

A REPORT ON VIOLATIONS OF HUMAN RIGHTS BASED ON SEXUAL ORIENTATION AND GENDER IDENTITY IN THE PHILIPPINES

Submission to the Human Rights Council for Universal Periodic Review 13th Session

Introduction

This information is submitted by the Progressive Organization of Gays in the Philippines (ProGay)¹ a civil society organization working on documenting human rights violations based on sexual orientation and gender identity in the Philippines. Assisting was Lesbians for National Democracy (LesBond)². ProGay submits this report 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. We produced this report based on our documentations gathered from our community members and press stories in print, and from the internet. The following report is a sampling of our many different interactions with the community especially in the urban and rural poor communities of the Philippines.

1. Legal framework

The Philippines is a member state of the United Nations. It has acceded to human rights instruments but the government has many gaps in implementing the protection, fulfillment and respect of human rights based on sexual orientation and gender discrimination. The Philippines Constitution³ has a bill of rights that calls for respect for human rights based on sex, political belief, religion, etc. except sexual orientation and gender identity. We still do not have a national law that protects lesbians, gays, bisexuals, transgender, queer, and intersex people. There are old laws, such as the Anti-Vagrancy Law. They may not be about sexual orientation and gender identity, but are being used widely by the police to arrest gay and transgender persons who are walking the streets at night.⁴

Because of lack of a clear law, persons who are victims of human rights violations based on sexual orientation and gender identity cannot file legal cases of discrimination against violators. Many times even crimes that involve bodily harm to the victim are not handled by the police and the courts because they believe the LGBTQs are the ones who provoked the violations. There are already Gender and Development (GAD) Desks in government agencies and the police, but they handle mostly issues and cases of heterosexual women and children, and rarely have the capacity to handle LGBTQ issues and cases.

The Office of the President has an attached agency called the Presidential Human Rights Commission that produced the National Human Rights Action Plan (NHRAP), and regrettably, has no provisions to protect the human rights of LGBTQs.

However, there is hope that the Congress will pass proposed acts that can protect LGBTQ rights. In August 2010, *Bayan Muna (People First Party)* Representative Teodoro Casino filed House Bill 1483 or *An Act Defining Discrimination on the Basis of Sexual orientation and gender*

¹ ProGay Philippines, is a human rights advocacy organization of bakla, gay, bisexual men and transgendered persons in the Philippines (<http://www.progay.multiply.com>).

² Lesbians for National Democracy LESBOND is a grassroots organization that services individuals and organizations in the Philippines who are lesbians, women loving other women, tomboys, bisexual women, questioning and queer women and those who identify themselves with similar sexual orientations and gender identities. (<http://lesbondphils.wordpress.com/about/.com/>)

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

⁴ <http://www.remate.ph/2011/02/defend-gay-rights-in-un-group/>

*identity and Providing Penalties Therefor.*⁵ If this becomes law, LGBTs will enjoy equal rights in education, jobs, housing and many other social benefits. If the Congress cannot pass the bill, the government should encourage local governments to implement ordinances at the city and provincial levels.

However, the Committee on Justice of the House of Representatives is stalling the hearings for this bill. There is a need for international pressure to get Congress to act on this bill so that hearings and documents of discrimination can be submitted.

There are also growing evidence of local government councils being influenced by religious groups to pass local ordinances that would affect human rights based on sexual orientation and gender identity, such as rights to establish domestic partnerships.⁶

We strongly recommend the government of the Philippines to:

- *Pass in both houses of Congress the Anti-Discrimination Act of 2010 (House Bill 1483) and draft the Implementing Rules and Regulations for its speedy implementation*
- *Pass in local legislative councils in cities and provinces effective versions of the Anti-Discrimination Act, and put in place implementing structures with capacity building funded by the mandatory 5% Gender and Development budgets*
- *Repeal the Anti-Vagrancy Law and other laws used to oppress and violate human rights based on sexual orientation and gender identity*
- *Study all administrative rules and regulation, jurisprudence and programs to remove discriminatory language and intent*
- *Order national agencies under the guidance of the National Council of Women to add to the Gender and Development desks tasks addressing the needs, issues and cases of LGBTQ Filipinos*
- *Assign the Presidential Human Rights Commission to incorporate in the National Human Rights Action Plan the human rights based on sexual orientation and gender identity as stated in the Yogyakarta Principles*
- *Order the Department of Interior and Local Government to issue guidelines, capacity building documents, and memorandums for the Vice Mayors League, the Councilors League and other leagues concerning ordinances that can affect human rights based on sexual orientation and gender identity*

2. Right to life, liberty and security of persons (Article 3. Universal Declaration of Human Rights, Article 20. ICCPR, Principle 5. Yogyakarta Principles)

LGBTQs are facing increasing dangers of getting hurt physically and emotionally due to violence from homophobic individuals and groups with religious fundamentalist beliefs or homophobic and transphobic feelings. With increasing homophobia and transphobia, we observe that people with hatred and bias are starting to organize groups, and issuing public threats to LBGQT people on social networking sites, in the streets, and in the mass media.

