

**SHADOW REPORT TO THE UN COMMITTEE ON
ECONOMIC, SOCIAL AND CULTURAL RIGHTS
REGARDING THE PHILIPPINES' PROTECTION OF THE
RIGHTS OF LGBTI PERSONS**

(Response to the List of Issues)

Compiled by the Kaleidoscope Human Rights Foundation

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1 INTRODUCTION

- 1.1 Kaleidoscope Human Rights Foundation (**Kaleidoscope**) welcomes the opportunity to provide this written submission to the Committee on Economic, Social and Cultural Rights (**Committee**) on its List of Issues on the fifth periodic report regarding the Philippines (**List of Issues**).
- 1.2 Kaleidoscope is an NGO that works with local civil society organisations to protect and promote the rights of Lesbian, Gay, Bisexual, Transgendered and Intersex (**LGBTI**) persons in the Asia Pacific region. Kaleidoscope has prepared this report to inform the Committee on the extent to which the Philippines is complying with its obligations under the International Covenant on Economic, Social, and Cultural Rights (**ICESCR or Covenant**) with respect to LGBTI persons.
- 1.0 All people enjoy the rights set out under the Covenant, regardless of sexual orientation, gender identity or intersex status (**SOGII**). However, LGBTI people are often denied their basic human rights, freedoms and opportunities as a result of discrimination, marginalisation, exploitation, intimidation and violence.¹ As such, we confine our comments on paragraphs in the List of Issues to these diverse sub-populations in the Philippines.

2 SCOPE OF REPORT

- 1.1 This report responds to the Committee's List of Issues in relation to the fifth periodic report of the Philippines with a specific focus on the issues that are relevant for LGBTI individuals and communities. This report raises specific concerns with respect to the rights under Articles 2, 6, 7, 10, 11, 12 and 13 of the Covenant, which although not specifically addressed in the List of Issues with respect to LGBTI persons, are significant for the situation of LGBTI persons in the Philippines.

3 THE PHILIPPINES: LEGAL AND SOCIAL CONTEXT

- 3.1 The Philippines ratified ICESCR in 1974, and it is incorporated into domestic law. The legal status of ICESCR is confirmed by Section 2 of *The Philippine Constitution* (1987), which states that the Philippines “*adopts the generally accepted principles of international law as part of the law of the land.*”²
- 3.2 Section 11 of *The Philippine Constitution* (1987) states “the State values the dignity of every human person and guarantees full respect for human rights,” and “[n]o person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.” Notwithstanding this, there is no reference to sexual orientation, gender identity and/or intersex status as protected grounds.
- 3.3 In the Philippines, there is a degree of acceptance for the diversity associated with the SOGII of LGBTI sub-populations. For example, consensual same-sex sexual conduct and behaviours

¹ UNICEF, 'Eliminating Discrimination against children and parents based on sexual orientation and/or gender identity', (2014) *Current Issues*, (no. 9), 2.

² *Philippine Constitution* (1975) Paragraph 2, Section II, .

associated with being transgender (example.g. cross dressing) are not illegal in the Philippines.³ However, in a more general sense, LGBTI Filipinos continue to experience a significant degree of discrimination and marginalisation in relation to numerous aspects of everyday life, including but not limited to family and relationships, healthcare, education and employment.

4 POSITIVE STEPS TAKEN BY THE PHILIPPINES

4.1 In recent years there have been several positive developments within the Philippines to advance the rights of LGBTI people. The Philippines government is to be commended for its recent actions in support of LGBTI rights, namely:

4.1.1 In February 2015, The *Anti-Discrimination Bill (House Bill 5687)* was approved by the Philippines' Parliamentary Committee on Women and Gender Equality. The proposed Bill prohibits all forms of LGBTI discrimination, including penalties for violations, with an emphasis on giving law enforcers gender awareness training to address the issue of hate crimes.⁴ If this Bill is enacted, it will offer a comprehensive legal framework prohibiting LGBTI discrimination in the Philippines.

