

LEGAL GENDER RECOGNITION IN THE PHILIPPINES

A Legal and Policy Review



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Forewords



Transgender people in the Philippines continue to confront many challenges. Unfortunately, social stigma and discrimination are a feature of many schools and universities, businesses, and public offices. Transgender people lack legal recognition and protection making them both vulnerable and marginalized. There are however some promising developments.

Important bills have been filed including the Sexual Orientation and Gender Identity and Expression (SOGIE) Equality Bill and the Comprehensive Anti-Discrimination Bill (CADB). Both seek to define, prohibit, and penalize situations and practices of discrimination on the basis of SOGIE as well as promote and protect the rights of Lesbian, Gay, Bisexual,

Transgender, and Intersex (LGBTI). These bills are anchored on several human rights instruments and international conventions that seek to address all forms of discrimination and violence among marginalized sectors and to which the Philippines is a signatory. These include the Universal Declaration on Human Rights, Convention on the Elimination of All Forms of Discrimination Against Women, Convention on the Rights of the Child, International Covenant on Civil and Political Rights, International Covenant on Economic, Social, and Cultural Rights. We hope to see these Bills passed and if properly implemented, they will make a quantum difference in the lives of LGBTI in this country.

National legislation will need to be enabled through appropriate policies and implementing rules and regulations (IRRs). This report “Legal Gender Recognition in the Philippines: A Legal and Policy Review” provides an important foundation for the formulation or adjustment of such policies and IRRs. The report provides specific recommendations and suggested actions that will promote legal gender recognition and human rights for transgender people and if adopted will facilitate an enabling environment for transgender people to access education, employment, health, and other public services based on SOGIE. The report also highlights transgender community efforts and initiatives that could serve as new platforms for asserting transgender rights and those which could open the doors for more enhanced collaboration among the various sectors.

The UNDP Strategic Plan 2018 – 2021, which sets out the direction for a new UNDP and is optimized to help countries achieve the 2030 agenda for sustainable development, suggests that reducing gender inequalities and empowering vulnerable groups is vital to achieving the Sustainable Development Goals. I am confident that this review will contribute to the important endeavor of meeting the needs of vulnerable and marginalized groups such as LGBTI people and ensuring that they are protected and free from any forms of violence and discrimination and in doing so, deliver on the Philippine commitment to ‘leave no one behind’ by 2030.

A handwritten signature in blue ink, appearing to read 'Titon Mitra', written in a cursive style.

Titon Mitra
Country Director
UNDP Philippines



The LGBTQI+ community suffer from various forms of discrimination in Philippine society, ranging from stereotyping and unfair treatment to harassment and sexual assault that sometimes lead to the loss of lives. While the Philippines is generally considered as tolerant of members of the LGBTQI+ community, they continue to fight for acceptance of their sexual orientation, gender identity and expression (SOGIE) by the vast majority. One major stumbling block to their full acceptance is the lack of understanding of their choice of SOGIE. Transgender people are among those who experience major challenges in the area of acceptance.

Even in a country that scores high in the gender equality index, many people still do not understand who a transgender person is. They are usually referred to as gays or lesbians, without a thorough understanding of their SOGIE. This inevitably results to the disregard of their uniqueness as individuals, both in the eyes of society and of the law. The lack of legal recognition of transgender persons in the Philippines heightens their vulnerability to gender-based violence and other forms of discrimination.

This legal and policy review on gender recognition in the Philippines is an important resource towards enhancing respect, protection, and fulfilment of human rights of transgender people in the country. It begins by tracing the history of transgender people in the Philippines and moves on to depict their current situation and the contemporary issues that they face, with the case studies providing a clearer picture of their challenges. This is an important component in the gender equality discourse as it is the starting point in understanding their plight as a sector and the inequalities they face. The study then outlines the legal and policy measures, institutional mechanisms, and jurisprudence related to sexual orientation and legal gender recognition. These are then juxtaposed with real-life experience of transgender people to determine the gaps in law and policy. The study concludes that there is no comprehensive regulation, law, or policy that accords legal gender recognition to transgender people and protects them from discrimination. The recommendations in the areas of resource allocation, promotion of awareness, and law and policy reform provide valuable input that government agencies and civil society organizations may use in their work to uplift the plight of transgender people in the Philippines.

Indeed, sexual rights are human rights that are difficult to claim. It is highly contentious particularly when its assertion involves SOGIE. Normative pressures silence and render these rights as taboo reinforcing gender stereotypes, curtailing right to personal fulfilment, and freedom from coercion, discrimination and violence around sexuality. As the Gender Ombud, the Commission on Human Rights recognizes the need to establish sexual rights as integral part of human rights for all anchored on international human rights law. Ensuring the recognition, protection, and respect of sexual rights remains an enormous challenge, but this initiative opens an opportunity to push for filling the normative gaps in the country's laws and policies.

