

**THE STATUS OF LESBIAN, GAY, BISEXUAL AND TRANSGENDER RIGHTS
IN THE PHILIPPINES**
Submission to the Human Rights Council for Universal Periodic Review 13th Session

Introduction

This information is submitted by Rainbow Rights Project (R-Rights)¹ and Philippine LGBT Hate Crime Watch², human rights organizations from the Philippines, in the framework of the Universal Periodic Review for the Philippines, in order to draw attention of the Human Rights Council on lesbian, gay, bisexual and transgender (LGBT) rights in the Philippines. This report is largely based on unpublished interviews, grassroots research, media reports, the web, and records of the Philippine government and United Nations agencies.

Overview

Although the Philippines has signed and ratified most of the core human rights instruments, including the ICCPR, ICECSR, CEDAW, CRC, CRPD, CERD and other human rights treaties, Philippine society and culture maintain much prejudice towards the LGBT community, and lacks basic sensitivity and recognition of the LGBT rights. Although a number of laws mention sexual orientation or address same-sex relations, such as The Magna Carta on Women³, oftentimes the references have negative impact on the human rights of LGBTs.

According to the Constitution⁴, the State guarantees full respect for human rights and every person has the right to equal protection of the laws, but sexual orientation and gender identity are not explicitly mentioned. The Revised Penal Code of the Philippines, as well as other criminal laws, does not have provisions punishing hate crimes.

The Philippines has no comprehensive antidiscrimination law. Only one city has a local ordinance limited to workplace discrimination based on sexual orientation and gender identity. There are specific anti-discrimination provisions in the PNP Code and the Magna Carta of Social Workers⁵. Draft bills that protect sexual orientation and gender identity have been filed in the Philippine Congress and are in different committees. A number of government agencies have administrative rules or policies that protect sexual orientation, and alternately, other agencies have expressed policies that are discriminatory to their employees or clients.

According to the Philippine LGBT Hate Crime Watch research⁶ on violence against the LGBT population in the Philippines, around 141 deaths of LGBTs with varying elements of motives of hate or bias, extrajudicial killing, and/or discrimination-related violence related to sexual orientation and gender identity have been documented in media mass media reports and oral testimonies since 1996.

¹ Rainbow Rights Project (R-Rights), Inc. is an LGBT (lesbian, gay, bisexual, and transgender) legal organization in the Philippines composed of a team of gay and lesbian lawyers and gender activists that provides legal and policy reform services to the LGBT community. (<http://www.rainbowrightsproject.org/>).

² The Philippine LGBT Hate Crime Watch - A diverse, inclusive, and non-partisan community of individuals and organizations dedicated to ending anti-LGBT prejudice and the hate crimes born from it (<http://thephilippinelgbthatecrimewatch.blogspot.com/>).

³ http://www.nscb.gov.ph/ru8/GAD/Magna_Carta_of_Women.pdf Note: The Family Code also mentions homosexuality/lesbianism but in a negative light. The Anti-Rape Law of 1997 (sexual assault covers same-sex). RA 9262 (Anti-VAWC Act) punishes lesbian partners for domestic violence.

⁴ Article 2, Section 11 and Article 3, Section 1, Philippine Constitution

⁵ Section 17, <http://laws.chanrobles.com/ph/ra/republicactno9433.html> & <http://www.dswd.gov.ph/phocadownload/irr/irra9433final.pdf>

⁶ For the research, download the file at <http://www.thephilippinelgbthatecrimewatch.blogspot.com/>

The judiciary has made several favorable and unfavorable precedents in the legal treatment of LGBTs and intersexed persons. The Supreme Court ruled against a ministerial decision of the Commission on Elections that denied accreditation from Ladlad, an LGBT party list, to run as a political party. The Supreme Court also rendered a decision⁷ that denied the rights of transgenders to self-determination and legal changes of identity.