4.1.2 While same-sex relationships are not recognised, the Supreme Court has invalidated government regulations that infringed on the sexual relations of consenting adults, stating that these violated the privacy rights and personal dignity of individuals.⁵

4.1.3 The *PAP Code of Ethics* (2010), was implemented by the Psychological Association of the Philippines (**PAP**), with a reference to “remove the stigma of mental illness that has long been associated with diverse sexualities and to promote the wellbeing of LGBTI people.”⁶

4.1.4 Local governments throughout the Philippines have been proactive in passing city ordinances banning LGBTI discrimination;⁷ Quezon City Council, Davao City, City of Angeles, Agusan del Norte and Vigan City have all passed distinct anti-discrimination ordinances.⁸

4.1.5 In 2012, the Presidential Human Rights Committee (**PHRC**) approved a request to organise a dialogue between the PHRC and the Philippines National Police (**PNP**) to address illegal raids by errant police officers. As a result of this discussion, the PHRC committed to ensuring the PNP adheres to the legal process

³ International Lesbian, Gay Bisexual, Trans and Intersex Association (2012) “*Philippines Country Survey*,” <http://ilga.org/ilga/en/countries/PHILIPPINES/Law>.

⁴ Fritzie Rodriguez, 'The long road to an LGBT anti-discrimination law' (29 July 2015, updated 16 February 2016) <http://www.rappler.com/move-ph/issues/gender-issues/100632-ph-anti-discrimination-law-history>.

⁵ *City of Manila vs. Perfecto Laguio and Malate Tourist Development Corporation* (G.R. No. 118127) http://www.lawphil.net/judjuris/juri2005/apr2005/gr_118127_2005.html.

⁶ United National Development Programme and USAID, *Being LGBT in Asia: The Philippines Country Report* (2014) 27.

⁷ International Gay and Lesbian Human Rights Commission, *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 (October 2012) [4].

⁸ Gay Law Net, *Laws: Philippines* (2016) <http://www.gaylawnet.com/laws/ph.htm#discrimination>.

in conducting raids. The PNP promised to provide training to police on the legal procedure during raids and to emphasise the recent police policy prohibiting arbitrary arrest. This was in response to the reported use of the "grave scandal" offence to extort gay men.

- 4.1.6 Also in 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.⁹
- 4.1.7 Recently elected President Rodrigo Duterte has previously said that he would consider legislating for marriage equality and believes LGBTI persons should be able to join the Philippines military.¹⁰
- 4.2 Whilst the Philippines should be commended for these achievements, there are still significant deficiencies in laws, regulations and policies where considerable work is required in order for the Philippines to meet its obligations under ICESCR in relation to LGBTI persons. In addition, cultural change is necessary, which requires the Philippines to take further steps to counter prejudice, stigma and discrimination towards LGBTI persons in its various forms.

RESPONSE TO THE LIST OF ISSUES

5 ISSUES RELATING TO GENERAL PROVISIONS OF THE COVENANT

Article 2(2) - Non-discrimination

- 5.1 The List of Issues asked the Philippines to "provide information on the steps taken to expedite the adoption of a comprehensive anti-discrimination law" and details the "steps taken to review existing provisions that may result in discrimination in the enjoyment of economic, social and cultural rights of certain individuals and groups."¹¹

Relevant Filipino laws and policies

- 5.2 Under RA No. 3815 *Revised Penal Code* (1932), an individual may be charged with "grave scandal", an offence imposed upon "any person who shall offend against decency or good customs by any highly scandalous conduct not expressly falling within any other article of this Code."¹² In Manila, venues frequented by men who have sex with men (**MSM**) are frequently raided by police. When raids occur, the men who are at these venues are threatened with being charged with "grave scandal" as the basis for extortion by police. Many individuals pay extortion demands for fear of being "outed" to peers and family members.

⁹ International Gay and Lesbian Human Rights Commission, *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 (October 2012), [4].

