list while citing that the COMELEC failed to justify "what societal ills are sought to be prevented, or why special protection is required for the youth. Neither has the COMELEC condescended to justify its position that petitioner's admission into the party-list system would be so harmful as to irreparably damage the moral fabric of society."

The decision also mentioned that, "as far as this Court is concerned, our democracy precludes using the religious or moral views of one part of the community to exclude from consideration the values of other members of the community." And that, "moral disapproval, without more, is not a sufficient governmental interest to justify exclusion of homosexuals from participation in the party-list system. The denial of LADLAD's registration on purely moral grounds amounts more to a statement of dislike and disapproval of homosexuals, rather than a tool to further any substantial public interest."

It added that LADLAD's "blanket justifications give rise to the inevitable conclusion that the COMELEC targets homosexuals themselves as a class, not because of any particular morally

⁵² "According to information before the Committee, the Commission on Elections (COMELEC) rejected an application for accreditation by an LGBT group LADLAD to participate in the 2010 elections on grounds of morality arguing that homosexuals are a CCPR/C/PHL/Q/4 threat to young persons. Please explain what measures are being taken to provide an environment in which all political parties and their members have equal rights and legal status to participate freely in the State party's periodic elections." 28, U.N. Doc. CCPR/C/PHL/Q/4 (April 26, 2012).

⁵³ LADLAD vs. Commission on Election, G.R. No. 190582 (S.C., Apr. 8, 2010)(Phil.), *available at* <http://sc.judiciary.gov.ph/jurisprudence/2010/april2010/190582.htm>.

reprehensible act. It is this selective targeting that implicates our equal protection clause.” Furthermore, “laws of general application should apply with equal force to LGBTs, and they deserve to participate in the party-list system on the same basis as other marginalized and under-represented sectors.”

The decision of the COMELEC clearly shows how state actors with personal religious homophobic biases discriminate and abuse the basic human right of LGBT persons. At the same time the decision of the Supreme Court recognizes the LGBT sectors right to association and expression and the right to participate freely in, which sets a legal precedent for the recognition of the LGBT as a sector.

Recommendations

- The State party should require the COMELEC to produce a Policy Paper and/or a Resolution in its commitment and adherence to the non-discrimination (Art 2), equality (Art 2) and secularism (Art 6) clause of the Philippines Constitution in decision concerning application for accreditation of individuals and groups who want to exercise their right to political participation.

All Recommendations

- The State should prioritize passage of a comprehensive anti-discrimination legislation pending in Congress that includes protection of LGBT persons in the Philippines as a way to prevent harassment, discrimination or violence against persons because of their sexual orientation or gender identity.
- The State party should also take all necessary legislative, administrative and other measures to eliminate and prohibit discrimination on the basis of sexual orientation and gender identity, including with respect to access to employment, housing, education and health care, and to ensure that individuals of different sexual orientation or gender identity are protected from violence and social exclusion within the community.
- The State party should repeal or amend all legislation, which provides for or could result in discrimination against, and prosecution and punishment of, people because of their sexual orientation or gender identity.
- The State should seek policy reform in the Philippines National Police (PNP) by including a non-discrimination provision for LGBT persons and require the Presidential Human Rights Commission (PHRC) to include the rights of LGBT persons in the National Human Rights Plan by having concrete programs in the National plan to address and prevent violence and discrimination of LGBT persons.
- The State should also require the PNP to provide training to police on the legal procedure of raids, incorporating SOGI issues into the training and expressly prohibiting arbitrary arrests of individuals based on their sexual orientation and gender identity.
- The State party should repeal or amend all legislation, which provides for or could result in discrimination against, and prosecution and punishment of, people because of their sexual orientation or gender identity.
- The State party should veto Republic Act 9048 (RA 9048) or the “Clerical Error Law of 2001” and amend RA 9048 by repealing section five that specifically prevent transgender persons from changing their name and sex in their legal papers.
- The State party should also take all necessary legislative, administrative and other measures to eliminate and prohibit discrimination on the basis of sexual orientation, including with respect to access to education to ensure that individuals of different sexual

orientation or gender identity are protected from violence and social exclusion within the community.

- The State party should indicate clearly and officially that it shall not tolerate any form of social stigmatization with respect to lesbian, gay, bisexual or transgender members of the military by requiring The Armed Forces of the Philippines (AFP), Philippines National Police (PNP) and the Philippine Military Academy (PMA) to formalize their non-discriminatory position towards LGBT persons by amending their respective Code of Ethics, particularly removing any discriminatory provisions on homosexuality.
- The State party should require the COMELEC to produce a Policy Paper and/or a Resolution in its commitment and adherence to the non-discrimination (Art 2), equality (Art 2) and secularism (Art 6) clause of the Philippines Constitution in decision concerning application for accreditation of individuals and groups who want to exercise their right to political participation.