The Commission commends the non-government organizations and the national government agencies which assisted and contributed during the conduct of activities that made possible the writing of this document. We appreciate the United Nations Development Programme for its support and solidarity for this project. Finally, we congratulate the vibrant transgender community for their perseverance. Together, let us continue to build bridges towards upholding the dignity and human rights of all persons with diverse sexual orientation, gender identity and expression.

A handwritten signature in black ink, appearing to read 'Karen S. Gomez-Dumpit'.

Karen S. Gomez-Dumpit
Focal Commissioner for Women and LGBTI
Commission on Human Rights of the Philippines

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The Legal Gender Recognition in the Philippines: A Legal and Policy Review report was developed by UNDP to comprehensively review the laws, regulations and policies related to legal gender recognition in the Philippines.

The author of this report is Atty. Kristine Jazz Tamayo.

Jensen Byrne, Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) and Human Rights Project Officer, UNDP Bangkok Regional Hub is a contributing author of the report, while Andy Quan and Angel Treesa Roni, Research Assistant, UNDP Bangkok Regional Hub edited the report.

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- Department of Foreign Affairs (DFA)
- Department of Health (DOH)
- Department of Labor and Employment (DOLE)
- Department of Social Welfare and Development (DSWD)
- Government Service Insurance System (GSIS)
- Land Transportation Office (LTO)
- National Bureau of Investigation (NBI)
- Office of the Court Administrator (OCA)
- Office of the Solicitor General (OSG)
- Philippine Commission on Women (PCW)
- Philippine Health Insurance Corporation (PhilHealth)
- Philippine Insurance Corporation (PIC)
- Philippine Judicial Academy (PHILJJA)
- Philippine Statistics Authority (PSA)
- Philippine National Police (PNP)
- Professional Regulatory Commission (PRC)
- Quezon City Health Department (QCHD)
- Social Security System (SSS)

Civil society organizations:

- Association of Transgender People in the Philippines
- Babaylanes, Inc.
- Batangas Barako Pride
- Child Legal Rights Development Center
- Coalition against Trafficking of Women in Asia Pacific (CATW-AP)
- The Coalition for the Liberation of the Reassigned Sex (COLORS)
- Cebu United Rainbow LGBT Sector (CURLS)
- DIOSSA Taguig
- EnGendeRights
- Ganda (Gender and Development Advocates) Filipinas
- GAYON Albay
- Ilocos Sur Pride Council
- Ladlad CARAGA, Inc.

- Lakambini Advocates Pilipinas
- LGBT Filipinas Youth
- Metro Manila Pride
- Old Balara Pride LGBT Pilipinas
- Outright Action International
- Philippine NGO Council on Population, Health and Welfare, Inc. (PNGOC)
- Pinoy FTM
- Psychological Association of the Philippines (PAP)
- Rainbow Rights Philippines
- Repos Angels
- Society of Transsexual Women of the Philippine (STRAP)
- Team (Transman Equality and Awareness Movement) Cebu
- Transman Pilipinas
- Universall Club LGBT Pilipinas
- Asia Pacific Transgender Network (APTN)

Constitutional body:

- Commission on Human Rights (CHR)

UN agency:

- Joint United Nations Programme on HIV/AIDS (UNAIDS)

The development of this report benefited from two ‘Multi-Stakeholder Roundtable Discussions on Legal Gender Recognition in the Philippines’ hosted by UNDP in Manila, Philippines on 21 April 2016 and 21 July 2016. The first roundtable discussion was aimed at formally introducing the Being LGBTI in Asia (BLIA) Programme and the initiative to conduct a review of legal gender recognition for transgender people to key stakeholders from the transgender communities and other partners, as well as introducing and levelling-off understanding on the assessment tool and the review process. The second roundtable discussion provided the participants with the opportunity to review and validate the report, its findings and recommendations.

Edmund Settle, Policy Advisor for HIV, Human Rights and Governance, Katri Kivioja, Programme Specialist, Bangkok Regional Hub and Fe Cabral, Programme Analyst for Governance, Human Rights and LGBTI of UNDP Philippines managed the development of the report.

The Legal Gender Recognition in the Philippines: A Legal and Policy Review report is part of regional project jointly implemented by UNDP and APTN which reviewed the law, regulations and policies in relation to legal gender recognition in Bangladesh, China, India, Nepal, Pakistan, the Philippines and Thailand. APTN conducted equivalent reviews in Indonesia and Malaysia.

