



**EnGendeRights, Inc.**  
*Asserting Gender Equality*



**OUTRIGHT**  
ACTION INTERNATIONAL

Human Rights for LGBTIQ People Everywhere.

June 9, 2016

**TO: CEDAW Secretariat**

Office of the High Commissioner for Human Rights

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OutRight Action International (OutRight)

Society of Transsexual Women of the Philippines (STRAP)

ASEAN SOGIE Caucus (ASC)

Association of Transgender People in the Philippines (ATP)

Bahaghari Advocacy Group

Benilde Hive

Bohol LGBTs, Families, Friends, and Allies

Catholic Diocese of One-Spirit Philippines

Coalition for the Liberation of the Reassigned Sex (COLORS)

Cordillera Rainbow Connection

DowneLink Philippines Community

Filipino Free Thinkers

Galang Philippines

ILGA World Trans\* Secretariat

Initiative and Movement for Gender Liberation against Discrimination (IM GLAD)

Ipride Manila

Kapederasyon LGBT Organization

LADLAD Caraga

LGBT Bus

LGBT Pinoyed

Metropolitan Community Church – Metro Baguio

Metropolitan Community Church – Quezon City

Metropolitan Community Church of Marikina

Old Balara Pride Council

Pinoy FTM

Pinoy LGBT Channel, Philippine Online Chronicles

Promoting Rights and Equality for Society's Marginalized (PRISM)

Rainbow Rights Project, Inc.  
SHINE Mindanao  
The Lovelife Project for Health and Environment, Inc.  
TransMan Pilipinas  
Trippers Philippines, Inc.  
Universal LGBT Club  
Alvin Cloyd Dakis  
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## **RE: PHILIPPINE LBT COALITION REPORT for 64th SESSION of CEDAW**

This report provides independent information on the discriminatory conditions of lesbians, bisexual women and transgender (LBT) persons in the Philippines. Our written submission is to assist the Committee on the Elimination of Discrimination Against Women (the Committee) during its 64<sup>th</sup> Session in July 2016 for its review of the Philippines' compliance with the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). The NGOs submitting this report would like this report to be posted on the CEDAW website for public information purposes.

LBT persons in the Philippines suffer discrimination and violence in their own families, schools, workplace, and by employers and members of the public. Violence includes physical abuse, sexual assault including rape, and in some cases, even torture and murder. Family violence includes physical abuse and forced confinement by parents.

### **1. State of Philippine Laws, Policies, and Practices**

The Philippines does not have comprehensive anti-discrimination legislation that protects vulnerable groups including LBT persons. The Philippines also does not have a gender identity recognition law and a law prohibiting hate crimes. In the Family Code, homosexuality and lesbianism are placed in a negative light and are considered sufficient grounds for automatically nullifying a heterosexual marriage on the basis of fraud (Art. 46 Sec. 4) and to legally separate (Art. 55 Sec.6).<sup>1</sup>

Although sexual orientation and intimate relationships of LBT persons are mentioned in the Philippine Magna Carta of Women<sup>2</sup> and although the sexual assault provisions of the Anti-Rape Law<sup>3</sup> are applicable to rape of LBT persons, much is needed from the government in terms of their efforts to prevent, document, monitor and follow up cases of

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<sup>1</sup> Art. 46 Sec. 4 and Art. 55 Sec.6. The Family Code of the Philippines, 1987.

<sup>2</sup>“An Act Providing for the Magna Carta of Women.” Republic Act No. 9710

[http://www.lawphil.net/statutes/repacts/ra2009/ra\\_9710\\_2009.html](http://www.lawphil.net/statutes/repacts/ra2009/ra_9710_2009.html); SEC. 3. Sexuality refers to the expression of a person's thoughts, feelings, sexual orientation and relationships, as well as the biology of the sexual response system of that person.

<sup>3</sup> Article 266-A.2 "An Act Expanding the Definition of the Crime of Rape, Reclassifying the Same as a Crime against Persons..." Republic Act No. 8353; Lesbian partners can be punished for domestic violence, Section 3 "an Act Defining Violence Against Women and Children..." also known also as "The Anti-Violence Against Women and Children Act of 2004" (Anti-VAWC) Republic Act No. 9262.

discrimination and abuse on the basis of sexual orientation and gender identity.