In June 2011, the Baguio Pride Network organized a Pride Parade to celebrate LGBTQ rights in the city of Baguio. The local chapter of the Metropolitan Community Church conducted same-sex weddings for eight couples, and the religious groups reacted negatively. They demanded the city

⁵ <http://www.congress.gov.ph/press/details.php?pressid=4694>

⁶ <http://www.sunstar.com.ph/baguio/local-news/2011/07/02/baguio-mulls-declaring-8-gay-couples-unwelcome-164489>

government to declare the MCC church unwelcome and to ban all same-sex wedding ceremonies. They started to hold noisy public gatherings encouraging people to oppose homosexuality. We got reports that lesbian passersby were physically harassed by the gathered crowds. The lesbians were taunted to join their group so that their lesbian sexual orientation can be cured.⁷

In September 2011, transgendered women in the city of Cebu were targeted by unidentified assailants on cars hiding behind heavily tinted windows. Transgendered women who are sitting or walking the streets are shot at with pellets propelled by recreational guns (airsoft game rifles), and there has been no arrest of any culprit.⁸

We strongly recommend that the government of the Philippines to:

- *Define hate crime as a criminal offence and order the police to monitor the formation and activities of groups and individuals who are agitating hate against LGBTQs*
- *Monitor and document activities and pronouncements of hate groups and individuals*
- *Develop police investigative and procedural measures that enable law enforcers to process complaints of hate crime*
- *Implement protective measures such as police presence during Pride parades and other cultural events of LGBTQs when organizers report such risks arising from hate groups*

3. Right to opinion, expression and association (Article 28-29. CRC, Principles 19 to 21 Yogyakarta Principles)

This section focuses on the rights of LGBTQ youth and students whose basic human rights to freedom of expression and free association are compromised.

We have been receiving reports of students and teachers whose expressions of their sexual orientations and gender identities through preferred clothing, cosmetics, hairstyle, voice, demeanor, accessories, nicknames, titles, and pronouns, even if within the regulations of the schools' dress codes and discipline codes, are being made the basis for disciplinary actions, such as harsh reprimands, suspension, expulsion, denial of examination and/or final academic grades, denial of graduation, denial of tenure, etc.⁹

In the University of the Philippines in Los Baños, the LGBTQ group UPLB Babaylan documented cases of transgender students who were threatened to be disallowed from graduating; teachers making gay students stand for prolonged periods in front of the class; and termination of leadership and/or membership from a fraternity/sorority and other academic organizations when the members' sexuality was disclosed.¹⁰

According to jurisprudence, academic freedom as defined in the Education Act of 1982, includes the determination by institutions of learning of who to admit to study¹¹. There are reports that schools are implementing "masculinity tests" to weed out effeminate-acting boys and prevent them from enrolling.¹²

⁷ <http://www.ucanews.com/2011/07/01/church-groups-plan-gay-protest-march/>, also <http://www.sunstar.com.ph/baguio/local-news/2011/07/02/baguio-mulls-declaring-8-gay-couples-unwelcome-164489>

⁸ <https://cebudailynews.wordpress.com/2011/10/14/police-probe-%E2%80%98%E2%80%99-on-gays/>

⁹ <http://www.sunstar.com.ph/baguio/opinion/2011/09/02/baquirin-getting-back-176835>

¹⁰ *Cases of Discrimination in the Academe*, an unpublished report, prepared by UPLB Babaylan and ProGay-Philippines Laguna Chapter (copy available upon request)

¹¹ http://www.lawphil.net/judjuris/juri2007/dec2007/gr_127980_2007.html

¹² <http://philippinesgraphic.com/?p=2038>

We strongly recommend that the government of the Philippines to:

- *Implement fair policies that allow free expression by LGBTQ students, including gender expression and sexual orientation in the use of preferred pronouns, dress, and demeanor*
- *Take active steps to prevent, address, and reduce bullying of LGBTQ students by fellow students, teachers and other school actors.*
- *Review the definition of academic freedom in jurisprudence and rules of the Department of Education and the Commission on Higher Education to include respect for freedom of expression and free association for students, teachers and academic personnel in connection with their sexual orientation and gender identity*

4. Right to work and equal pay (Article 6. ICESCR, Convention 100 and 111. ILO, Principles 12 and 13. Yogyakarta Principles)

Aside from ratifying the major human rights instruments, the Philippines has ratified ILO conventions including those on discrimination (Convention 111) and equal pay (Convention 100) However, there are indications that workplace discrimination based on sexual orientation and gender identity still pervades in the Philippines. The labor laws of the country do not set workplace rules to protect employees based on their sexual orientation and gender identity.

The Lesbians for National Democracy made a research among butch lesbian workers in the Baguio Export Processing Zone and has found out that they were paid less than their male counterparts for so-called “masculine work,” because of the practice rampant among BEPZ employers that females get paid less than men.¹³

We strongly recommend that the government of the Philippines:

- *Review and redraft the Labor Code of the Philippines to make it compliant with the ILO conventions on workplace discrimination and pay scales*
- *Build capacity in the Department of Labor and Employment and develop educational programs among employers and managers on labor rights based on sexual orientation and gender identity*
- *Direct the Department of Labor and Employment to collect and analyze data on incidents of workplace discrimination targeting sexual orientation and gender identity*

5. Additional Recommendations

Finally, we recommend the Government of the Philippines to extend an invitation for country visits to the Philippines of Special Rapporteurs who work on the following themes:

- Minority Issues,
- Cultural Rights,
- Freedom of Opinion and Expression, and
- Education

with the express purpose of finding facts about human rights violations based on sexual orientation and gender identity from both government and civil society actors.

¹³ <http://www.thefreelibrary.com/Queer+and+present+danger%3A+gay+rights+in+the+Philippines.-a094893928>