The regional report is available here: http://www.asia-pacific.undp.org/content/rbap/en/home/library/democratic_governance/hiv_aids/legal-gender-recognition--a-multi-country-legal-and-policy-revie.html

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Acronyms

ADB	Anti-Discrimination Bill
APTN	Asia Pacific Transgender Network
BPO	Business Process Outsourcing
CA	Court of Appeals
CAH	Congenital Adrenal Hyperplasia
CAT	Convention Against Torture
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CERD	Convention on the Elimination of all Forms of Racial Discrimination
CFLI	Canada Fund for Local Initiatives
CHR	Commission on Human Rights
COLORS	Coalition for the Liberation of the Reassigned Sex
COMELEC	Commission on Elections
CR	Comfort Room
CRPD	Convention on the Rights of Persons with Disabilities
CSC	Civil Service Commission
CURLS	Cebu United Rainbow LGBT Sector
DO	Department Order
DILG	Department of the Interior and Local Government
DSWD	Department of Social Welfare and Development
FGHR	Fund for Global Human Rights
GAD	Gender and Development
GANDA	Gender and Development Advocates
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICRMW	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
IGLHRC	International Gay and Lesbian Human Rights Commission
IRR	Implementing Rules and Regulations
LGBTI	Lesbian Gay Bisexual Transgender Intersex
MCLE	Mandatory Continuing Legal Education
MCW	Magna Carta of Women
NYC	National Youth Commission
OSG	Office of the Solicitor General
PAP	Psychological Association of the Philippines
PBA	Philippine Basketball Association
PCW	Philippine Commission on Women
PDP	Philippine Development Plan
PHILJA	Philippine Judicial Academy
PSA	Philippine Statistics Authority
QCHD	Quezon City Health Department
RA	Republic Act
SOGIE	Sexual Orientation, Gender Identity, and Expression
SRS	Sex Reassignment Surgery
SSS	Social Security System
STRAP	Society of Transsexual Women of the Philippines
TEAM	Transman Equality and Awareness Movement
UNCRC	United Nations Convention on the Rights of the Child
UNDP	United Nations Development Programme
UNHRC	UN Human Rights Council
USAID	United States Agency for International Development
WEDGE Plan	Women's Empowerment, Development and Gender Equality Plan

Terminology

Transgender (or Trans) is an umbrella term used to describe people whose gender identity does not match the sex they were assigned at birth. It encompasses a wide range of people including transsexual people, transgender men, transgender women, gender non-conforming people, and a large number of culturally specific terms across Asia and the Pacific. In addition, there are many transgender women in the region who simply identify as women and transgender men who identify as men. Asia and the Pacific both have long traditions of non-binary gender identities including *hijra* (India and Bangladesh), *thirunangai* (India), *khwaja sira* (Pakistan), and *meti* (Nepal) among others. In those countries, transgender people are legally recognized as third gender. Non-binary English language terms such as gender non-conforming, non-binary or genderqueer are less common in the region, outside of Australia and New Zealand, but, are slowly gaining wider use. This document and project use “transgender” as an umbrella term.

Gender identity: A person’s internal sense of being a man, a woman, a third or some alternative gender, a combination of genders or no gender. Everyone has a gender identity. A person’s gender identity may not correspond with their sex assigned at birth.

Gender expression is a person’s ways of communicating masculinity or femininity (or both or neither) externally. This is done through physical appearance (including clothing and hair styles), mannerisms, ways of speaking, and behavioural patterns when interacting with others.

Gender affirming health services encompasses any of the biomedical, surgical or health interventions a transgender person may undertake to physically transition. This includes, for example, access to counseling, hormone therapy, and hair removal, and a range of surgeries. The term “gender-affirming surgeries” is used alongside the older term “sex reassignment surgery” (SRS).

Gender marker refers to how a person’s gender is recorded on official documents. Some examples in this region include Male (M), Female (F), indeterminate (X), and Other (O). As documents often use the words ‘sex’ and ‘gender’ interchangeably, this is sometimes referred to as changing ‘sex details rather than as changing one’s ‘gender marker’. Other gender-specific details may also be considered to be gender markers, for example a gendered name, title or registration number.

Intersex people are born with sex characteristics (including genitals, gonads and chromosome patterns) that do not fit typical binary notions of male or female bodies. Intersex is an umbrella term used to describe a wide range of natural bodily variations. In some cases, intersex traits are visible at birth while in others, they are not apparent until puberty. Some chromosomal intersex variations may not be physically apparent at all. According to experts, between 0.05% and 1.7% of the population is born with intersex traits – the upper estimate is similar to the number of red haired people.¹

Legal gender recognition is the official recognition of a transgender person’s gender identity, including gender marker(s) and name(s), in public registries and key documents. Amending a gender marker or name may involve an administrative or legal process, and the changes made are legally recognised.

1 UN Free and Equal (2015) Fact Sheet: Intersex. Available at: https://www.unfe.org/system/unfe-65-Intersex_Factsheet_ENGLISH.pdf (accessed 24 February 2017).

I. Description of the Project

A. Background

The Legal Gender Recognition: A Multi-Country Legal and Policy Review in Asia report was jointly developed by UNDP and the Asia Pacific Transgender Network (APTN) to comprehensively assess laws, regulations and policies in relation to legal gender recognition in nine countries in Asia including Bangladesh, China, India, Nepal, Pakistan, the Philippines and Thailand. APTN conducted equivalent assessments in Indonesia and Malaysia. The project comprehensively reviewed laws, regulations and policies in relation to legal gender recognition in each country, including their implementation and impact, within the broader context of human rights for transgender people.