The Philippine permanent representatives at the United Nations did not support both the June 2011 Joint Statement at the UN Human Rights Council urging states to end violence, criminal sanctions and related human rights violations based on sexual orientation and gender identity; and the Joint Statement and the December 2010 United Nations General Assembly resolution which included protection for lesbian, gay, bisexual and transgender (LGBT) people from extrajudicial executions (EJE) and other unlawful killings based on sexual orientation.

The Commission on Human Rights (CHR) has signed memorandums in 2010 with civil society organizations that would start projects that will educate and strengthen protection programs for human rights based on sexual orientation and gender identity.

Promotion and protection of LGBT rights on the ground – implementation of the international human rights obligations

1. Right to security of the person (Article 3. Universal Declaration of Human Rights, Article 20. ICCPR, Principle 5. Yogyakarta Principles)

LGBT persons are targeted with physical and verbal assaults that affect their economic, cultural, social, health, and other wellbeing. There are no coordinated and comprehensive state or even non-state mechanisms that monitor the instances of discrimination, bias, prejudice, and violence that LGBT Filipinos face due to homophobia, transphobia, and machismo. Circumstantial information indicate that attackers are most probably sex workers, strangers, groups of hostile neighbors, family members, and intimate partners, and very few have been positively identified, and even fewer are arrested and made to face the law. Murders and attempted murders were accomplished by such acts as stabbing, arson, mutilation, strangling, shooting, and battery.

Evidence points to hate or bias related to the victims' real or perceived sexual orientation and gender identity, as defined by international hate crime definitions and indicators. Government authorities treat these as ordinary crimes, discount the possibility of sexual orientation as a factor, or alternately, blame the victim for bringing the violence on themselves. Part of the reason is the lack of local investigation methodologies that enable government security forces to identify bias, prejudice, or hate as whole or partial motives in committing a crime. As such, no government agency has ever declared that hate crimes do happen in the Philippines and that the victims are LGBT people.

LGBT human rights defenders in the Philippines particularly in Muslim areas are under pressure from community authorities to conduct their activities less openly because of increasing religious radicalization. Religious leaders and lay members affiliated to organized Christian faiths are increasingly becoming aggressive in accosting LGBTs in public spaces. During the Manila Pride parades in December 2008, 2009, and 2010, street preachers targeted participants with hostile messages of death, disease, and suffering on blaring sound systems and large character posters.

In a period between 2007 and 2010, the police repeatedly conducted raids of gay saunas, old cinemas, and parks in Metro Manila on different charges of vagrancy, indecency, pornography,

⁷ Silverio vs. Republic of the Philippines, http://www.lawphil.net/judjuris/juri2007/oct2007/gr_174689_2007.html

prostitution, sex trafficking, operating without license and other flimsy reasons. Clients, bar staff, bystanders were arrested by groups and detained for more than 12 hours. The arrested persons are usually threatened by the arresting officers with exposure to media or to their families.

Recommendations:

- Hate crime should be legislated in Philippine Congress as particular criminal offense;
- The State should compel the police and the Department of Justice to work with the Commission on Human Rights, and LGBT experts and groups to define hate crime and implement procedures in the investigation of incidents, assisting survivors in accessing justice mechanisms, and the serious prosecution of accused parties;
- State should work with Civil Society to establish mechanisms that would monitor the instances of discrimination, bias, prejudice and violence that LGBT Filipinos face.

2. Right to equality and non-discrimination (Article 26 ICCPR, Article 7 ICESCR, Principle 2 Yogyakarta Principles)

The State guarantees full respect for human rights and every person has the right to equal protection of the laws, but sexual orientation and gender identity are not explicitly mentioned. The Philippines still lacks an anti-discrimination Law. There are pending bills in Congress that defines discrimination as a crime and recommends penalties⁸.

The Labor Code of the Philippines⁹ has no prohibition of both direct and indirect discrimination except as to gender discrimination against women, and neither sexual orientation nor gender identity is mentioned. The Commission on Civil Service has rules that include sexual orientation as a status that can be factored in sexual harassment cases. The Bureau of Jail Management and Penology has a standing policy barring its lesbian and gay employees from making body searches of jail visitors of the same genital sex.¹⁰ A local court dismissed a workplace discrimination case filed by a gay employee against a school¹¹, while a labor quasi-judicial body awarded damages to a lesbian couple who sued their corporate employer¹².

