



Women's Priority Legislative Agenda for the 17th Congress

11

Enacting an Anti-Discrimination Based on Sexual Orientation and Gender Identity Law



POLICY BRIEF NO. 11

This policy brief provides the rationale and recommendations for upholding the basic human rights of persons with diverse sexual orientation and gender identity.

WHAT IS THE ISSUE? WHAT HAS BEEN OUR RECENT EXPERIENCE/S WITH REGARDS TO THE ISSUE?

Persons with diverse sexual orientation and gender identity (SOGI) experience abuse and violence (ranging from subtle jokes to extreme forms of stigma and assault) from their families, neighbors, educational/training institutions and even from government institutions.¹

Lesbian, Gay, Bisexual and Transgender (LGBT) people also experience lost economic opportunities due to discrimination in employment such as being required to wear clothes according to their sex-assigned at birth as condition for hiring and outright refusal to hire applicants on the ground of their SOGI.

Prejudicial attitudes of some law enforcers and service providers towards LGBT people deter them from reporting cases of abuse and violence committed against them. One documented case of a transgender woman who was sexually abused by a relative when she was eight-years old narrated that the judge who was hearing the case questioned her and said that maybe she showed motives that prompted the assault.² In yet another case, the police told a transwoman victim of gang rape that she should be thankful for being raped by men who otherwise should not give attention to people like her.³

Around the world, LGBTs are at high risk of suicide which is linked with their experiences of being rejected and discriminated based on their gender identity. The stigma that LGBTs face in everyday life

takes a toll on their mental and physical well-being. A study done in Cambodia reveals that SOGI-based bullying in schools has resulted in reduced school attendance, dropout, damaged academic achievement and performance. The study also established that long-term bullying is a major contributory factor to depression, anxiety, loss of confidence, withdrawal, social isolations, self-harm and suicidal tendencies among the victims.⁴

The lack of a national policy as legal basis to address these discriminatory practices leaves the LGBTs with no recourse for redress. This results to continued violations of LGBTs human rights by private as well as public institutions and individuals.

WHY IS THE ISSUE IMPORTANT?

Eliminating discrimination based on SOGI will address disparity in treatment that stems from gender biases and double standards that provide protection selectively to those who adhere to the patriarchal concept of male and female, and discriminate against those who do not fit in the socially constructed norms of what is a man and a woman.

Although the 1987 Philippine Constitution guarantees the right of every person to equal protection of the laws, without distinction or discrimination, the laws protecting human rights are not being equally applied especially to persons with diverse SOGI.

Private establishments and companies assert their management prerogative in hiring and distinguishing who can and cannot enter their premises which sometimes discriminate against LGBTs. Schools or

academic institutions assert their academic freedom in institutionalizing policies against cross-dressing and reserve the right not to accept or even expel students that violate these policies. Enacting an Anti-Discrimination Law will affirm and enforce the equal application of existing laws that protect the human rights of those who face human rights violation because of their SOGI and will address the impunity by which they are discriminated.

WHAT ARE THE EXISTING LAWS OR POLICIES RELATED TO THE ISSUE?

Section 3 of Republic Act 9710 otherwise known as the Magna Carta of Women (MCW) provides that “All individuals are equal as human beings by virtue of the inherent dignity of each human person. No one should therefore suffer discrimination on the basis of ethnicity, gender, age, language, sexual orientation, race, color, religion, political or other opinion, national, social or geographical origin, disability, property, birth, or other status as established by human rights standards.

The Philippine Constitution provides that “The State values the dignity of every person and guarantees full respect for human rights” (Article II, Section 11). It also guarantees every person the right to life, security of person and privacy, right to be free from torture, arbitrary arrest and detention, the right to be free from discrimination and the right to freedom of expression, and the right to organize associations (Article III, Section 1, 2, 4, 8, 12).

Civil Service Commission Memorandum Circular No. 29-2010 prohibits discrimination against LGBT people applying for civil service examinations. In addition, the CSC’s Revised Policies on Merit and Promotion plan include a provision that inhibits discrimination in the selection of employees based on various criteria including gender.