The material contained in this report is the cumulative result of the desk review of laws, regulations, and policies regarding legal gender recognition in the Philippines. It likewise included research into how these existing laws, regulations, and policies are implemented and how they impact or will impact on transgender people in the Philippines. The project also looked into local transgender community efforts and initiatives that could be new platforms for asserting transgender rights or those which could open the doors for more enhanced collaboration among the various sectors.

B. Objectives

The aims and objectives of the project are to:

- assess existing, and generate new legal, policy and practice related information through the country specific projects;
- contribute to ongoing national processes and dialogues on legal gender recognition and human rights;
- create participatory multi-stakeholder national processes where the voices and perspectives of transgender people are strongly and comprehensively taken into account;
- build capacity amongst national experts and transgender activists to initiate and carry out comprehensive legislative and policy processes in a multi-stakeholder context;
- contribute to legal and policy changes in countries, that respect and protect transgender people's human rights and
- facilitate knowledge transfer to other countries and regions through peer-reviewed publications.

C. Methodology

The information for this study were obtained via the following methods.

CONSULTATIVE MEETINGS

- Two roundtable consultations were held. The first on 21 April 2016 was attended by 20 participants representing transgender organizations from Luzon and Visayas, the Psychological Association of the Philippines (PAP), the Quezon City Health Department (QCHD), and the Philippine Commission on Women (PCW).
- The second was conducted on 21 July 2016, where the first draft was presented to attendees from PCW, QCHD, and leaders from the various transgender community organizations and some LGBT groups. This draft was circulated online among those who attended the first consultation, some of the people who were interviewed, and any other key stakeholders whose contact information was supplied by participants to

the consultation or their corresponding networks. Their comments, insights, and suggestions informed the final report.

INTERVIEWS

- With the aim of being able to provide as varied sources of information as possible, transgender, LGBT and Human Rights' networks were approached to identify key people to be interviewed (either through phone or face-to-face interviews).
- Those agencies whose mandates interact most with transgender people's concerns were prioritized as sources of information about relevant laws and policies. Specifically, agencies' respective Legal Departments and/or Gender and Development Offices were approached for interviews.

DESK REVIEW

- A desk review of relevant policies, laws, court cases was conducted, alongside a search for articles, analysis, news, and information that were pertinent to this research.

D. Scope of the Assessment

This report is a product of information gathered during the period of 21 April to 30 September of 2016. Likewise, policies quoted were confirmed in their existence. However, the assessment of their implementation and impact on the community were based on the anecdotal experiences from the transgender community and from the interviews with the specific government agencies selected for this report.² While efforts were made to reach out to many government agencies, not all have responded to requests for interviews or supplied needed information. There were also instances where frontline service providers and management differed in their understanding of their own policy or its implementation. Comparatively speaking, accounts regarding the experiences of transgender people in Mindanao were harder to obtain due to distance and lack of presence in the existing networks. Efforts were made to include as much data regarding their experiences as possible in this report, based on what was shared by the few attendees to the consultations, published reports, and through the interviews.

Legal gender recognition not only affects transgender people but also tangents with the concerns of some intersex persons. Legal gender recognition of intersex people sits within a complex mix of human rights issues. One of the primary human rights issues faced by intersex people include the performance of non-consensual so-called 'normalizing' surgeries on intersex infants born with so called 'ambiguous' genitalia in an attempt to remove any physical ambiguity and conform their bodies to dominant ideas of male or female bodies.³ Typically, the gender marker placed on an intersex infant or child's birth certificate is intended to legally reinforce medical decisions made about the child's body. Analysis of these broader human rights issues and the lived experiences of intersex people was beyond the scope of this study. Therefore, it did not proactively seek information or data that were pertinent to the experience of intersex people. However, a judicial decision that involved an intersex person, where the court compared the facts to a similar case by a transgender person, has been included.

2 Given the period with which the study was to be conducted, not all agencies were able to answer in time and/or provide all information promised. Some agencies did not respond despite multiple attempts made to contact them.

3 Astraea Lesbian Foundation for Justice. (2016). We are Real: The Growing Movement Advancing the Human Rights of Intersex People. New York: Astraea Lesbian Foundation for Justice. Available at: <http://astraeafoundation.org/wearereal/wp-content/uploads/2016/07/AstraeaWeAreRealReport.pdf> (accessed 28 October 2016).

II. Executive Summary

Despite being recognized as influential leaders during the pre-Hispanic era, transgender people are now largely misunderstood as a result of widespread conflation of the concepts of sex and gender, and gender identity and sexual orientation. This confusion is the context that governs many actions or omissions, policies and the absence of policies regarding the human rights of transgender people in the Philippines.

Community effort has produced some positive changes in media representations of transgender people, such as a TV show that showcased the life of transgender people and a laudable community-initiated style guide for more sensitive news reporting. However, full recognition of the gender identity of transgender people remains elusive. The initial media reporting of the death of Jennifer Laude showed some reporters' and writers' lack of understanding and reluctance to use a transgender person's preferred name and/or pronoun, preferring their birth name and the pronoun corresponding to their sex assigned at birth instead.