In January 2010 Ladlad filed an appeal to the Supreme Court contesting the majority decision of the Commission on Election (COMELEC) that rejected its application for Party List accreditation. The COMELEC based its decision to deny accreditation on the need to protect morality. Ladlad cited the ICCPR and the Yogyakarta Principles on the right to participate in the political process. In April 2010, the Supreme Court ordered the COMELEC to accredit Ladlad as a qualified Party List sectoral organization, arguing that morality and religious quotes cannot be used as bases for determining ineligibility under the Party List law.

Recommendations:

- Discrimination based on sexual orientation and gender identity should be prohibited in a specific anti-discrimination law, and other laws and local ordinances;
- The State should direct executive agencies to draft memorandums, circulars and programs that would explicitly protect human rights based on sexual orientation and gender identity.

⁸ <http://www.congress.gov.ph/press/details.php?pressid=4694>

⁹ <http://www.bcphilippineslawyers.com/the-labor-code-of-the-philippines-book-3/>

¹⁰ <http://www.starobserver.com.au/news/2011/07/25/philippines-gay-prison-guards-cant-search/57623>

¹¹ <http://www.gmanews.tv/story/10074>

¹² <http://ca.judiciary.gov.ph/cardis/SP107821.pdf>

3. Right to the Highest Attainable Standard of Health and Protection from Medical Abuses (Article 12. ICESCR, Principles 17 & 18. Yogyakarta Principles)

Everyone is entitled to basic healthcare and services according to the Constitution, but this is not really the case with LGBTs. Health-care related laws deal mostly with professional and institutional regulations, delivery of services, certain diseases, and rights of health workers. The Philippines HIV/AIDS Control Law of 1998 (RA 8504) provides inadequate protection of health care access rights and health information privacy rights. While it has good penal provisions such as against¹³ disclosure of HIV status, many health care settings do not have adequate safeguards for confidentiality and counseling.

Medical personnel also occasionally exhibit judgmental and erroneous behaviors during diagnosis and treatment of LGBTs, which discourage beneficial health-seeking practices among LGBTs. In 2008, a hospital operating team operated on a gay patient to remove a foreign object from the rectum, and the footage of health workers making fun of the patient was uploaded on a video-sharing site¹⁴. In addition, police personnel use punitive measures such as planting condoms as evidence during bar raids to make it appear that sexual behaviors and the use of condoms are criminalized. The assigned sex of intersexed infants is subject to the arbitrary judgment of birth attendants, resulting in many social and legal complications later in life. Most endocrinologists refuse to provide counseling and sex-reassignment treatments to transgenders. The former head of a private physicians' group, the Philippine Ob-Gyn Society, commented that lesbians are not women, and therefore gynecologists cannot provide services to lesbians.

Recommendations:

- The State should redraft and strengthen the Philippine HIV/AIDS Control Law to provide sensitivity in the protection of MSMs and transgender youth;
- The State should focus on the Philippine National Police to institutionalize public health goals in police work and end the practice of harassing the LGBT community;
- The State should develop educational programs for health workers regarding sexual orientation and gender identity, and the specific health needs, diagnostics, and treatment regimens of LGBTs and intersexed persons.

4. Rights to Recognition before the Law (Article 16. and 17. ICCPR, Principle 3. Yogyakarta Principles)

There is no law to address the procedure of changing one's sex in legal documents. The courts have partially addressed the rights of intersexed persons to choose one's sex and to correct legal documents¹⁵. However, conflicting decisions regarding legal cases filed by transgenders have made it very difficult for them to assume their preferred identity, gravely affecting their everyday lives. The effects include compromised access to public services and difficulties with family issues, travel, immigration, health care, livelihood, and the right to marry¹⁶. Transgenders trying to access legal processes to reconcile their birth records and access legal marriage have been denied by the Supreme Court. The denial hinged on the absence of a law to address their specific need for change in legal documents. Complainants have filed with the UN in 2010 complaints of violations to the Optional Protocol of the ICCPR regarding these matters¹⁷.