### **1a. Absence of National Anti-Discrimination Legislation (Articles 1 and 2)**

For the past 15 years, the Anti-Discrimination Bill, a proposed national law to explicitly protect vulnerable groups, including LBT persons from discrimination and promote their rights, has been languishing in Congress despite support from legislators and the Commission on Human Rights Philippines (CHRP).<sup>4</sup> In fact, the former Chair of the CHRP, Leila de Lima, noted that LGBT persons remain one of the most vulnerable to human rights abuses, such as discrimination in the workplace and harassment in educational institutions.<sup>5</sup>

Without a national Anti-Discrimination Law, local anti-discrimination ordinances that have been passed at the province, city or municipality levels are not properly implemented due to other discriminatory laws that contradict local anti-discrimination ordinances. For instance, while a 2004 Quezon City ordinance<sup>6</sup> prohibits discrimination in the workplace on the basis of sexual orientation and a 2014 Quezon City ordinance<sup>7</sup> prohibits a wide range of discriminatory acts against LGBT persons, the Philippine House of Representatives issued Memorandum Circular No. 05-14 (MC 05-14) in 2014 prescribing that women wear dresses on Mondays and Tuesdays,<sup>8</sup> hence compelling all women employees to wear dresses, including lesbians whose preferred attire is shirts and trousers. Failure to comply with the dress code results in sanctions, including being fired. After concerns about MC 05-14 were raised in 2016, the human resources department has not been conducting daily checks on the uniform worn by employees. However, MC 05-14 has not been withdrawn.

The failure to pass a national Anti-Discrimination Law also means that crimes against LBT persons are not taken seriously because the message from Congress is that LBT persons in the Philippines have no rights to equality before the law, non-discrimination, and safety.

### **RECOMMENDATIONS:**

- It is recommended that the government of the Philippines ensure that Congress passes a comprehensive national Anti-Discrimination Law before the next state review by the CEDAW Committee, and that this law includes language that prohibits discrimination on the basis of sexual orientation and gender identity.

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<sup>4</sup> Commission on Human Rights of the Philippines.  
[http://www.chr.gov.ph/MAIN%20PAGES/about%20us/01consti\\_creation.htm](http://www.chr.gov.ph/MAIN%20PAGES/about%20us/01consti_creation.htm).

<sup>5</sup> “CHR vows to promote gay, lesbian rights”. Inquirer.net, Dec. 6, 2008.

<sup>6</sup> An Ordinance Prohibiting All Acts of Discrimination Directed Against Homosexuals in Any Office in Quezon City Whether in the Government or in the Private Sector, and Providing Penalties for Violation Thereof, Quezon City Ordinance No. SP-1309 (2004).

<sup>7</sup> An Ordinance Providing for a Comprehensive Anti-Discrimination Policy on the Basis of Sexual Orientation, Gender Identity and Expression, Quezon City Ordinance No. SP-2357 (2014).

<sup>8</sup> House of Representatives Memorandum Circular No. 05-14, November 27, 2014.

- The Philippine government should take steps to remove and amend existing national discriminatory laws that contradict local ordinances that prohibit discrimination on the basis of sexual orientation and gender identity, including laws that require employees to follow a gender specific dress code.

### **1b. Absence of Gender Recognition Legislation (Articles 1, 2, and 3)**

Transgender women face discrimination based on their gender identity and gender expression because their changed gender is not recognized by the State and they are continually perceived and stereotyped as gay men. One of the department heads at the Department of Foreign Affairs informed a transgender woman that, per department policy for passport applications, male applicants should look masculine in their passport photograph. Since she looked feminine in the photo for her passport renewal and “contradicted” her appearance in her previous passport, she was forced to repeatedly have her photo taken until she looked less feminine in the photo. This process was done amidst the scornful looks of other applicants and department personnel.<sup>9</sup>

There is also clear unequal application of the law because some lower courts in the Philippines have granted transgender women the change of name and sex on their legal documents. The lower court rulings were not appealed by the Office of the Solicitor General, and the transwomen petitioners were able to successfully change their name and sex.<sup>10</sup>

### **RECOMMENDATIONS:**

- It is recommended that the Philippine government pass a Gender Recognition Law that provides legal gender recognition for transgender persons.
- The government should direct immigration and passport control authorities to implement a policy of non-discrimination towards LBT persons, including receiving awareness training on proper procedures for handling applications from transgender persons.