Recently, the Department of Social Welfare and Development (DSWD) issued a Memorandum respecting the right of persons of diverse SOGI to wear uniform of their preferred sexual orientation and gender identity.⁵

In addition, Anti-Discrimination Ordinances that prohibit discrimination based on sexual orientation and gender identity have been enacted in nineteen (19) LGUs, namely: Barangays Bagbag, Lagro and Pansol in Quezon City, Angeles City in Pampanga, Antipolo City, Bacolod City in Negros Occidental, Batangas City in Batangas, Candon City in Ilocos

Sur, Cebu City, Dagupan City in Pangasinan, Davao City, Mandaue City, Puerto Princesa, Quezon City, Vigan City in Ilocos Sur, Municipality of San Julian in Eastern Samar, Province of Agusan del Norte, Province of Batangas and Province of Cavite.

In the legal battle for gender equality, there have been cases that were ruled in favor of LGBTs such as when the Supreme Court ruled in favor of the *Ang Ladlad* Partylist, declaring that the LGBT sector deserves to participate in the party-list system on the same basis as other marginalized and under-represented sectors.⁶

In another case, wherein the husband petitioned for the custody of his child with an estranged wife whom the petitioner claimed was immoral on the grounds that the ex-wife had a lesbian relationship, the Court decided in favor of the wife saying that “moral laxity alone does not prove parental neglect or incompetence”.⁷

WHAT ARE THE EXPERIENCES OF OTHER COUNTRIES IN ADDRESSING THE ISSUE?

Countries that have national laws prohibiting discrimination based on sexual orientation include: Canada (Canadian Human Rights Act), Denmark (Danish Penal Code), Finland (Finish Penal Code), France (French Penal Code), Iceland (The Icelandic Penal Code), Ireland (The Irish Employment Discrimination Law), Israel, The Netherlands (The Dutch Penal Code), New Zealand (The New Zealand Human Rights Act), Norway (The Norwegian Penal Code), Slovenia (The Slovenic Penal Code), South Africa (Sexual orientation is identified as a protected category in their Constitution), Spain (The Spanish Penal Code), Sweden (Enacted laws that forbid discrimination on the grounds of homosexuality).⁸ In the US, the following States passed civil rights laws that include sexual orientation – California, Connecticut, Hawaii, Massachusetts, Minnesota, New Jersey, Rhode Island, Vermont and Wisconsin. Also, the US Equal Employment Opportunity Commission (EEOC) interprets and enforces the prohibition on discrimination based on sex as provided in Title VII of the U.S. Civil Rights Act of 1964 as prohibition against employment discrimination based on gender identity or sexual orientation.⁹

In September 2015, Thailand passed the Gender Equality Act that defines unfair discrimination among sexes, provides protection for members of the LGBT community and penalizes acts of discrimination on the basis of sexual orientation and gender identity.¹⁰ In October 2015, Nepal ratified its new Constitution that expressly prohibits discrimination based on sexual orientation, ensures the right of sexual minorities to

participate in state mechanisms and public service, and the right to choose their preferred gender identity on citizenship documents.¹¹

WHAT ARE THE CONSIDERATIONS IN ADDRESSING THIS ISSUE IN THE COUNTRY?

Promoting women's rights and gender equality

Enacting a law that prohibits and penalizes acts of discrimination based on SOGI will contribute to the achievement of gender equality. An anti-discrimination law will ensure that all people, regardless of SOGI are able to exercise their rights to life, education, employment and expression without fear of reprisal, torture, arrest and detention.