¹⁰ CNN Philippines Ina Andolong and JC Ansis, *Duterte to consider legalizing same-sex marriage if he becomes president* (18 February 2016) <http://cnnphilippines.com/news/2016/02/18/duterte-consider-legalize-same-sex-marriage.html>.

¹¹ Committee on Economic, Social and Cultural Rights, *List of Issues E/C.12/PHL/Q/5-6* (27 April 2016).

¹² The Law Phil Project: Philippine Laws and Jurisprudence Database at: http://www.lawphil.net/statutes/acts/act_3815_1930.html

The List of issues highlighted this provision as one which subjects LGBTI persons to arrest and persecution, and disproportionately discriminates against LGBTI individuals.¹³

- 5.3 The jurisprudence of the Philippines regarding LGBTI persons has been contradictory. The Supreme Court has held that transgender persons are not entitled to change their legal identity and *Clerical Error Law* of 2001, specifically prevents the amendment of the sex of a person on a civil register by a City or Municipal Civil Registrar without a Judicial Order, where the petitioner has undergone a 'sex change or sex transplant'.¹⁴ Further, legislators have attempted to file a number of bills that would define individuals according to their genetic or birth sex, and bills to specifically ban marriage between two people of the same gender.¹⁵ The Court has however, decided in favour of the allowing intersex persons to change their name and sex.¹⁶
- 5.4 In allowing LGBTI political party Ang Ladlad to participate in the 2010 elections, the Court stated that “laws of general application should equally apply to LGBTs”. However, it added that this finding, in a case involving election law, did not “imply that any other law distinguishing between heterosexuals and homosexuals under different circumstances would similarly fail”.¹⁷
- 5.5 Also of concern is the confusion of Filipino courts regarding concepts of sexual orientation and gender identity. For example, the Courts have referred to “LGBTs” and “homosexuals” interchangeably, despite the term "LGBT[I]" being an umbrella term referring to a variety of persons, which illustrates a lack of awareness regarding the sexual orientation, gender identity and intersex status aspects of the term.¹⁸
- 5.6 There are also policies that may be considered pro-LGBTI but these are contradicted by other policies. For instance, Section 59 of RA 8551 (*Philippine National Police Reform and Reorganization Act* of 1998) requires the National Police Commission (NAPOLCOM) to “formulate a gender sensitivity program to include but not [be] limited to the establishment of equal opportunities for women in the PNP, the prevention of sexual harassment in the workplace, and the prohibition of discrimination on the basis of gender or sexual orientation.” Surprisingly, the NAPOLCOM Memorandum Circular No. 2005-002, release in 2005, states that a police officer can be discharged for sexual perversion, including 'latent and overt homosexuality', with this memorandum placing homosexuality under 'neurological and psychiatric disorders' that make a person unsuitable for service.¹⁹

Recommendations

- 5.7 Kaleidoscope urges the Committee to include in its concluding observations, recommendations that the Philippines:

¹³ International Gay and Lesbian Human Rights Commission (October 2012), “*Human Rights Violations on the Basis of Sexual Orientation, Gender Identity, and Homosexuality in the Philippines*”: at http://www.iglhrc.org/sites/default/files/philippines_report.pdf. p.3.

¹⁴ *Rommel Jacinto Dantes Silverio vs Republic of the Philippines* (G.R. No. 174689).

¹⁵ Rainbow Rights Project and Philippine LGBT Hate Crime Watch, *The Status of Lesbian, Gay, Bisexual and Transgender Rights in the Philippines*, Submission to the Human Rights Council for Universal Periodic Review 13th Session [5].

¹⁶ *Republic of the Philippines vs Jennifer B. Cagandahan* (G.R. No. 166676).

¹⁷ *Ang Ladlad LGBT Party versus Commission on Elections* (G.R. No. 190582) <http://sc.judiciary.gov.ph/jurisprudence/2010/april2010/190582.htm>.

¹⁸ American Psychological Association, “Answers to Your Questions About Transgender Individuals and Gender Identity”, (2006). <http://www.lgbt.ucla.edu/documents/APAGenderIdentity.pdf>.