### **1c. Absence of Legislation Prohibiting Hate Crimes on the Basis of Sexual Orientation, Gender Identity and Gender Expression (Article 3 and GR 19 Violence Against Women)**

Research conducted by the Philippines LGBT Hate Crimes Watch showed that of the total 141 documented cases of hate crimes recorded from 1996 to August 2011, 95 hate crimes involved gay men, 26 involved transgender persons, 16 involved lesbians and four

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<sup>9</sup> Discrimination to Transgenders in Department of Foreign Affairs' Passport Process. Magdalena Robinson, Feb. 7, 2011.

<sup>10</sup> A Manila Regional Trial Court judge granted the change of name and sex of a petitioner based on sex reassignment without the Office of the Solicitor General appealing the decision.

involved bisexuals. Hate crimes generally refer to criminal acts that are motivated by bias against persons belonging to a certain social group, usually defined by race, religion, sexual orientation, disability, class, ethnicity, nationality, age, gender, gender identity, social status or political affiliation.

Negative stereotypes and prejudice in general towards LGBT persons trigger intense hatred. At the same time, violence against women is high as reported by many women's organizations, including UN Women Philippines. Under these conditions, LBT persons are subjected to feelings of male superiority usually rooted in patriarchal attitudes, which compound the homophobia and transphobia and motivates violent crimes against them.

For example, several lesbians were murdered because of intense resentment by male perpetrators who felt justified to kill lesbians because they posed a threat. These men felt lesbians have no right to "steal" their women.<sup>11</sup> Some of the perpetrators murdered lesbians for "leading their female relatives to immorality and live sinful lives."<sup>12</sup>

Police investigations of crimes against LBT persons often are inconclusive. A series of drive-by shootings in 2011 of transgender women in Cebu City by unidentified men using pellet guns is still unresolved.<sup>13</sup> The justice system also takes an uneven approach to hate crimes against transgender women. In December 2015, the Court meted out a low penalty to the killer of Jennifer Laude, a transwoman, allowing for the mitigating circumstance that the perpetrator's actions were motivated by his realization that Laude was a transgender woman. The Court disregarded evidence of clear use of superior strength by the perpetrator who was a trained United States marine who knocked Laude unconscious, weakening her defense, dragged her unconscious body to the toilet bowl and flushed the lever, drowning her in the toilet bowl. Such a ruling sends a message that hate crimes including murder carry little or low consequences if the victims are LBT persons.

### **RECOMMENDATIONS:**

- It is recommended that the Philippine government take immediate steps to address hate crimes on the basis of sexual orientation and gender identity, including steps to enact legislation prohibiting gender-based violence targeting persons for being lesbian, bisexual and transgender.

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<sup>11</sup> Love Triangle in tomboy's death. Juliet de Loza, Abante, Sept 8, 2011; Police in Zamboanga have started a manhunt for a male suspect in the massacre of a woman and her family. According to the police the main suspect who is being hunted was jealous and deeply resentful to the woman's reported relationship with a lesbian who recently visited the woman's home. The police said that the mode of killings indicated that one of the three to four men believed to have carried out the massacre harbored deep anger toward the victims because the killers stabbed and axed the victims to death near midnight while they were asleep and none of the female victims had been sexually abused. [Police hunt Zamboanga del Sur killers](http://newsinfo.inquirer.net/66815/police-hunt-zamboanga-del-sur-killers). Hernan dela Cruz. Inquirer Mindanao, Sept. 28, 2011. <http://newsinfo.inquirer.net/66815/police-hunt-zamboanga-del-sur-killers>

<sup>12</sup> Tomboy lover stabbed. Alvin Madan, Abante, Jun. 28, 2011.

<sup>13</sup> Victims reported that when the attack took place they were just either in front of their homes or walking in the streets and in one incident the assailants onboard a white minivan stopped in front of a group of transgender women and fired successive shots at them [Transgender Pellet Attack in Cebu](http://www.abs-cbnnews.com/nation/regions/10/13/11/pellet-gun-attacks-target-gays-cebu). Carine Asutilla, ABS-CBN News Central Visayas Oct 13, 2011 <http://www.abs-cbnnews.com/nation/regions/10/13/11/pellet-gun-attacks-target-gays-cebu>

- The government of the Philippines must prosecute and punish LBT hate crimes to the full extent of the law.
- The Philippine National Police (PNP) should institute proper training for police officers to conduct swift, thorough, and non-discriminatory investigation of crimes perpetrated against LBT persons.

