



Commission on Human Rights of Philippines

**REPORT TO THE REGIONAL NATIONAL HUMAN RIGHTS
INSTITUTIONS PROJECT ON INCLUSION, THE RIGHT TO
HEALTH AND SEXUAL ORIENTATION AND GENDER IDENTITY**

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CONTENTS

03

1. Introduction

03

2. Background

03

3. The Commission on Human Rights of the Philippines - Mandate and Powers

04

4. Independence and Affiliations

04

5. The CHR and International Human Rights Mechanisms

05

6. The CHR and Domestic Mechanisms

05

7. Policies and Initiatives Related to SOGI and HIV

06

8. The Complaints System and Rights Reporting Mechanisms

07

9. Case Studies – the CHR Response to SOGI and HIV-related Rights

09

10. The Way Forward

This Report was prepared for the Regional National Human Rights Institutions Project on Inclusion, the Right to Health, and Sexual Orientation and Gender Identity (SOGI), implemented by the International Development Law Organization (IDLO) and the United Nations Development Program (UNDP) in partnership with the Asia Pacific Forum. The Project was designed to build an understanding of the response of National Human Rights Institutions (NHRIs) in South Asia and Southeast Asia to SOGI-related human rights issues.

The Project advocates for greater employment of the Yogyakarta Principles; builds upon the outcomes of the South Asia Roundtable Dialogue: Legal and Policy Barriers to the HIV Response (Kathmandu, 2011); and supports the commitments of the Economic and Social Commission for Asia and the Pacific (ESCAP) under Resolutions 66/10 and 67/9.

The Project is a direct response to the recommendations of the Report of the Asia Pacific Forum (APF) Advisory Council of Jurists: Human Rights, Sexual Orientation and Gender Identity, 2010 (ACJ Report). Specifically, the ACJ Report recommends that NHRIs:

- undertake an internal dialogue on issues relating to the human rights of people of diverse SOGI and build the capacity of the institution to understand the issues and to react appropriately;
- build relationships with people of diverse SOGI, including civil society organizations, in order to inform the work of the NHRI; and
- research, identify and document human rights violations against people of diverse SOGI, and the impact of discriminatory laws and practices.

In participating in the Regional NHRI SOGI Project, the Commission on Human Rights of the Philippines took part in two dialogues with representatives of the SOGI community with a view to building Commission representatives' sensitivity to, and understanding of the rights and specific vulnerabilities of people of diverse SOGI; as well as a series of internal meetings and research activities.

National report approved by: Chair Loretta Ann Rosales, Commission on Human Rights of the Philippines.

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"It is not called the partial declaration of human rights. It is not the sometimes declaration of human rights. It is the Universal Declaration, guaranteeing all human beings their basic human rights – without exception."

– UN Secretary General Ban Ki Moon, December 10, 2010

1. INTRODUCTION

Since 2010, the Commission on Human Rights of the Philippines (CHR or Commission) has embarked on several initiatives to define its human rights programs on sexual orientation and gender identity (SOGI) and HIV. This report looks into the progress that the CHR has made in the areas of SOGI and HIV, maps out potential challenges it may encounter, and proposes actions to help the Commission move forward.

2. BACKGROUND

The Commission on Human Rights of the Philippines is a national human rights institution created under the 1987 Constitution of the Republic of the Philippines (1987 Constitution) (Section 17, 18 and 19, Art. XIII).

3. THE COMMISSION ON HUMAN RIGHTS OF THE PHILIPPINES - MANDATE AND POWERS

CHR has the principal mandate to investigate human rights violations, monitor the State's compliance with its international treaty obligations on human rights, and promote human rights. It also has the duty to recommend human rights policies to Congress.

The CHR aims to instill universal human rights values and principles; promote the universality, indivisibility and interdependence of all human rights; advocate for human rights policies; and establish cooperation with other organizations. It also explicitly aims to interpret its constitutional human rights mandate as widely and as comprehensively as possible. Several recently enacted laws have expanded the investigatory, recommendatory and legal aid mandate of the CHR in the areas of international humanitarian law, women's rights, and torture.¹

The CHR is composed of a Chairperson and four members, a majority of whom are members of the bar. The Commission is present in 16 regions of the Philippines, including the recently established regional office in the Autonomous Region of Muslim Mindanao.

