



# Women's Priority Legislative Agenda for the 18th Congress

## Enacting a Law Prohibiting Discrimination Based on Sexual Orientation, Gender Identity and Expression (SOGIE)

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

### WHAT IS THE ISSUE? WHY IS THE ISSUE IMPORTANT?

Despite significant strides in the advancement of gender equality in the Philippines, little progress has been made in recognizing the rights of persons of diverse sexual orientation, gender identity, and expression (SOGIE) to be protected from various forms of discrimination in private and public institutions. The absence of a protective legal mechanism for persons of diverse SOGIE leaves them vulnerable to discriminatory practices that exclude them from full and meaningful participation in work, education, and training institutions and which limit their access to basic services (e.g., health and social services, access to justice).

Discrimination experienced by persons of diverse SOGIE include stereotyping and more extreme forms of stigma such as unfair treatment and outright rejection.

In 2015, a nightclub in Taguig City refused entry to some transwomen due to its “No Crossdressers Allowed Policy”. One of them presented their California State ID which indicated their female name and gender marker<sup>i</sup> but was still turned away by security personnel who said “*Lalaki pa rin ‘yan*”, (He’s still a man).

In 2008, a rape victim underwent rectal surgery to remove a canister which was used to sexually assault him. Unknown to him at the time, attending medical personnel took photos and videos of the procedure while making a ridicule of the patient. The video footage was uploaded online, causing the victim to be the subject of public mockery and disdain by the local church<sup>ii</sup>.

Recently, transgender students were barred from wearing the garb of their choice in their graduation rites due to requirements that their clothing should conform to the sex reflected in their school records.

Persons of diverse SOGIE suffer from harassment and assault, the effects of which range from psychological trauma to physical injuries and even death. While disaggregated data on cases are not available, anecdotal evidence from lesbian, gay, bisexual and transgender (LGBT) communities show that victims of such crimes face difficulties in obtaining redress due to

prejudicial attitudes by service providers. Some also experience being targeted on account of their being transgender by law enforcers, being victim-blamed in rape cases by officers of court<sup>iii</sup> and police officers<sup>iv</sup>.

There are also those who fail to obtain proper recourse due to the limited judicial understanding of gender expression and identity<sup>v</sup>. This is demonstrated in *People v. Penonia*, wherein the trial court upheld an elementary school principal’s action of forcing a student to wear a school curtain due to the child’s refusal to wear the uniform skirt for girls. The principal’s action was deemed as an imposition “that is within the ambit of her authority” in order “to give sense to the agreed school policy and to correct AAA’s deviating attitude”.<sup>vi</sup>

The 1987 Constitution declares that the State values the dignity of every human person and guarantees full respect for human rights as well as the right of every person to the equal protection of laws. However, the inequities and biases faced by persons of diverse SOGIE remain unaddressed. The lack of national policy that prohibits these discriminatory practices leaves them with no recourse for redress. This results in continued violations of their human rights by other individuals and public and private institutions.

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

The 1987 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 provides that “No 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.” (Article III, Section 1).

Republic Act No. 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” (Section 3). (*Emphasis supplied*)

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 for promotion based on various criteria including gender<sup>vi</sup>. The National Police Commission, on the other hand, through its Memorandum Circular 2005-02 prohibits discrimination on account of gender, among other things, in recruitment, selection, and appointment policy. Recently, the Department of Social Welfare and Development (DSWD) issued a Memorandum respecting the right of persons of diverse SOGI to wear a uniform of their preferred sexual orientation and gender identity.<sup>viii</sup>

In addition, Anti-Discrimination Ordinances that prohibit discrimination based on sexual orientation and gender identity have been enacted in twenty-five (25) LGUs, namely: Barangays Bagbag, Greater Lagro and Pansol in Quezon City, Angeles City in Pampanga, Antipolo City, Bacolod City, Batangas City, Baguio City, Butuan City, Candon City, Cebu City, Dagupan City, Davao City, General Santos City, Malabon City, Mandaue City, Marikina City, Puerto Princesa, Quezon City, Vigan City, Municipality of San Julian in Eastern Samar, Province of Agusan del Norte, Province of Batangas, Province of Dinagat Islands Province of Cavite, and Province of Iloilo.<sup>ix</sup>