#### **1d. LBT Persons Unable to Access Justice for Gender Violence (GR 19, Violence Against Women; GR 33 Women’s Access To Justice)**

The CEDAW Committee has recognized that discrimination against women is compounded by intersecting factors that make it difficult for women in certain marginalized or vulnerable groups, such as LBT persons, to gain access to justice.

The Philippine Anti-Rape Law<sup>14</sup> is applicable to sexual assaults of lesbians and transgender persons. However, most lesbians lack access to this law for various reasons including the prohibitive cost of legal services and the stigma attached to being a lesbian victim of rape. Consequently, perpetrators can act with impunity and criminal charges against them are rarely pursued. In some situations, lesbians with masculine gender expression (tomboys, butch lesbians) have been raped, resulting in unwanted pregnancies. Perpetrators of the rapes included male friends who specifically targeted the butch lesbians because of their lack of interest in men.

Although LBT persons are often too afraid to report rape, when they do go to the police for help, they experience additional violations. An 18-year old transgender woman was gang raped in Zamboanga City. When she reported to police, she was ridiculed by police officers and told, “Did you not enjoy it? That is a blessing for you! You may be the one who made the first move!”<sup>15</sup>

#### **RECOMMENDATIONS:**

- It is recommended that the CHRP hold closed door hearings with LBT survivors of rape to determine the challenges for LBT access to justice when sexual violence occurs. Findings of the hearings should be the basis for recommendations to improve safety of reporting, access to affordable legal aid services, and redress under the existing laws prohibiting gender-based violence and rape.
- The government should make low-cost or no cost legal aid services available for LBT persons.

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<sup>14</sup> Article 266-A.2 "An Act Expanding the Definition of the Crime of Rape, Reclassifying the Same as a Crime against Persons..." Republic Act No. 8353

<sup>15</sup> Dangerous Live: Being LGBT in Muslim Mindanao”, *Outrage*, December 10, 2013, accessed April 15, 2016, <http://outragemag.com/dangerous-lives-lgbt-muslim-mindanao/>.

- Those providing legal aid services should be trained in the proper methods of conducting interviews with LBT victims of rape, providing support and referrals for psychosocial services.

## **2. Discrimination and Violence against LBT Persons by State Actors**

Although the Philippines does not have an anti-sodomy law, the enforcement of some laws by the police have the effect of criminalizing homosexuality and lesbianism. These include the archaic or mundane laws like the prohibition on public scandal and vagrancy or more severe laws like the Anti-Trafficking Law and special provisions in the Revised Penal Code, which create an environment where LBT persons are vulnerable to police abuses.

### **2a. Discrimination and Abuse by Police (GR 19, Violence Against Women and GR 33, Women's Access to Justice)**

Police officers are themselves perpetrators of physical assaults against LBT persons. A lesbian who owed money was abducted, ganged up on, and beaten by a family member and friends, including a police officer, who then illegally detained her at a police station under fabricated charges of drug trafficking. The lesbian's sister filed a missing person's report with the chief inspector of the station. In this instance, charges were filed against the perpetrators for unlawful detention and causing serious physical injuries. The police officer's participation resulted in administrative charges.<sup>16</sup>

Most cases of police assaults against LBT persons do not result in the police officers being penalized for their actions.<sup>17</sup>

Most police violence against LBT persons involves illegal detention, where police officers abuse their authority and take advantage of LBT people's lack of awareness of their rights to carry out unwarranted raids. Most raids on venues frequented by transgender persons or events held by LGBT people are not done in the exercise of rule of law. Instead, police officers, knowing that LBT persons are vulnerable, use the opportunity of conducting raids to extort bribes by blackmail and threatening to disclose LBT persons' sexual orientation and gender identity to their parents or employers. For closeted LBT individuals, fear of exposure and police harassment often means that they give in to the demands of the police officers and will not report the incidents.

Police also collude with parents who object to their daughters having same sex relationships. A report by Rainbow Rights Project, Inc. indicates that on the request of

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<sup>16</sup> Lesbian abducted and illegally detained in the Precinct. Armida Rico, May 31, 2011. [http://www.abante-tonite.com/issue/may3111/crime\\_story02.htm](http://www.abante-tonite.com/issue/may3111/crime_story02.htm)

<sup>17</sup> A police officer was charged with physical assault by the lesbian partner of her sister in law after he punched and pointed a gun at the complainant while she was on the ground. Lesbian Accused Police of Assault.

complaining parents who accuse the butch lesbian partners of kidnapping,<sup>18</sup> police have arrested butch lesbians<sup>19</sup> even if both lesbian partners are of legal age and in consenting relationships, in some instances, intimidating and forcing the couples to separate.<sup>20</sup>

### **RECOMMENDATIONS:**

- It is recommended that the PNP exercise due diligence in ensuring that all police officers across ranks and positions are trained in issues relating to sexual orientation and gender identity and how to handle cases involving crimes against LBT persons.
- Police training needs to be sustained to ensure that good practices are monitored and constantly updated.
- Training curriculum for police recruits should include sexual orientation and gender identity and issues of LBT persons.