Politically, the triumph of the first ever transgender woman elected to the Philippine Congress, Congresswoman Geraldine Roman ushers in hope for more responsive legislations pertaining to sexual orientation and gender identity (SOGI). The change in administration, while viewed as highly polarizing, has resulted in the first Senate level hearing and a few Gender Committee hearings in the lower house for the Anti-Discrimination Bill (ADB) in the 17 year effort to pass such a law⁴.

At the local level, the years of waiting for anti-discrimination provisions have yielded several local ordinances in different parts of the country that seek to protect LGBT people from discrimination on the basis of Sexual Orientation and Gender Identity (SOGI). One such ordinance is in the city where the current Philippines President Rodrigo Duterte was the long term Mayor. This has led many to be more optimistic of the national law's passage. While the local laws have been an avenue for pushing for the human rights of transgender people, some challenges remain. In particular, Implementing Rules and Regulations (IRR) are required before a victim can claim redress under a local ordinance. To date, only the Quezon City Gender Fair ordinance has its own IRR. This underscores the need for the passage of the national ADB

In addition to the delayed ADB, the lack of hate crime law is also problematic. Its absence means that violence and discrimination committed against transgender people because of their gender identity remains invisible. This was evident in the finding of the court in the case of Jennifer Laude, where a "trans panic" defense was one of the grounds for reducing the charges from murder to homicide which carries a lesser sentence.

In terms of other governmental policies, the Magna Carta of Women has helped in progressing gender rights. Although, at the moment, it mostly accords rights to women based on sex assigned at birth. It has, however, given a significant mandate to the Commission on Human Rights (CHR), as Gender Ombud, to document and investigate instances of violence in a more encompassing manner, covering people of diverse gender identities and expressions.

For transgender people in the Philippines, the lack of gender recognition law has led to even more discrimination. In the workplace, gendered policies prevent transgender people from accessing facilities (such as comfort rooms) or wearing a uniform based on their gender identity, rather than their sex assigned at birth. In schools, despite several policies protecting students from discrimination on the basis of SOGI, a recent lower court case has been disappointing. It deemed that disciplinary measures employed by a principal, forcing a child to conform to a certain gender expression, was a valid exercise of the principal's authority and did not amount to child abuse.

Throughout the years before the Supreme Court's Silverio⁵ ruling, transgender women were able to amend the gender marker on their birth certificates and benefit from the resulting gender recognition. In the Silverio

4 In September 2017, the lower House approved the Anti-Discrimination Bill in the third and final reading. As the next step, the bill moves to the Senate and then to the President for his signature before it becomes a law. CNN Philippines. (23 September 2017). House approves anti-discrimination bill on 3rd and final reading. Available at: <http://cnnphilippines.com/news/2017/09/20/House-approves-anti-discrimination-bill-3rd-and-final-reading.html>

5 *Silverio v Republic of the Philippines* (22 October 2007) G.R. No. 174689

ruling, a transgender woman was denied the chance to change her first name and gender marker having undergone gender affirming surgery. As a result, things have changed for the worse for transgender people, and changing gender markers on birth certificates has become more difficult. Another pertinent Supreme Court ruling was in the Cagandahan case⁶ where it allowed an intersex person to use male gender markers. While this was a success for Cagandahan, put side-by-side with the Silverio ruling, it affirmed that the Court makes a distinction between a transgender person who has undergone gender affirmation surgery and an intersex person who is deemed in the eyes of the Court to have just allowed “nature to take its own course”. It allows gender recognition for the latter and not for the former.

Because of these constraints, accounts from the community describe government agencies compelling transgender women to change the way they look to conform to their sex assigned at birth, for example when renewing their documents. Some agencies ask for additional proof of identity, when such evidence is not required from people who are not transgender. There are also accounts of transgender men who are asked to produce before and after transition pictures to prove assigned sex at birth. Transgender people involved in this project shared accounts of harassment when travelling, because of the “discrepancy” between their passport and gender expression. This lead to authorities presuming a transgender person was committing identity fraud. Frequently, transgender women are assumed to be sex workers, which brings additional police surveillance as sex work is illegal in the Philippines

In the absence of a gender recognition law, there have been some attempts to address the lack of understanding of gender identity. While still inadequate, some government agencies have gender sensitivity training that includes SOGI components. Many activists consider such training as an essential first step in order to achieve gender sensitive policies. At the time of writing, the versions of the anti-discrimination bill in Congress and in the Senate also include such components. The bill identifies the need to build the government’s capacity in this area by providing knowledge and training on SOGI concepts and about the rights of LGBT people.

6 Republic of the Philippines v Jennifer Cagandahan (12 September 2008) G.R. No. 166676

III. Introduction

A. History

Men wearing women's clothing has long been recognized in Filipino⁷ culture. In the 16th and 17th century, references were made about the existence of the “*babaylan*”.