¹⁹ United National Development Programme and USAID, *Being LGBT in Asia: The Philippines Country Report* (2014) 24.

- 5.7.1 prioritises passing the *Anti-Discrimination Act* (2015) into law;²⁰
- 5.7.2 enacts legislation that affords legal recognition to the gender identities of transgender and intersex persons; and
- 5.7.3 reviews and repeals existing laws that are used indiscriminately against LGBTI persons.

ISSUES RELATION TO THE SPECIFIC PROVISIONS OF THE COVENANT

6 Article 6 (right to work) and article 7 (right to enjoyment of just and favourable conditions of work)

- 6.1 Article 6 of ICESCR recognises the right to work, which includes the right not to be deprived of work unfairly.²¹ Article 7 mandates just and favourable working conditions, including fair remuneration, safe and healthy working conditions and equal opportunity for promotion.
- 6.2 These rights are to be enjoyed without discrimination as to SOGII by virtue of the operation of Article 2.²²

Relevant Filipino laws and policies

- 6.3 The discriminatory barriers that LGBTI people face in obtaining employment, and the discrimination they face within the workplace itself, constitute violations of their right to work under Article 6 and their right to just and favourable work conditions under Article 7.
- 6.4 In the Philippines, the governing law between employers and employees is the *Labor Code* of the Philippines, also known as *Presidential Decree 442*, the main purpose of which is the protection of workers. However, no reference is made to SOGII discrimination in the workplace. The absence of a specific protection for discrimination based on SOGII within the code makes LGBTI persons open to discriminatory treatment by allowing employers to refuse to hire a person who identifies as LGBTI, to harass or otherwise discriminate against such person, and to terminate their employment on these grounds without consequence.²³
- 6.5 The recently proposed *Anti-Discrimination Bill* (2015) includes provisions relating to employment. This legislation would make it unlawful to “[r]equire disclosure of sexual orientation and gender identity or us[e] it as a criteria for worker's hiring, dismissal,

²⁰ International Gay and Lesbian Human Rights Commission (October 2012), “*Human Rights Violations on the Basis of Sexual Orientation, Gender Identity, and Homosexuality in the Philippines*”: at http://www.iglhrc.org/sites/default/files/philippines_report.pdf. p.2.

²¹ Committee on Economic, Social and Cultural Rights, “*General Comment No. 20, Non-Discrimination in Economic, Social and Cultural Rights (Art. 2 para. 2)*”, adopted in the Committee's 42nd session, Geneva, 4-22 May 2009, UN Economic and Social Council, E/C.12/GC/20, 10 June 2009, at 10, ¶ 32.

²² *Ibid.*

²³ Patrick King Pascual, “Discrimination in focus”, *Outrage Magazine* (18 November 2012) <http://outragemag.com/a-closer-look-at-lgbt-discrimination/>.

promotion, transfer, assignment, performance review, compensation, or determinant for any career opportunity”.²⁴

- 6.6 Similarly, Article 3, in section 16 of *Republic Act 8504 (AIDS Prevention and Control Act)* of 1998, specifically prohibits compulsory HIV testing as a precondition to employment.²⁵ However, there are instances when HIV-positive employees cease working for companies that require them to undergo medical examinations that will force them to disclose their HIV status.
- 6.7 One of the key barriers to transgender people obtaining decent employment is the failure of the Philippines Government to allow them to legally change their gender and obtain identity documents that reflect their gender expression. This allows them to be easily discriminated against by potential employers, who often demand that employees dress and act according to their legal sex. Additionally, transgender people are often limited to working in low-level jobs in the entertainment, beauty, hospitality and sex industry, where they are highly vulnerable to HIV infection.

Recommendations

- 6.8 Kaleidoscope urges the Committee to include in its concluding observations, recommendations that the Philippines:
- 6.8.1 allows transgender people to legally change their gender to reflect their gender identity, in order to reduce barriers to employment and discrimination in the workplace for LGBTI persons.