Then President Corazon Aquino created the CHR through a Presidential Action, thus abolishing the Commission's predecessor, the Presidential Committee on Human Rights, and creating the legal framework that governs the CHR's mandate.² However, the structures and mandate of the CHR, as established by the law, are deemed weak, making the Commission neither judicial nor quasi-judicial – a "tiger without dentures but with maimed legs to boot".³

An earlier ruling of the Supreme Court limited the powers of the CHR. In *Carino v. CHR G.R. No. 96681, December 2, 1991*, the High Court ruled that the Commission has the power to seek preventive remedies

¹ The Magna Carta of Women (RA9710), Anti-Torture Act (RA9745), and Act on Crimes Against International Humanitarian Law, Genocide, and other Crimes Against Humanity (RA9851) have expanded the investigatory, reportorial, policy advocacy, human rights education, and legal assistance functions of the CHR.

² Executive Order No. 163, signed on May 5, 1987 by President Corazon Aquino. It must be noted that in 2002, the Philippine government, through Administrative Order 29 (January 27, 2002), re-established the Presidential Committee on Human Rights as an advisory body to the President on human rights.

³ *Brigido Simon, Jr. v. CHR* [GR No. 100150, 05 January 1994]

from courts, receive evidence of human rights violations, and investigate cases, but it cannot adjudicate. A subsequent Supreme Court ruling limited the CHR's jurisdiction further to human rights cases involving civil and political rights.⁴

Efforts to amend the CHR's legal framework have been undertaken and bills pending before the 15th Congress, if enacted, would broaden the mandate of the Commission and grant it quasi-judicial powers.

4. INDEPENDENCE AND AFFILIATIONS

The CHR is one of the independent constitutional commissions created under the 1987 Constitution, but its powers as provided by law are not at par with other constitutionally created commissions.

The Commission maintains strong linkages with local and national civil society organizations, UN bodies, and other international groups. It is part of the International Coordinating Committee of National Human Rights Institutions (ICC), which has granted the CHR A status accreditation, an indication that the Commission is in full compliance with the Paris Principles and therefore has access to speaking rights and seats at UN human rights treaty bodies.

The CHR is also a full member of the Asia Pacific Forum of National Human Rights Institution (APF) and the ASEAN NHRI Forum (SEANF).

5. THE CHR AND INTERNATIONAL HUMAN RIGHTS MECHANISMS

The CHR submits to UN mechanisms in fulfillment of its mandate to monitor the Government of the Philippines' implementation of its international human rights commitments. It submits reports to UN treaty bodies such as the Human Rights Committee, the Committee on the Elimination of All Forms of Racial Discrimination, Committee on Migrant Workers, Committee on the Rights of the Child, and Committee on Torture.

In separate submissions for the Universal Periodic Review and the Philippine review of the UN Human Rights Committee for the International Covenant on Civil and Political Rights, the Commission highlighted its role in the case of Ang Ladlad, whose application for accreditation as a political party was denied by the Commission on Elections (COMELEC). The Commission intervened again when the case was elevated to the Supreme Court,⁵ arguing that the case involved violations of the human rights standards and principles enshrined in the 1987 Constitution, the Universal Declaration of Human Rights, and the International Covenant on Civil and Political Rights.

In both interventions, the Commission also made submissions on alleged hate crimes against lesbian, gay, bisexual and transgender (LGBT) individuals that were reported by civil society organizations.

In June 2011, in consideration of an upcoming vote in the UN Human Rights Council on a sexual orientation and gender identity (SOGI) resolution filed by South Africa, the Commission wrote to the Department of Foreign Affairs of the Philippines to urge the Foreign Affairs Secretary to direct the Permanent Representative to the UN Human Rights Council to support the resolution.

⁴ Ibid.

⁵ Ang Ladlad v. COMELEC [G.R. No. 190582, April 8, 2010]

6. THE CHR AND DOMESTIC MECHANISMS

While it is not required by law to do so, the Commission submits an annual report to the Philippine Congress, the most recent of which is the 2009 Report. The report covers CHR's key program areas: human rights protection, human rights promotion, human rights policy advocacy and standards setting, and human rights treaty monitoring.

The main reference to SOGI in its latest report is its advisory on the Ang Ladlad case. The Commission's 2010 report is yet to be published. The 2009 report and the previous reports have not triggered any parliamentary action.