“While the word *babaylan* is said to connote a woman, there were also male *babaylans* – for example the *asog* of the *Bisayan* society during the 17th century – who not only put on women’s clothing but also pretended to be women so that the spirits listened to their prayers. These men, however, did not only wear the customary clothes of women as well as assumed the demeanor of women, but were also granted social and symbolic recognition as “somewhat-women”. Some were even “married” to men, with whom they had sexual relations”.⁸

The *babaylan* were influential both as socio-political and religious leaders. Terms such as “*asog/bayoguin*” were used to describe them. An important point about this history is articulated by one of the pioneering transgender activists in the Philippines, Naomi Fontanos;

“It is important to note that *asog, bayoguin, bakla, bayot and bantut* were not originally meant as categories of sexual orientation but rather gender terms. This means that Filipino culture is amenable to the idea of gender variance or gender diversity, that there are not only two but instead possibly a variety of genders. Clearly, ancient Philippine culture adopted a supernumerary gender system and not just a binary one.”⁹

When Spain colonized the Philippines, they brought with them Christianity. The gender diversity inherent to the Philippines at the time was seen as a threat to the new Christian religion and as a result the Spanish friars sought to convert the *babaylan* to Christianity. In cases where they were not successful, the Spaniards used violence instead.¹⁰ The emergence of Christianity as the dominant religion in the Philippines and its emphasis on binary gender saw a dwindling of the numbers of *babaylan* people, and in the awareness that there was a long tradition in the Philippines of recognizing a non-binary gender system.

B. Current Landscape

Societal Understanding of Transgender

At present, a vibrant community of people exists in the Philippines that would fall under a broad definition of “transgender”, yet there is no widely used word in the Philippines that “directly” corresponds to the word transgender. Transgender women are commonly referred to as *bakla* (in Tagalog) or *bayot* (in Visayan). Transgender men are understood by most as tomboy or lesbian, primarily because only a minority of people in the Philippines understand the difference between gender identity and sexual orientation.¹¹ In the same manner, both informal and formal communications in the country conflate the meanings of sex and gender. Most who have heard about transgender people exhibit a tendency to assume that a transgender person is a gay man or a lesbian who has had a ‘sex transplant’ or ‘sex change operation’¹².

7 While the term “Filipino” is used both as to mean a citizen of the Philippines and a male citizen, today someone who was assigned a male sex at birth and lives as a woman would use the term “Filipina”.

8 UNDP, USAID (2014). Being LGBT in Asia: The Philippines Country Report. Bangkok.

9 Fontanos, N. (22 July 2008) Transgenderism: The Philippine experience. Transgender Filipina Online Journal. Available at: <http://pinaytg.blogspot.com/2008/08/transgenderism-philippines-experience.html>. (accessed 16 August 2016)

10 Melencio, G. (19 January 2013). The Babaylan Lives in Her Story. Available at: <http://philippinehistory.ph/the-babaylan-lives-in-her-story/>. (accessed 18 August 2016)

11 UNDP, USAID (2014). Being LGBT in Asia: The Philippines Country Report. Bangkok.

12 While the most commonly used terms in the Philippines are ‘sex change’ and ‘sex transplant’, the preferred term used for this project is ‘gender affirming surgery’.

This kind of “average” understanding, albeit mistaken, is the context that governs most of the governmental responses to the queries put forth in the conduct of this research.

This report uses the word transgender as an umbrella term to describe anyone whose gender identity (and often gender expression) does not conform to their sex assigned at birth. This reflects how the term is used by the Asia Pacific Transgender Network and in various reports written by or for United Nations agencies regionally and internationally.¹³

In 2008, STRAP (Society of Transsexual Women of the Philippines), in response to the lack of terms, coined “*transpinay*”¹⁴ for Filipina transgender women. An equivalent term, “*transpinoy*” has been adopted by some Filipino transgender men. *Pinay* and *Pinoy* are colloquial terms for females and males respectively in the Philippines.¹⁵

Despite these attempts, the media and society continue to misunderstand the term transgender, and transgender women and men often remain incorrectly understood as gay men and lesbians respectively. The 2014 brutal killing of a transgender woman Jennifer Laude, which will be further discussed in the next section, called attention to many outstanding concerns about transgender people’s right to recognition and equal protection under the law. These included the lack of a hate crime law that could have ensured a greater punishment¹⁶ for the crime committed against Jennifer Laude and other victims of gender-based violence, the dearth of documentation and data on similar cases, and the transphobia that manifested in many alarming and very hateful reactions to the case. Of central relevance to this report was most media’s insistence on using Jennifer Laude’s legally given (male) name and male pronouns in the reporting of her case, which has sparked many debates and arguments.¹⁷

On 24 June 2016, Outrage Magazine and Rainbow Rights Philippines formally launched its *Media Reference Guide: Stylebook Supplement on LGBT Terminology in the Philippines*, at its Bahaghari Media Awards. This advocacy guide hopes to improve how cases relating to LGBT people are reported in Philippine media. The Stylebook includes a chapter on “Covering the Trans Community” that highlights acceptable terminologies.¹⁸

In September 2015, one of the two major television networks in the Philippines aired ‘Destiny Rose’, the country’s first television drama focusing on the story of a transgender woman as a central character. Destiny Rose is said to have involved ongoing consultation¹⁹ with the transgender community.²⁰ While it did provide a space in the public sphere for discussion about transgender issues and concerns, it remains the only one of its kind to date.