¹³ Philippines HIV/AIDS Law of 1998, <http://www.chanrobles.com/republicactno8504rules.htm>

¹⁴ <http://onlinemindanao.com/health/news/surgery-scandal.html>

¹⁵ <http://www.chanrobles.com/scdecisions/jurisprudence2008/september2008/166676.php>

¹⁶ Page 183, [http://www.icj.org/dwn/database/Sexual%20Orientation,%20Gender%20Identity%20and%20Justice-%20A%20Comparative%20Law%20Casebook\[1\].pdf](http://www.icj.org/dwn/database/Sexual%20Orientation,%20Gender%20Identity%20and%20Justice-%20A%20Comparative%20Law%20Casebook[1].pdf)

¹⁷ <http://ilga.org/ilga/en/article/mZK6cN316j>

Recommendations:

- The State should legislate the legal recognition of the rights of transgender and intersexed persons and legally arrange a procedure to change a person's sex in their legal documents, as well as the other rights accessed through the new legal personhood;
- The justice system under the Supreme Court should review its jurisprudence, render a report, and build capacity in recognizing the equal rights of LGBTs before the law;
- The Department of Health should provide adequate information and support to transgender persons regarding surgery, health care costs, and mental health care management in relation to transitioning to the preferred sex.

5. Rights to family (Article 23 and 24. ICCPR, Principle 24. The Yogyakarta Principles)

The Philippines governs family relationships under the Family Code, which states that marriage is between a man and a woman. Lawmakers have repeatedly tried to file bills that would also define man and woman according to their genetic and/or birth sex, and also bills that would ban same-sex marriages¹⁸. The City Council of Baguio City and Christian-affiliated faith groups reacted to private ceremonial same-sex weddings in June 2011 with proposals to ban this private practice of the Metropolitan Community Church, and file criminal charges against the officiating pastors¹⁹. The courts allow annulment of marriages on the grounds of homosexuality, and usual custodial rulings award the children of such unions to the non-homosexual parent²⁰.

The head of state President Benigno Aquino III in September 2011 said he was neutral to having same-sex partnerships legalized but opposed adoption of children by same-sex couples in the Philippines. The agency overseeing adoptions, the Department of Social Welfare and Development, allows adoption by single LGBTs but not for two persons of the same sex who identify as a domestic couple²¹.

There are no clear rights for either spouse in same-sex and transgender-heterosexual partnerships regarding hospital and prison visitations, making medical and burial decisions, transfer of joint properties, custody of children, insurance benefits, and other privileges accorded to married and unmarried opposite-sex couples. Government-managed social security and health insurance are not awarded to the surviving spouse of a deceased same-sex partner.

Recommendations:

- The State should provide mechanisms to protect the right of same-sex spouses to enter into legal partnerships, via legislation in Congress or local governing councils;
- Congress should remove homosexuality as basis for legal separation and the courts and judges be advised to grant custodial rulings on fair assessment of parental abilities rather than on sexual orientation and gender identity;
- The Department of Social Welfare and Development should rewrite rules to equalize adoption rights for same sex couples;
- The Social Security System, Government Service Insurance System, Philippine Health Insurance Corporation and other benefits-related state agencies should restructure their benefits system to accommodate same-sex partnerships and family dependents that ensue from such partnerships.

¹⁸ <http://www.iglhrc.org/cgi-bin/iowa/article/takeaction/partners/142.html>

¹⁹ <http://ph.news.yahoo.com/baguio-mayor-backs-ordinance-vs-same-sex-wedding-152709551.html>

²⁰ Article 46 Family Code, <http://www.chanrobles.com/executiveorderno209.htm>

²¹ <http://www.abs-cbnnews.com/lifestyle/09/22/11/gays-ask-pnoy-push-anti-discrimination-bill>