Article 9 - right to social security

- 6.9 The Committee has requested that the Philippines provide information on contributory schemes for social benefits. In addition, the Committee has asked for information on other non-contributory social assistance benefits such as child and disability benefits, whether there are segments of the population unable to enjoy these benefits, and if so, which measures are being taken to ensure universal coverage.

Relevant Filipino laws and policies

- 6.10 LGBTI couples are unable to marry in the Philippines . Accordingly, there are no clear rights for either party in same-sex and transgender-heterosexual partnerships regarding insurance and social security benefits. Government-managed social security and health insurance benefits are not awarded to surviving partners of a deceased same-sex partner.²⁶ For instance, the Social Security System (a form of government sponsored superannuation) recognises only 'legitimate spouses' under the law and biological or adopted children as primary beneficiaries.²⁷ Similarly, the Philippines Health Insurance Corporation (**PhilHealth**), a government sponsored health insurance body providing low cost and subsidised health

²⁴ Fritzie Rodriguez “*The long road to an LGBT anti-discrimination law*”, (29 July 2015) <http://www.rappler.com/move-ph/issues/gender-issues/100632-ph-anti-discrimination-law-history>.

²⁵ *Republic Act No. 8504* (Philippine AIDS Prevention and Control Act of 1998).

²⁶ United National Development Programme and USAID, *Being LGBT in Asia: The Philippines Country Report* (2014) 40.

²⁷ Fritzie Rodriguez, 'LGBT rights are human rights' (12 May 2014, updated 1 September 2015) <http://www.rappler.com/move-ph/ispeak/57744-lgbt-human-rights-philippines>.

insurance to certain individuals, accept only natural or adopted children, and legal spouses as beneficiaries.

- 6.11 The State Party Report to the Committee provides detailed information on the Community Mortgage Programme and the Resettlement Programme in terms of the number of families and households that have been provided with financial assistance and resettlement, respectively. However, evidence indicates that as LGBTI relationships are not recognised by the National Housing Authority, LGBTI couples and families are not recognised as such, reducing the chance of obtaining social housing.²⁸

Discriminatory nature of contributory and non-contributory schemes

- 6.12 The lack of recognition of unmarried LGBTI relationships culminates in significant economic insecurity.²⁹ LGBTI couples are unable to name their partners as primary beneficiaries under contributory schemes. This has a discriminatory effect on same-sex or transgender-heterosexual couples, as at law, adoption is not permitted by two parents of the same sex.³⁰ Rules and policies of contributory schemes do not permit benefits of one of the individuals (the non-natural or non-adoptive parent) in such relationships to flow to any children of the relationship.
- 6.13 With reference to non-contributory schemes such as social housing, LGBTI couples and families are disparately affected due to the lack of legal recognition of these relationships. Such institutionalised discrimination has serious implications for the Philippines' compliance with Article 9 of ICESCR.

Recommendations

- 6.14 Kaleidoscope urges the Committee to include in its concluding observations, recommendations that the Philippines:
- 6.14.1 amend the policies and rules applying to contributory and non-contributory social benefits schemes such that LGBTI relationships are legally recognised and partners and children of LGBTI couples are ensured access to any resultant benefits; and
- 6.14.2 provides awareness raising strategies (as well as education and training) to relevant employees and government officials to combat prejudice and discrimination against LGBTI persons in the assessment for eligibility for social housing assistance.

²⁸ Fritzie Rodriguez, 'LGBT rights are human rights' (12 May 2014, updated 1 September 2015) <http://www.rappler.com/move-ph/ispeak/57744-lgbt-human-rights-philippines>.

²⁹ Kate Hawkins et al 'Sexuality and Poverty Synthesis Report' (February 2014) <http://opendocs.ids.ac.uk/opendocs/bitstream/handle/123456789/3525/ER53.pdf?sequence=1>.

³⁰ The Department of Social Welfare and Development (which manages adoptions), permits adoption by a single LGBTI individual, although not by same sex identifying couples: Rainbow Rights Project and Philippine LGBT Hate Crime Watch, *The Status of Lesbian, Gay, Bisexual and Transgender Rights in the Philippines*, Submission to the Human Rights Council for Universal Periodic Review 13th Session [5].