### **2b. Discrimination in Health Care (Article 12)**

The Department of Health (DOH) has inadequately and consistently failed to promote and protect the sexual and reproductive health and rights of people with non-heteronormative needs. LBT persons' sexual health needs are still absent in the overall comprehensive reproductive health program.<sup>21</sup> For instance, stigma against LBT persons negatively impacts services for HIV prevention and treatment. Transgender women are lumped together with men having sex with men (MSM), which reflects myths and stereotypes about transgender women.<sup>22</sup> Clearly, there need to be guidelines and training for delivery of LBT-responsive and LBT-friendly health services.

### **RECOMMENDATION:**

- It is recommended that the DOH issue a directive for non-discriminatory health care services, including awareness training and protocols for proper implementation of LBT sensitive health care.

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<sup>18</sup> Kidnapping is under "Crimes Against Liberty," Article 267 on "Kidnapping And Serious Illegal Detention", *An Act Revising the Penal Code and other Penal Laws, the Revised Penal Code of the Philippines*, accessed February 15, 2013.

<sup>19</sup> Lim, Anne, "GALANG: a movement in the making for the rights of poor LBTs in the Philippines", Srilatha Batliwala, 2<sup>nd</sup> edition, *Changing Their World*, AWID Women's Rights, 2011, [http://www.awid.org/sites/default/files/atoms/files/changing\\_their\\_world\\_2\\_-\\_galang\\_rights\\_of\\_poor\\_lbt\\_in\\_the\\_philippines.pdf](http://www.awid.org/sites/default/files/atoms/files/changing_their_world_2_-_galang_rights_of_poor_lbt_in_the_philippines.pdf), 9.

<sup>20</sup> "Kwentong Bebot Lived Experiences of Lesbians, Bisexual and Transgender Women in the Philippines," *Violence: Through the Lens of Lesbians, Bisexual Women and Trans People in Asia*, OutRight Action International, March 2014, <https://www.outrightinternational.org/content/violence-through-lens-lbt-people-asia>, 188;

<sup>21</sup> The Responsible Parenthood and Reproductive Health Law (RPRH Law or Republic Act 10354) and the Implementing Rules of RA 10354 do not mention the rights of LBTs; The 2nd Consolidated Report on the Implementation of the Responsible Parenthood and Reproductive Health Act of 2012 only mentions lesbians in the context of gender-based violence.

<sup>22</sup> Case studies of Rainbow Rights, Inc.

## 2c. Discrimination and Violence in Education (Article 10)

Transgender children, adolescents and young adults are subjected to abuse in school even at a young age. Tomboy girls and transgender boys are humiliated by being forced to parade before their classmates wearing a curtain as a makeshift skirt. Transgender girls are summoned to the school administrator's office and forced to stop wearing dresses and skirts and cut their hair short. To enforce compliance with gender specific clothing, LBT students are threatened with suspension, not being allowed to enter the school premises, or not being allowed to graduate should they disobey the schools' orders.<sup>23</sup>

At the University of Philippines-Los Banos and University of Philippines Babaylan, transgender students were forced out of their classrooms or threatened that they would be barred from graduating because of their gender expression. Some lecturers made gay and lesbian students stand in front of their class for prolonged periods.<sup>24</sup>

A gender discrimination complaint by a female transsexual student from the University of the Philippines Diliman against her professor who, because of religious beliefs, refused to address her as a female in class, was dismissed by the chairperson of the Department of European Languages, College of Arts and Letters, citing the absence of applicable provisions that directly deals on LGBT issues in the University policy.<sup>25</sup>

There is progress with some education policies such as: the Department of Education (DepEd) Child Protection Policy, which mandates all public and private elementary and secondary schools to prohibit discrimination based on sexual orientation and gender identity;<sup>26</sup> the DepEd Implementing Rules of the Anti-Bullying Act, which expound "gender-based bullying" to include acts committed on the basis of perceived or actual sexual orientation and gender identity;<sup>27</sup> and the Commission on Higher Education (CHED) Memorandum Order 1-2015, which identifies sexual orientation and gender identity as one of the priority areas for research in all the higher education institutions.