The annual congressional deliberation of the General Appropriations Act is another platform where members of Congress call on the CHR to report on various human rights issues. This is conducted in the exercise of Congress's oversight functions, and is therefore used by legislators to check if the Commission is fulfilling its mandate.

The position of the CHR is likewise sought during congressional deliberations on human rights measures. CHR Chair Loretta Ann Rosales, then a Congresswoman, filed an anti-discrimination bill during the 12th Congress. The bill prohibits discrimination on the basis of SOGI. The CHR has consistently supported the enactment of this bill; it has been included as part of CHR's priority legislative agenda for the 15th Congress.

On 16 April 2012, the CHR signed a Memorandum of Agreement (MOA) with the Department of Justice to enhance the capacity of public prosecutors to investigate and prosecute human rights cases through the development of a Prosecutor's Manual on Human Rights. The MOA establishes a continuing agreement between the institutions to strengthen the prosecution of human rights cases, including those referred by the CHR to DOJ. Under the MOA, the Commission is tasked to ensure that prosecutors from the National Prosecution Service are sufficiently trained to handle human rights cases.⁶

The MOA strengthens the capacity of both institutions to successfully resolve human rights cases by improving the skills of public prosecutors and by increasing the number of human rights related cases resolved by the government.

There is also an informal agreement between the CHR Chair and the Secretary of the Department of Labor and Employment to address human rights violations against labor leaders and trade union members, particularly in cases involving extrajudicial killings, enforced disappearances, and torture.

7. POLICIES AND INITIATIVES RELATED TO SOGI AND HIV

Efforts to establish CHR's policy and programs on HIV and SOGI have gained momentum in 2012.

This builds on past efforts to mainstream SOGI and HIV in the work of the CHR.

In 2010 and 2011, key CHR officials held internal dialogues on HIV, these dialogues included discussions on the vulnerabilities of men who have sex with men (MSM) and transgender people.

Also in 2010, the CHR participated in the Asia-Pacific Regional Workshop on HIV and Human Rights for NHRIs, co-hosted by UNDP, UNAIDS, and the UNOHCHR. The dialogues and the regional workshop led to the crafting of CHR's HIV and Human Rights Action Plan for 2010-2011, along with several internal documents on the role of the CHR in the country's HIV response.⁷

⁶ Memorandum of Agreement Between the Commission on Human Rights and the Department of Justice, April 16, 2012.

⁷ Reference documents on HIV from Renante Basas, CHR's Director-in-Charge on HIV and AIDS, which include the 2010-2011 CHR Action Plan on HIV and Human Rights; A Report on the 2011 Orientation on HIV and AIDS and Human Rights for officials and staffs of the main office on HIV and human rights, and an internal document by the focal person on the Role of the NHRI in the HIV response.

With the appointment of Loretta Ann Rosales as Chair of the Commission, LGBT rights and HIV have been identified as one of the Commission's emerging priorities. Chair Rosales established and took charge of the Commission's HIV working group, which has engaged the assistance of UNAIDS and TLF Share, an NGO for MSM and transgender people.

In July 2012, the CHR held an HIV working group meeting. The working group is comprised of several CHR units, namely: the Assistance and Visitorial Office; the Human Rights Education and Research Office; the Women Human Rights Center; the Child Rights Center the NGO, Civil Society and Media Cooperation Office; the Legal and Investigation Office, and the Field Operations Office. The HIV working group has identified three priority areas:

1. The development of a CHR policy on HIV/AIDS and SOGI, which is scheduled for adoption by the Commission *en banc* by early 2013 and shall be the Commission's main tool for policy reform and advocacy;
2. Advocacy and monitoring of the State's accountability through the establishment of national human rights standards on HIV/AIDS and SOGI;
3. Strengthening CHR's redress mechanism for and documentation of SOGI or HIV-related human rights cases.

The working group has agreed to prioritize sites where HIV incidence, especially among MSM and transgender people, is rapidly increasing.

On 24 September 2012, in partnership with UNAIDS and TLF Share, the CHR conducted a capacity building workshop on HIV and SOGI for CHR personnel in Cebu City. On 19 November 2012, with support from the US Embassy, the CHR conducted a capacity building workshop on HIV and SOGI for CHR personnel in Davao City.