Responding to International Commitments

Protection of the rights of persons with diverse SOGI or the LGBT community is embedded in international human rights laws/ treaties. The Universal Declaration of Human Rights declares that everyone has the right to life, security of person and privacy, the right to be free from torture, arbitrary arrest and detention, the right to be free from discrimination and the right to freedom of expression, and association.¹²

The International Convention on Civil and Political Rights (ICCPR) affirms that the inherent right to life of every person shall be protected by law and that no person should be arbitrarily deprived of life.¹³

POLICY RECOMMENDATION

Consistent with the Philippine Constitution mandating the State to uphold the equal protection of all people before the law, the PCW supports the passage of the anti-discrimination law that will ensure that human rights of all people, regardless of their SOGI, are protected and promoted. The PCW pushes for a law that will:

1. Penalize discriminatory acts such as but not limited to: non-hiring or dismissal of workers, refusal of admission from any educational institution, denial of access to services available to the general public, revocation of license, denial of access to establishments or facilities on the basis of SOGI;
2. Establish mechanism to monitor, report and record incidents of SOGI-based discrimination and abuse;
3. Create redress mechanism to address complaints of acts of discrimination;
4. Provide guidelines in: a) handling of LGBT victims of SOGI-based discrimination and

- and abuse, and b) handling LGBTs arrested and detained for criminal and civil offense;
5. Mandate the review and repeal or amendment of provisions of existing national and local policies discriminatory to LGBTs (e.g., Amend RPC to define acts that constitutes grave scandal provision of the RPC, DOH Memorandum that forbids homosexuals to donate blood);
6. Mandate the crafting of non-discriminatory policies in employment and job retention, training and education;
7. Mandate awareness-raising campaigns with media, public and private institutions, educational and training institutions; and
8. Integrate orientation on SOGI rights in new employee orientation in in both public and private institutions.

CONCLUSION

The PCW reiterates its advocacy to end gender-based discrimination and recommends the passage of an anti-discrimination bill that prohibits discriminatory practices based on SOGI. The enactment of such law is deemed necessary towards ending all forms of gender discrimination, and the achievement of gender equality.

ENDNOTES

¹ RTD on Legal Gender Recognition in the Philippines, organized by UNDP on April 21, 2016

² Kwentong Bebot, Lived Experiences of Lesbians, Bisexual and Transgender Women in the Philippines. Rainbow Rights Project. Available at: <https://www.outrightinternational.org/content/violence-through-lens-lbt-people-asia>

³ RTD, April 2016

⁴ UNESCO, 'Impact of Homophobic Bullying'. Available at: <http://www.unesco.org/new/en/education/themes/leading-the-international-agenda/health-education/homophobic-bullying/bullying/> cited in CCHR publication LGBT Bullying in Cambodia's School

⁵ DSWD Memorandum Fostering a Gender-Inclusive Workplace, September 2016

⁶ G.R. No. 190582 Supreme Court decision on Ang Ladlad Party List vs. Commission on Election (Ang Ladlad vs. COMELEC) Retrieved at: http://www.lawphil.net/judjuris/juri2010/apr2010/gr_190582_2010.html

⁷ Joycelyn Pablo-Gualberto v. Crisanto Rafaelito Gualberto (GR No. 154994). Retrieved at: <http://chanrobles.com/scdecisions/jurisprudence2005/jun2005/154994.php>. Cited in "Being LGBT in Asia: The Philippine Country Report, 2014

⁸ Fact Sheet: Worldwide Antidiscrimination Laws and Policies Based on Sexual Orientation, Retrieved at: <http://www.thebody.com/content/art2432.html>

⁹ What You Should Know About EEOC and the Enforcement Protections for LGBT Workers. Available at: https://www.eeoc.gov/eeoc/newsroom/wysk/enforcement_prot

ections_lgbt_workers.cfm

¹⁰ Thailand Gender Equality Act B.E. 2558 (2015)

Retrieved at:

http://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=and loc100442&p_country=THA&p_count=4

¹¹ Nepal's New Constitution Leads Region in LGBTI Rights' The World Post (10 October 2015) Available at:

http://www.huffingtonpost.com/tracy-fehr/nepal-constitution-lgbti-rights_b_8239360.html

¹² Article 3 and 5, Universal Declaration of Human Rights

¹³ Article 6 and 7, International Convention on Civil and Political Rights policies discriminatory