The greatest weakness of these education policies is absence of proper guidelines for implementation, specifically, how schools and institutions of higher learning can protect students from discrimination based on sexual orientation and gender identity.<sup>28</sup> Data collected by the DepEd is not disaggregated to determine the prevalence of violence and discrimination in schools based on sexual orientation and gender identity. The CHED policy does not include a mandate for prevention, investigation, and prosecution of school violence and discrimination against LBT in higher education institutions.

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<sup>23</sup> Actual cases gathered from December 2011 onwards by the Quezon City Protection Center. Evidence-gathering methods and identities withheld for confidentiality.

<sup>24</sup> UPLB LGBT community march for equality, August 15, 2011, available at <http://next.upi.com/archive/2011/08/15/UPLB-LGBT-community-march-for-equality/2081313393367/>

<sup>25</sup> UP Diliman student claims gender discrimination Bernice P. Varona, *UP Community Newspaper April 2011 Vol. 32 No 04 pp. 3 & 5*

<sup>26</sup> DepEd Order No. 40, Series 2012, Child Protection Policy, Sec. 3, para. J.

<sup>27</sup> Anti-bullying Law Implementing Rules and Regulations, 2013.

<sup>28</sup> CHED Memorandum Order 1, Series 2015, Section 5 on Priority Areas.

## **RECOMMENDATIONS:**

- It is recommended that the DepEd and CHED develop and provide resources for the implementation of a monitoring tool with SOGIE-disaggregated data to determine the prevalence of SOGIE-related violence and discrimination in school.
- The DepEd and CHED should exert due diligence to prevent, investigate and prosecute violence and discrimination against LBT students in schools.
- The DepEd's curriculum on sexuality education as required under the Responsible Parenthood and Reproductive Health Law (RPRH Law or Republic Act 10354) should cover the rights of persons with non-conforming sexual orientation and gender identity.
- The CHED should issue a directive addressing prejudiced treatment of LBT students and school employees especially with regard to punitive policies for wearing gender specific uniforms and access to toilet and common facilities.
- The DepEd should provide space for participation and consultation of LBT persons and other stakeholders in the development of these policies;

### **2d. Discrimination in Employment (Article 11)**

Two of three transwomen who participated in one study by a Filipino clinical psychologist on the experiences of transwomen in the Philippines, disclosed that the worst discrimination they have experienced is being denied the right to express their gender identities in the workplace. Transwomen were told by job recruitment officers that they would only be hired if they presented themselves as males by cutting their hair short, dressed in men's clothes, and acting in less stereotypically feminine ways.<sup>29</sup>

There have also been reports of discrimination of lesbians applying for jobs who were expressly turned away for not being heterosexual.<sup>30</sup>

In 2009, the Armed Forces of the Philippines issued a statement saying that it would allow lesbians and gay men to serve in the military provided that they adhere to the Code of Ethics that includes policies against the expression of LGBT identities among military personnel. Members of the military who are openly gay or lesbian, or who cross-dress, can be dishonorably discharged.<sup>31</sup>

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<sup>29</sup> Alegre, B. R. (2006). Psychological perspectives and development of the transsexual woman: Phenomenological case study on Filipino male-to-female transsexuals.

<sup>30</sup> GALANG Philippines, "How Filipino LBTs Cope with Economic Disadvantage" (2015), page 8, available at [http://opendocs.ids.ac.uk/opendocs/bitstream/handle/123456789/5873/ER120\\_HowFilipinoLBTsCopewithEconomicDisadvantage.pdf;jsessionid=6FA4A06FB966B2BBAC195F1DB51CE97C?sequence=1](http://opendocs.ids.ac.uk/opendocs/bitstream/handle/123456789/5873/ER120_HowFilipinoLBTsCopewithEconomicDisadvantage.pdf;jsessionid=6FA4A06FB966B2BBAC195F1DB51CE97C?sequence=1)

<sup>31</sup> Under the section on discipline, "An individual may be discharged by reason of unsuitability, not due to misconduct, when it has been determined that he is unsuitable for further military service because of homosexual tendencies, desires or interests accompanied by overt homosexual acts. A homosexual is an individual who demonstrates, by behavior, a