Also in November 2012, CHR launched an internal online survey to gather baseline information on the capacity needs of the CHR on SOGI and HIV.

Dr. Renante Basas, Director for the Assistance and Visitorial Office, was designated as the Director-in-charge for HIV and AIDS while Atty. Marc Titus Cebreros, Chief of Staff of the Chairperson and Coordinator for the NGO, Civil Society and Media Cooperation Office, serves as the SOGI focal person.

8. THE COMPLAINTS SYSTEM AND RIGHTS REPORTING MECHANISMS

Filing and Processing of Complaints

The CHR follows a straightforward procedure in receiving complaints or reports on human rights violations. The CHR guarantees confidentiality in the conduct of its inquiries on human rights abuses. Cases may be submitted to the Central Office or to any of CHR's regional offices.⁸

However, very few SOGI or HIV-related cases have been filed before the Commission. A list of suspected hate crime related deaths was filed by an LGBT group in May 2012. The list is currently being verified by the Commission's regional offices.

In mid-2012, Chair Rosales directed CHR's regional directors to conduct a rapid appraisal of the HIV situation their areas, map out HIV-related discrimination, and check if any cases have been brought before the Commission. Based on initial reports, only one complaint was identified: a case filed by a person living with

⁸ CHR Resolution No. A89-109-A (July 19, 1989) and CHR Resolution No. A93-047 (August 11, 1993)

HIV (PLHIV) regarding oral defamation and threats by relatives of her husband. While the issue is related to the sero-status of the complainant, HIV was not mentioned in the complaint, at the complainant's request.

In a separate research activity, the Action for Health Initiatives (ACHIEVE) reported that only three HIV-related complaints have been filed before the Commission on Human Rights. ACHIEVE reports none has been duly pursued.⁹

The Commission has no alternative mechanisms to address SOGI or HIV-related cases. The CHR plan is integrate SOGI and HIV-related issues into existing CHR procedures.

The Commission has long struggled with low findings of cases, a result of deficits in its resources and personnel. It has persistently asked for additional resources from Congress to improve its services and programs.

Capturing Data on SOGI or HIV-related Cases

Since 2008, CHR has adopted the Martus-based Executive Information System (MAREIS) as its database software to document and capture human rights cases filed before the Commission. The voluminous data collected through the new system, which consists of all the cases and complaints filed before the Commission (including violations that the Commission on its own decided to investigate), does not indicate whether cases are SOGI or HIV-related.

The reason is that SOGI and HIV are invisible in the nomenclature of cases used in the software. Thus, it needs to be revised and expanded to include SOGI or HIV-related cases, a process that the Commission has already initiated. It aims to implement the new HIV and SOGI-inclusive documentation language by early 2013.

There is no information to date whether the documented cases would be disaggregated according to sexual orientation, gender identity, sero-status, or according to key populations vulnerable to HIV (for instance, sex workers or injecting drug users). Disaggregation is crucial to understand and unpack the range of SOGI or HIV-related human rights issues confronting different communities.

9. CASE STUDIES – THE CHR RESPONSE TO SOGI AND HIV-RELATED RIGHTS

Ang Ladlad Case

The Commission's intervention in the Ang Ladlad Case exemplifies how the Commission can effectively use its powers to respond to a case of human rights violation against the lesbian, gay, bisexual and transgender (LGBT) community.

Ang Ladlad Party-list, a political party for LGBT individuals, was denied accreditation for the 2007 party-list elections. In 2009, Ang Ladlad Party-list, reapplied for accreditation with the Commission on Elections to be able to participate in the 2010 party-list elections.

On 11 November 2009, the application was denied by COMELEC, and after an appeal from Ang Ladlad, the petition was denied with finality on 16 December 2009. The denial is based on moral grounds. COMELEC found the party advocates for sexual immorality that offends religious doctrines and the inclusion of Ang Ladlad in the party-list race allegedly compromises the well-being of the people, especially young Filipinos.¹⁰

The CHR issued an advisory on the matter and said that the decision "smacks of prejudice and discrimination". It did not only dwell on legal arguments to support the Ang Ladlad's case, but it mustered

⁹ Guzman, Manuel. "Seeking Redress for HIV-related Violations of Human Rights". March 2011.