In the legal battle for gender equality, there have been cases that were ruled in favor of persons with diverse SOGIE 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.<sup>x</sup>

In another case, wherein the husband petitioned for the custody of his child with an estranged wife whom the petitioner claimed was immoral because 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”.<sup>xi</sup>

Protection of the rights of persons with diverse SOGIE is also 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.<sup>xii</sup>

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.<sup>xiii</sup>

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

Countries that have national laws prohibiting discrimination based on sexual orientation include: Canada, Denmark, Finland, France, Iceland, Ireland, Israel, The Netherlands, New Zealand, Norway, Slovenia, South Africa, Spain, and Sweden.<sup>xiv</sup>

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. 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.

## POLICY RECOMMENDATIONS

The Philippine Commission on Women (PCW) supports the passage of the anti-discrimination law that will ensure that the rights of all persons, regardless of their SOGIE, 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 SOGIE;
2. Establish mechanisms to monitor, report and record incidents of SOGIE-based discrimination and abuse;
3. Create redress mechanisms to address complaints of acts of discrimination;
4. Provide guidelines in: a) assisting victims of SOGIE-based discrimination and abuse, and b) treatment of persons with diverse SOGIE who are arrested or detained for commission of criminal offenses;
5. Mandate the review and repeal or amendment of provisions of existing national and local policies discriminatory to persons with diverse SOGIE (*e.g., Amend RPC to define acts that constitutes grave scandal provision of the RPC*);
6. Mandate the crafting of non-discriminatory workplace policies in recruitment, job promotion and evaluation criteria, training and education;
7. Mandate awareness-raising campaigns with media, public and private institutions, educational and training institutions; and
8. Integrate orientation on the rights of persons of diverse SOGIE in new employee orientation in both public and private institutions.

- <sup>i</sup> Rodriguez, Fritzie. "Valkyrie Club apologizes to transgender fashion designer". Rappler, 23 June 2015. Retrieved at <https://www.rappler.com/move-ph/issues/gender-issues/97206-valkyrie-club-apology-transgender>
- <sup>ii</sup> "YouTube rectal surgery scandal' victim raped?". ABS-CBN News, 25 April 2008. Retrieved at <https://news.abs-cbn.com/nation/04/25/08/youtube-rectal-surgery-scandal-victim-raped>
- <sup>iii</sup> 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>
- <sup>iv</sup> Round Table Discussion, Consultation on Legal Gender Identity Recognition. April 2016
- <sup>v</sup> "Legal Gender Recognition in the Philippines: A Legal and Policy Review", United Nations Development Programme, Commission on Human Rights of the Philippines (2018)
- <sup>vi</sup> *People vs. Penonia*. April 12, 2016. FCCriminal Case No: R 2013-066, RTC of Misamis Oriental, 10th Judicial Branch 22, Cagayan De Oro City.
- <sup>vii</sup> CSC MC No. 3, S. 2001 No. 3 provides that "there shall be no discrimination in the selection of employees on the account of gender, civil status, disability, religion, ethnicity, or political affiliation".
- <sup>viii</sup> DSWD Memorandum Fostering a Gender-Inclusive Workplace, September 2016
- <sup>ix</sup> Manalastas, Eric Julian LGBT Resources. Retrieved at <https://pages.upd.edu.ph/ejmanalastas/policies-ordinances>
- <sup>x</sup> Ang Ladlad Party List vs. Commission on Election (G.R. No. 190582, April 8, 2010)
- <sup>xi</sup> Joycelyn Pablo-Gualberto v. Crisanto Rafaelito Gualberto (GR No. 154994, June 28, 2005)
- <sup>xii</sup> Article 3 and 5, Universal Declaration of Human Rights
- <sup>xiii</sup> Article 6 and 7, International Convention on Civil and Political Rights
- <sup>xiv</sup> Fact Sheet: Worldwide Antidiscrimination Laws and Policies Based on Sexual Orientation, Retrieved at <http://www.thebody.com/content/art2432.html>