The PNP in 2007 issued a warning to gay police officers that they must not act in ways that are associated with homosexuality, such as “swaying their hips” or “engaging in lustful conduct” since these acts would be considered grounds for firing them. A PNP spokesperson stated that they do not interfere with individual officers’ preferences, but are watchful of whether officers “behave within the norm.”<sup>32</sup>

### **RECOMMENDATIONS:**

- Issues of LBT persons should be included in official policies and annual planning of government agencies including, inter alia, those handling employment.
- The economic cost of exclusion of LBT persons has high negative impact for the Philippines. Inclusive employment policies are recommended especially from the Civil Service Commission for the public sector, the Department of Labor and Employment for the private sector, and the National Police Commission for police personnel, and the Armed Forces of the Philippines.

### **2e. Discrimination by the Judicial System (GR 19, Violence Against Women)**

A lesbian whose mother had forcefully detained and locked her in a room for a month faced blatant discrimination when justices of the Court of Appeals made homophobic statements about her. Several judges hearing the case implied that she was an immoral person because of her sexual orientation and went so far as to suggest that the mother was justified in kidnapping, holding hostage, and beating her daughter.<sup>33</sup>

LBT persons in cohabiting relationships suffer physical, verbal, and psychological abuse from their neighbors. They feel unsafe to live in their homes. These same victims face criminal prosecution when they defend themselves against their neighbors’ abuse and harassment.<sup>34</sup>

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preference or desire for sexual activity with persons of the same sex." Once inside the military, gays and lesbians must therefore ‘hide’ their sexuality in order to remain there. <http://www.iglhrc.org/cgi-bin/iowa/article/takeaction/resourcecenter/876.html>

<sup>32</sup> Human Rights Violations on the Basis of Sexual Orientation, Gender Identity, and Homosexuality in the Philippines Coalition Report, Submission to the 103rd Session of the Human Rights Committee, October 17- November 4, 2011, available at [http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/PHL/INT\\_CCPR\\_NGO\\_PHL\\_106\\_9911\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/PHL/INT_CCPR_NGO_PHL_106_9911_E.pdf) citing GMA NEWS TV, PNP-warns-gay-officers-not-to-sway-hips.

<sup>33</sup> C.A. Amparo Case

<sup>34</sup> Actual cases gathered from December 2011 onwards by the Quezon City Protection Center. Evidence-gathering methods and identities withheld for confidentiality

## RECOMMENDATION:

- It is recommended that the Philippines judiciary protect the rights of LBT persons facing retaliatory criminal prosecution for defending themselves.

### 3. Absence of Marriage Equality Law (Articles 1, 3, 16; GR 21)

The Committee's General Recommendation 21 recognizes that "[t]he form and concept of the family can vary from State to State, and even between regions within a State." The Committee has also asked states parties to reconceptualize lesbianism as a sexual orientation and to abolish penalties for its practice.

There is no legal recognition of marriage equality or even civil unions with regard to LBT persons in the Philippines. In 2011, a government official in the city of Baguio proposed a city ordinance banning same-sex unions and declared the sixteen individuals who participated in the same sex wedding ceremonies as "persona non grata" or "unwelcome persons."<sup>35</sup>

The right to marriage equality of LBT persons is a basic human right. Recognizing the right of LBT persons to marriage equality also affords them the same benefits enjoyed by heterosexuals such as the right to jointly adopt children, own conjugal properties, intestate succession, immigration, avail of tax exemption, and avail of benefits related to insurance, social security, medical, hospitalization, next-of-kin, burial, among others.<sup>36</sup> These rights and benefits have long been enjoyed by married heterosexual couples simply because they were heterosexuals. Not allowing LBT couples these basic rights is outright discrimination against LBT persons based on their sexual orientation and gender identity.