¹⁰ COMELEC SPP No. 09-228, November 11, 2009

the moral authority of the Commission as the prime institution on human rights to influence a prevailing consciousness that continues to stigmatize LGBTs in the Philippines.

It stressed that homosexuality is not an aberration and is in fact part of the Philippines' diverse culture. The CHR also underscored that there is no governmental policy that criminalizes homosexuality or renders it immoral, thus there is and there can be no basis to deny Ang Ladlad its right to participate in the race.

CHR also chided the COMELEC for using Christian and Islamic doctrines to justify its ruling, saying that doing so is not within the authority of the electoral body. CHR also commented on the application of Article 201 of the Revised Penal Code which penalizes immorality, saying that the provision should not be interpreted to penalize LGBTs since there is no "secular governmental policy against homosexuality." CHR further commented that rights of LGBTs are human rights issues.

The CHR met with Ang Ladlad leaders to discuss the case. When the LGBT party elevated the case to the Supreme Court on 4 January 2010, the CHR immediately filed a motion to intervene on the ground that as the premier human rights institution of the country, it has the obligation to protect the rights of LGBTs.

In its decision on the Ang Ladlad case, the Supreme Court cited the CHR's reference on the UN Human Rights Committee's elaboration of the meaning of the right to participate in public affairs and the right to vote, which are enshrined in the International Covenant on Civil and Political Rights. The ICCPR, it stated, affirms "the right of every citizen to take part in the conduct of public affairs, the right to vote and to be elected and the right to have access to public service."

The Supreme Court eventually reversed the COMELEC decision, thus allowing Ang Ladlad to participate in the 2010 polls. But the principles and standards upon which the decision was based resonate beyond the arena of politics. As pointed out by Michael O'Flaherty, a member of the UN Human Rights Committee, during the Committee's review of the Philippines' implementation of the ICCPR, the Ang Ladlad case can be used by the Philippine government as a legal framework to protect the rights of Filipino LGBTs. Mr O'Flaherty then challenged the Philippine delegation to the review, headed by Justice Secretary Leila de Lima (who happens to be the Chair of the CHR when it intervened in the Ang Ladlad case), to make the Philippines a champion of LGBT rights in the region.

Engaging LGBT Organizations

As part of its capacity-building efforts to prepare the staff and officials of the Commission in handling SOGI or HIV-related cases, the Commission engaged the assistance of civil society partners. Civil society partners will work with CHR to improve the awareness of its personnel and officials on issues related to SOGI and HIV.

The collaboration between the CHR and civil society partners led to the conduct of HIV and SOGI workshops for CHR staff in Cebu City and Davao City, two highly urbanized cities with increasing HIV incidence. The design of the workshops incorporates interaction with local HIV and LGBT groups. This not only facilitates a deeper understanding of the local human rights situation of the community, it also bridges ties with community partners that need the engagement of CHR.

In Cebu City, this interaction resulted in the filing of reported hate crimes cases by a local transgender organization. The regional CHR vowed to investigate these hate crimes. This is crucial considering the recent approval of a broad anti-discrimination ordinance in Cebu.

Also in Cebu City, discussions are underway for the CHR to facilitate a dialogue with public and private schools on the prejudices faced by LGBT students.

Similar gains are yet to eventuate in Davao City, but dialogue between LGBT groups, HIV groups and local CHR officials is ongoing. As a result of the workshop, the CHR committed to facilitate ties between other government bodies - the police, in particular - and the local LGBT and PLHIV communities. Davao

City has also recently approved a comprehensive anti-discrimination ordinance that protects LGBTs from discrimination.

10. THE WAY FORWARD

The strategy of the Commission to effectively include SOGI and HIV-related legal issues in its mandate depends upon SOGI and HIV-related human rights cases being integrated and addressed under its existing programs.

This presents a more comprehensive approach in mainstreaming human rights issues around SOGI and HIV. It also gives the Commission leverage to open up space to address LGBT rights; not just within the Commission, but also in the Commission's work with other state and non-state actors, whether it's the Philippine National Police or other civil society groups. Furthermore, in the battle of hearts and minds on the issues of SOGI and HIV, its advocacy on the rights of LGBTs and PLHIVs would be seen as more inclusive if they were (appropriately) framed as issues of human rights and human dignity.