Violence and Discrimination

Despite widespread anecdotal evidence of crimes perpetrated against the transgender community in the Philippines, most data on these cases have not undergone official verification and collation. Through the efforts of the Philippine LGBT Hate Crime Watch in 2012 and leading transgender organizations at that time, some cases of violence against transgender people were reported and documented. In March 2016, the Trans

13 UNDP, APTN (December 2017). Legal Gender Recognition: A Multi-Country Legal and Policy Review in Asia. Available at: http://www.asia-pacific.undp.org/content/rbap/en/home/library/democratic_governance/hiv_aids/legal-gender-recognition--a-multi-country-legal-and-policy-revie.html (accessed 8 January 2018)

14 Since the term was coined in Metro Manila, it is not necessarily accepted in other parts of the country. (Outrage Magazine and Rainbow Rights Project, Inc. (2016). *Media Reference Guide: Stylebook Supplement on Lesbian, Gay, Bisexual & Transgender Terminology in the Philippines*)

15 Cruz, J, Saballe, C and Alegre, B. (2015). *Transrespect versus Transphobia: The Social Experiences of Trans People in the Philippines*. Available at: <http://transrespect.org/wp-content/uploads/2015/08/TvT-PS-Vol11-2015.pdf> (accessed 18 August 2016)

16 The sentence was for 6 to 12 years in prison which was later reduced to 10 years.

17 Interviews by Anne Ruth Sabangan (17 October 2014) JEFFREY OR JENNIFER? | How should we call the victim who was killed in Olongapo? Available at: <http://interaksyon.com/article/97439/jeffrey-or-jennifer--how-should-we-call-the-victim-who-was-killed-in-olongapo> (accessed 20 July 2016)

18 Tan, M. (2016) *Media Reference Guide: Stylebook Supplement on LGBT Terminology in the Philippines*. This project received support from the US Embassy and the Fund for Global Human Rights (FGHR).

19 One of such consultants was Ms. Meggan Evangelista, a transgender woman from Babaylanes who shared her experience during the first consultation for the project.

20 Villano, A. (9 September 2015). PH drama ‘Destiny Rose’ shines spotlight on transgender relationships. Available at: <http://www.rappler.com/entertainment/news/105245-destiny-rose-ken-chan-gma-afternoon-drama-transgender-woman> (accessed 12 July 2016)

Murder Monitoring Project listed 41 reported cases of transgender people murdered in the country since 2008.²¹ Given the ratio between population and number of reported killings, it would seem that the per capita rate of transgender women who are murdered is particularly high in the Philippines. This is also likely to reflect concerted community efforts to report such crimes. More recently, data gathering in the Philippines is accomplished separately by a range of organizations, with the Commission on Human Rights collating data as cases are referred to them.

Case:

On the night of 11 October 2014, Jennifer Laude was brutally killed by Lance Corporal Joseph Scott Pemberton, a US Marine.

In its December 1, 2015 decision, the Regional Trial Court of Olongapo City²², ruled that Lance Corporal Joseph Scott Pemberton was guilty of homicide and not the murder alleged by the prosecution. Sentencing Pemberton to prison for a period of 10-12 years (later reduced to 10 years after an appeal from the defense), the court found no criminal intent to kill because of the presence of 2 mitigating circumstances²³ namely passion and obfuscation, and intoxication.

The court stated that “*in the heat of passion, he arm-locked the deceased, and dunked his (her) head in the toilet.*”²⁴ The court argued that it was the discovery of Jennifer Laude having male genitalia which “*disgusted and repulsed*” Pemberton and caused such heated passion. Therefore, the court decided he had no malicious intent to kill, reducing the murder charge to one of homicide.

This ruling has been condemned by transgender, LGBT, and Human Rights organizations, as pointed out by Gabriela Representative Emmi De Jesus, it is “*regrettable in the tone it set to again normalize elements of passion in justifying killings or mitigating the culpability*”.²⁵ Furthermore, “*as a retrogression of legal justice for transgenders and other victims of crimes of passion and a setback to global human rights standards.*”²⁶

This case was not a Supreme Court ruling so it does not set a legal precedent. However, as the only case of this nature that has been publicized, the ruling has the effect of legitimizing “trans panic”²⁷ as a viable defense that mitigates the killing of transgender people, particularly transgender women, in the Philippines.