Article 10 - protection of the family, mothers, and children

- 6.15 While the Committee has not asked for information on protection afforded to the family under Article 10, this is a significant issue for LGBTI families and therefore addressed below.
- 6.16 The scope and application of Article 10(1) is informed by the non-discrimination principle in Article 2; protection under Article 10(1) should be provided without discrimination as to SOGII.³¹
- 6.17 Article 10(3) of the ICESCR provides that:
- 6.17.1 *Special measures of protection and assistance should be taken on behalf of all children and young children without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation.*

Relevant Philippines laws and policies

- 6.18 *The Family Code of the Philippines* (1987) specifically defines marriage as between a man and a woman, and therefore precludes recognition of same-sex unions.³² Further, 'lesbianism' and 'homosexuality' are grounds for filing for legal separation, in the same category as drug addiction and domestic violence.³³

Failure to protect and assist LGBTI families

- 6.19 The lack of a right to marry, in conjunction with non-recognition of same-sex and transgender-heterosexual relationships generally, means there is a significant lack of protection and assistance to LGBTI families. There are no clear rights for either spouse in same-sex and transgender-heterosexual partnerships regarding hospital and prison visitation, making medical decisions, joint ownership of property, custody of children, insurance and other social benefits.³⁴ Of particular concern is that same-sex couples are unable to adopt as a couple. Further, as individuals in same-sex and transgender-heterosexual relationships are not recognised as next of kin, they are not entitled to any property of their partners in the event of dissolution of the relationship or death.

Recommendations

- 6.20 Kaleidoscope urges the Committee to include in its concluding observations, recommendations that the Philippines:
- 6.20.1 provide mechanisms to protect the right of same-sex and transgender-heterosexual couples to enter into legal partnerships;
- 6.20.2 make appropriate amendments to policies and rules to allow LGBTI partners to be recognised as next of kin, including for the purposes of hospital and prison visitation, ownership of property and insurance benefits; and

³¹ Paula Gerber, Kristine Tay and Adiva Sifris (2014) 'Marriage: A Human Right for All?' 36 *Sydney Law Review* 643, 657.

³² RA No. 8533, *The Family Code of the Philippines* (1987) Article 1.

³³ Ibid Article 55(6).

³⁴ Rainbow Rights Project and Philippine LGBT Hate Crime Watch, *The Status of Lesbian, Gay, Bisexual and Transgender Rights in the Philippines*, Submission to the Human Rights Council for Universal Periodic Review 13th Session, quoted in, United National Development Programme and USAID, *Being LGBT in Asia: The Philippines Country Report* (2014) 40.

- 6.20.3 amend policies and rules of the Department of Social Welfare and Development, to permit the adoption of children by same-sex couples and transgender-heterosexual couples.

Article 12 - right to physical and mental health

- 6.21 The Committee has requested information on the measures being taken to improve access to healthcare in accordance with Article 12 of ICESCR.

Relevant Philippines law and policy

- 6.22 The Philippines *HIV/AIDS Control Law* (1998) provides the legislative framework for the government response to HIV, including provisions that the government promote awareness campaigns about risks and preventative measures. In addition, everyone is entitled to basic healthcare and services pursuant to the Constitution. However, healthcare related laws do not make specific reference to access by LGBTI individuals.³⁵
- 6.23 Under RA 8504 *AIDS Prevention and Control Act* of 1998, there are strong penal provisions against disclosure of HIV status and guaranteed access to complete HIV/AIDS information in schools.³⁶