Lessons Learned

The Commission's focus SOGI and HIV initiatives can be attributed to two factors:

1. Over time, the Commission has built LGBT rights champions within the institution. The former CHR Chair and now Justice Secretary Leila de Lima was a strong advocate of LGBT rights. Equally, the current Chair, Loretta Ann Rosales, is a strong ally of the LGBT community, both when she was a Congresswoman and Chair of the House Committee on Civil, Political and Human Rights and in her role as CHR Chair. Within the structures of the Commission, the designation of champions as focal persons also contributed to move things forward.
2. The CHR's collaboration with the civil society, combined with the proactive roles of the champions within the agency, has steered the process to the right direction. The actions of the CHR are designed to respond to strategic needs of the LGBT and PLHIV communities. The impact of this collaboration can be amplified if the CHR can link the LGBT community to other human rights stakeholders, especially those that have roles in perpetuating stigma and discrimination based on SOGI or HIV status.

Challenges and Recommendations

As the Commission establishes and advances its programs in these areas, it is expected to face challenges that are both organic to the constitution of the Commission and unique to the complex nature of human rights, SOGI and HIV.

Firstly, the structural deficits in the current CHR will affect its work on SOGI and HIV issues. The low rate of case resolution, a result of the lack of investment on human rights by the State, would inevitably slow down or delay resolution of SOGI or HIV-related cases brought to the Commission. Furthermore, the fact that the Commission does not have the power to adjudicate on human rights cases, also limits the solutions that it can provide.

Secondly, while it is important to integrate SOGI and HIV in the broader human rights discourse, this must not mute the diverse and complex human rights issues of the communities involved. All LGBT rights are human rights, and yet specific programming needs to account for the different needs of the communities involved. For example, the right to health issues faced by transgender people differ from the concerns of men who have sex with men. While deeply embedded biases against male-to-male sex are conflated with prejudices on the basis of one's presumed or actual HIV status, there are other bases for stigma around HIV that need to be addressed.

These challenges should not be seen as dead ends in the Commission's initiatives to develop its SOGI and HIV programs. Below are some concrete proposals that could help the Commission move forward and mitigate the impact of its internal and external limitations:

1. The Commission should strive for the immediate formalization of its SOGI and HIV programs, which would help define and clarify its present and future engagements on both issues. It would also allow the institution to plan strategically, relative to its own capacity, on how it aims to implement SOGI or HIV programs, what kind of technical assistance it requires, and how it can sustain these programs. Furthermore, it would clarify the CHR pathways through which to address SOGI or HIV-related human rights cases. This would also give the Commission an opportunity to align its SOGI or HIV programs with existing State responses to the same issues. One such example is the MSM and Transgender Strategic Plan approved by the Philippine National AIDS Council. The MSM and Transgender Strategic Plan has human rights components through which the CHR could show leadership.
2. The Commission should sustain its capability-building efforts to harmonize awareness and understanding on SOGI and HIV-related human rights issues across different levels of its structure.
3. To diminish the possible effects of its own limitations, the Commission should enter into partnerships with other government agencies that have a mandate to protect and promote human rights.

The CHR's current agreement with the Department of Justice provides a strategic platform to mainstream the promotion and protection of LGBT and PLHIV rights, and could help expand redress mechanisms for these communities.

The Commission's ties with the Philippine National Police and other law enforcement agencies, its engagement with Congress, and even its work with faith-based groups could facilitate a more comprehensive response in addressing SOGI or HIV-related stigma and discrimination.

4. The Commission should strengthen and institutionalize its collaboration with CSOs. This would involve not only expanding linkages with LGBT groups or HIV organisations, but also generating demands for the CHR's SOGI or HIV-related human rights services. The groups could help mobilize the communities to access the space and programs provided by the Commission. This strategy would broaden the reach of the Commission. Operationally, the Commission may conduct regular fora with the LGBT and PLHIV communities that would provide them with a safe space to engage other institutions.
5. The Commission should address gaps in resources may be addressed through the use of technology . With the stigmatized status of LGBT and PLHIV communities, technology can bridge the CHR's services by linking people online.
6. In collaboration with its civil society partners, the CHR should scale up its role in setting policy, advocacy and standards. Through this, CHR and partners can strengthen and promote the rights of LGBTs and PLHIV. The Commission's track record on the Ang Ladlad case and its mandate on treaty obligations make the CHR a compelling force to articulate human rights standards for the nation.

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