The marriages of Filipino LBT nationals who were married in countries where marriage equality is recognized should be considered valid in the Philippines as Article 26 of the Family Code states, "[a]ll marriages solemnized outside the Philippines, in accordance with the laws in force in the country where they were solemnized, and valid there as such, shall also be valid in this country." In the same manner, the spouses of the LBT Filipinos who are nationals of other states who qualify under the Balikbayan Program under RA 6768 (as amended by RA 9174) should be allowed to travel to the Philippines. Not recognizing marriages of LBTs solemnized abroad and not allowing LBT persons and their spouses under the Balikbayan Program is discrimination against LBT persons and violates equal protection laws.<sup>37</sup>

It is significant, however, that women victims of abuse in lesbian relationships are accorded the same protection under the Anti-Violence Against Women Act, where

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<sup>35</sup> <http://www.iglhrc.org/cgi-bin/iowa/article/takeaction/resourcecenter/1423.html>

<sup>36</sup> Padilla, Clara Rita, "PH law must recognize LGBTs' right to marry as basic human right", Rappler, Aug. 4, 2015, available at <http://www.rappler.com/move-ph/ispeak/101507-ph-law-recognize-lgbt-right-marry>; See Rainbow Rights case studies.

<sup>37</sup> According to a Filipino gay married to a Dutch national, the Philippine embassy staff in the Kingdom of the Netherlands told him that Filipino LGBTs' spouses cannot avail of the Balikbayan Program.

Section 3 includes “*any person* with whom the woman has or had a sexual dating relationship.”<sup>38</sup>

### **RECOMMENDATION:**

1. It is recommended that the Philippines enact a national Anti-Discrimination Law prohibiting all types of discrimination as guaranteed by international human rights standards and that Congress pass a law allowing marriage equality for LBT couples.

### **SUGGESTED QUESTONS FOR THE STATE**

We hope that the Committee will consider addressing the following questions to the Philippine government:

1. What efforts are being done by the government to enact legislation that will not only prohibit discrimination against LBT persons but also affirmatively promote their rights?
2. What efforts are being done by the government to protect the rights of LBT persons who are facing retaliatory criminal suits for defending their rights?
3. What efforts are being done to eliminate discrimination against LBT persons in laws, policies and practices?
4. What is the status of the implementation of the DepEd’s Child Protection and Anti-Bullying policies?
5. What efforts have been made to determine prevalence of bullying/violence on the basis of sexual orientation, gender identity and gender expression? What proportion of such cases have been resolved in favor of the LBT victim-survivor?
6. What is the status of integrating sexual orientation and gender identity and rights of LBT students in the curriculum?

We hope that the information provided in this report is useful during the Committee’s review of the Philippine government’s compliance with CEDAW. If you have any questions, or would like further information, please do not hesitate to contact us at [gcrisobal@outrightinternational.org](mailto:gcrisobal@outrightinternational.org), [padillaclara@yahoo.com](mailto:padillaclara@yahoo.com) and [engenderights@gmail.com](mailto:engenderights@gmail.com).

We have annexed two resources that provide additional background information on the conditions for LBT and LGBT in different parts of the Philippines.

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<sup>38</sup> Section 54 of the IRR of RA 9262 stipulates the Inter-Agency Council on Violence Against Women and Their Children’s (IACVAWC) core functions to include research on violence within lesbian relationships.

## **ANNEX 1**

“Violence Against Lesbians, Bisexual Women, and Trans People in the Philippines” available at <https://www.outrightinternational.org/sites/default/files/Violence-against-lbt-people-Philippines.pdf> is a written submission of OutRight Action International (formerly known as International Gay and Lesbian Human Rights Commission) to the United Nations Commission on the Status of Women Annual Communications Procedure, August 1, 2015.

## **ANNEX 2**

“Dangerous Lives: Being LGBT In Muslim Mindanao” available at <http://outragemag.com/dangerous-lives-lgbt-muslim-mindanao/> is a 2013 report that quotes a lesbian from the Tausug or Suluk ethnic group from Jolo, capital of Sulu Province in Southwest Philippines. She is president of a lesbian organization in Jolo. The report stated the following: (1) In 2010, there was a declaration by local government officials to ban gays and lesbians saying, “Lesbians will be brought to the countryside for military training and gays will be hanged.” Gays and lesbians who do not agree with the training will be killed right there and then. She said that families who had no gay and lesbian members were very supportive of this declaration; (2) One gay person was hanged in Asturias. There was no investigation done by the police. There were other cases where bodies were found beheaded or missing body parts. She said that these were not documented so as not to not tarnish the image of Jolo; (3) In the countryside, there were soldiers who would search for gay individuals at roadside checkpoints. (4) There were “corrective rapes” of lesbians in Jolo. There was a lesbian whose rape was arranged by her father. She is now married and has six children, and she has isolated herself from her lesbian friends. Another lesbian was almost raped and this led to her committing suicide. Many lesbians have fled from their homes and now live with their friends.