Discrimination in accessing HIV/AIDS related healthcare

- 6.24 HIV is a prevailing health issue in the LGBTI community in the Philippines, and the incidence of HIV rates are rising rapidly.³⁷ The *HIV/AIDS Control Law* (1998) includes a statement that discrimination against individuals with HIV, or persons perceived or suspected of having HIV is contrary to the national interest.³⁸ However, there is no direct prohibition on such discrimination and a number of anti-LGBTI statements have been made by government officials and medical personnel in the context of HIV testing.³⁹ While access to HIV/AIDS testing is available, such social attitudes towards LGBTI persons may be contributing to the incidence of the disease, by discouraging individuals in the LGBTI community from seeking assistance.⁴⁰ Further, the current response to HIV appears to place an emphasis on testing, but fails to provide information about what can be done if results are HIV-positive.⁴¹

³⁵ Rainbow Rights Project and Philippine LGBT Hate Crime Watch, *The Status of Lesbian Gay, Bisexual and Transgender Rights in the Philippines*, Submission to the Human Rights Council for Universal Periodic Review 13th Session [4].

³⁶ Ibid; UN Committee on the Rights of the Child, *Concluding Observations of the Committee on the Rights of the Child, Philippines*, UN Doc CRC/C/15/Add.258 (2005) [64].

³⁷ International Gay and Lesbian Human Rights Commission, *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 (October 2012) [7]. According to UNICEF, the Philippines is one of only seven countries where there has been an over 25% increase in new cases from 2001 - 2009: UNICEF Philippines, *HIV and AIDS*, UNICEF <www.unicef.org/philippines/hiv aids.html#.Vpb_298rLfY>.

³⁸ RA No. 8504, *Philippines AIDS Prevention and Control Act* (1998) Section 2(3).

³⁹ For instance, in 2011, during the plenary meeting of the Philippine National AIDS Council (PNAC), the Secretary of the Department of Health, Enrique Ona, is reported to have suggested that parents have their homosexual children tested for HIV: United National Development Programme and USAID, *Being LGBT in Asia: The Philippines Country Report* (2014) 32.

⁴⁰ Data indicates that the incidence of HIV/AIDS is exacerbated in countries where homophobia and discrimination persists: *ibid*.

⁴¹ *Ibid* 33.

- 6.25 Courts have permitted intersex persons to change their sex on legal documents, and this appears to be supported by RA 8048 (*Clerical Error Law 2001*). Other information regarding the status and treatment of intersex individuals under the national healthcare system is limited and this lack of information is concerning.

Failure to provide adequate healthcare to transgender individuals

- 6.26 There is a significant lack of information on hormone replacement therapy and sex affirmation therapy.⁴² Further, endocrinologists have refused to provide sex affirmation surgery and appropriate counselling.⁴³ This constitutes a failure to comply with Article 12, as such medical treatment is available, but not accessible. This is further compounded by the inability of transgender individuals to legally change their name/sex.

Failure to provide adequate mental health services

- 6.27 The psychological health of LGBTI individuals in the Philippines is under-protected. We note that the Psychological Association of the Philippines is now aligned with international bodies including the American Psychiatric Association, American Psychological Association, and British Psychological Society, in its approach to LGBTI persons. However, evidence indicates that there is a lack of service providers who understand and respect this position, and can address LGBTI specific mental health issues.⁴⁴

Recommendations

- 6.28 We urge the Committee to include in its concluding observations, recommendations that the Philippines:
- 6.28.1 develop and provide training and educational programs for health workers (in particular, mental health service providers) regarding sexual orientation, gender identity and intersex status, and the specific health needs, diagnostics, and necessary treatment for LGBTI individuals, particularly in relation to HIV/AIDS; and
 - 6.28.2 take appropriate measures to better monitor the availability and accessibility of appropriate healthcare services, including access to HIV/AIDS testing and psychological health services for LGBTI individuals.

Articles 13 and 14 - right to education

- 6.29 Article 13(1) of the ICESCR recognises the universal right to education. The Committee has confirmed that State Parties are under an obligation to avoid measures that hinder the enjoyment of this right.⁴⁵ Read together with Article 2(2), the Philippines is required to facilitate this right without discrimination of any kind, including on the basis of SOGII.

⁴² Ibid 11.

⁴³ Rainbow Rights Project and Philippine LGBT Hate Crime Watch, *The Status of Lesbian Gay, Bisexual and Transgender Rights in the Philippines*, Submission to the Human Rights Council for Universal Periodic Review 13th Session [4].

⁴⁴ United National Development Programme and USAID, *Being LGBT in Asia: The Philippines Country Report* (2014) 33.

⁴⁵ Committee on Economic, Social and Cultural Rights, *General Comment No. 13, The Right to Education (art. 13)*, E/C.12/1990/10 (8 December 1999, adopted 15 November - 3 December 1999) [10].

- 6.30 The Committee has specifically asked for information on the measures taken to address the low completion levels in primary education.

Relevant Philippine Laws & Policies

- 6.31 *The Philippine Constitution* (1987), Section 5(2), Article XIV provides for 'academic freedom' of all educational institutions. This has been broadly interpreted as encompassing the independence of academic institutions to determine who they may teach, what may be taught, how they shall teach, and who may be admitted to study.⁴⁶ Therefore, academic institutions are able to create their own policies around LGBTI issues and practice.
- 6.32 The *Anti-Bullying Act* is a positive measure taken to address low completion levels in primary education in the Philippines, specifically for LGBTI children.⁴⁷ However, the legislation does not recognise or address institutionalised bullying. For instance, some schools have used the 'academic freedom' provision in the Constitution to prevent transgender students from accessing education facilities or enrolling for studies.⁴⁸ Discriminatory policies around uniform and hairstyle requirements for boys and girls have a disproportionate effect on transgender students. As the policies of academic institutions are largely left up to the institution, a major issue affecting primary school completion levels is the absence of institutional support for LGBTI students.⁴⁹
- 6.33 DepEd Order No. 40 is another positive measure to protect LGBTI students from discrimination in their education.⁵⁰ However, there is limited information on monitoring and implementation of this measure which makes it difficult to assess if it has had a positive impact on primary education completion levels. In addition, it is unclear if it curtails the current interpretation of the 'academic freedom' provision in the Constitution.

Recommendations

- 6.34 We urge the Committee to include in its concluding observations, recommendations that the Philippines:
- 6.34.1 focus on developing and enacting policies that can be implemented in academic institutions, that promote inclusiveness of LGBTI students and associated education and training programs for faculty, staff, and students; and
 - 6.34.2 create a program that monitors the implementation of DepEd Order No. 40 and assesses implementation of the measure.

⁴⁶ Gabriel T Ingles (17 March 2008), "Academic Freedom", Cebu Daily News, <<http://globalnation.inquirer.net/cebudailynews/opinion/view/20080317-125255/Academic-freedom>>.

⁴⁷ The *Anti-Bullying Act* of 2013 includes reference to gender-based bullying, defined as any act that humiliates or excludes a person on the basis of perceived or actual SOGII.⁴⁷ Another positive measure is the filing of House Resolution No. 1333, which seeks to investigate prejudicial, discriminatory, and unjust practices and policies against LGBTI students implemented and tolerated in schools. See International Gay and Lesbian Human Rights Commission, *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 (October 2012) [4].

⁴⁸ United National Development Programme and USAID, *Being LGBT in Asia: The Philippines Country Report* (2014) 28.

⁴⁹ International Gay and Lesbian Human Rights Commission, *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 (October 2012) [8].

⁵⁰ Further, in 2012, the Department of Education issued DepEd Order No. 40 to guarantee the protection of children in schools from any form of violence, abuse, or exploitation regardless of sexual orientation and gender identity.

7 CONCLUSION

- 7.1 The Philippines Government has taken some positive steps toward recognising and upholding the rights of LGBTI persons under the ICESCR. However, as outlined above, the Philippines has failed to meet a number of its obligations with respect to the economic, social and cultural rights of LGBTI persons. In particular, the lack of a national *Anti-Discrimination Act* that prohibits discrimination on the basis of SOGII has meant that the rights of LGBTI individuals are inadequately protected.
- 7.2 Therefore, we encourage the Committee to include in its concluding observations, the recommendations set out in this Report.