In another incident, a transgender woman was gang raped in Zamboanga city in Mindanao. Having survived the harrowing assault, she was even ridiculed by the police when she complained. The police presumed that she must have made the first sexual approach and that she enjoyed what happened to her.²⁸ While in 2011, a spate of senseless pellet gun attacks victimized transgender women in Cebu.²⁹

21 Trans Murder Monitoring Project (31 March 2016) Trans Murder Monitoring Project Update. Available at: <http://tgeu.org/transgender-day-of-visibility-2016-trans-murder-monitoring-update/> (accessed 21 October 2016)

22 People of the Philippines vs. L/Cpl Joseph Scott. Pemberton. December, 2015. Criminal Case Number: 865-14, Regional Trial Court, Third Judicial Region, Branch 74 Olongapo City.

23 In criminal law, conditions or happenings which do not excuse or justify criminal conduct, but are considered out of mercy or fairness in deciding the degree of the offense the prosecutor charges or influencing reduction of the penalty upon conviction. <http://dictionary.law.com>

24 Nonato, V. with Reuters. (2 December 2015). Pemberton found guilty of killing transgender. Available at: <http://www.bworldonline.com/content.php?section=Nation&title=pemberton-found-guilty-of-killing-transgender&id=119543> (accessed 17 June 2016)

25 Davao City Today. (7 December 2015). Ruling on US marine makes PH dangerous for LGBT says group. Available at: <http://davaotoday.com/main/todays-news-to-go/ruling-on-us-marine-makes-ph-dangerous-for-lgbt-says-group/> (accessed 18 July 2016)

26 Gabriela Women's Party. (7 December 2015) Gabriela warns Pemberton ruling a hit on transgender, women's rights. Available at: <http://gabriellawomensparty.net/content/gabriela-warns-pemberton-ruling-hit-transgender-womens-rights> (accessed 1 August 2016)

27 Gay and trans “panic” defenses are used by offenders to lay blame on the sexual orientation or gender identity of a victim as a reason for the offender's excessive violent reaction. In 2013, the American Bar Association unanimously approved a resolution calling for an end to the use of these kinds of defenses. THE LGBT BAR. Available at: <http://lgbtbar.org/what-we-do/programs/gay-and-trans-panic-defense/> (accessed 28 October 2016)

28 Mendoza, R. (10 December 2013) Dangerous lives: Being LGBT in Muslim Mindanao. Available at: <http://outragemag.com/dangerous-lives-lgbt-muslim-mindanao/> (accessed 12 August 2016)

29 Ladlad Party-list (18 October 2011) Ladlad Party-list and the Philippine LGBT Hate Crime Watch Condemn the rising Anti-LGBT Prejudice and Hate Crimes in the Country. Available at: <https://mbasic.facebook.com/notes/ladlad-party-list/ladlad-party-list-and->

While not all incidences of violence lead to death, the severity of other crimes perpetrated against transgender people are undeniable.

As will be discussed further in this report, violence is but one of the effects of stigma and prejudice against transgender people. Other forms of discrimination pervade in the various aspects of a transgender person's life. The lack of recognition of one's gender identity has stunted the potential of many transgender students, employees, and citizens in realizing their human rights and full potential.

Although the speed with which more progressive views are accepted in society needs improvement, it is a triumph that more advocacy and support groups³⁰ catering to the needs of the transgender community have sprung up. These organizations have not only empowered their members but helped in lobbying for legal and policy changes, and in educating government and the public on the issues and concerns of transgender people. This report documents many of these proposed legal and policy changes. In addition, transgender groups have called for their inclusion in existing provisions, including in gender and development budgets.

30 [the-philippine-lgbt-hate-crime-watch-condemn-the-rising-an/209083282494577/](https://www.foxnews.com/world/2016/08/16/philippines-lgbt-hate-crime-watch-condemn-the-rising-an/209083282494577/) (accessed 16 August 2016)
Such as but not limited to: Transgender man Pilipinas, Association of Transgender People in the Philippines, Pinoy FTM, Team (Transgender man Equality and Awareness Movement) Cebu, STRAP, GANDA (Gender and Development Advocates) Filipinas, CURLS (Cebu United Rainbow LGBT Sector), UNIVERSALL, The Coalition for the Liberation of the Reassigned Sex (COLORS), Repos Angels

IV. Political and Legal System

The following description of the legal system in the Philippines is important background context for anyone wishing to improve transgender people's access to legal gender recognition and human rights. It identifies the most influential ways to bring about change in the Philippines and the avenues through which these could be possible.

A. The President: Anti-Discrimination Policy

The President of the Philippines is elected directly by its populace in a *first past the post*³¹ election which means that the most popular, and therefore elected, candidate may not have more than fifty percent of the votes cast. Since the 1987 Constitution, an elected president has only been allowed to occupy the post for a lone term of 6 years. In the absence of strong ideologically different political parties, the presidential system has been maintained despite sporadic political and academic discourses calling for a shift to a parliamentary form of government. The cap of 6 years is relevant in that it becomes more difficult to predict and sustain any course a previous government has set in place, as the next administration may not be an ally, nor politically in sync with the previous one. In some cases, this same pitfall could provide a source of hope for progress. The lack of progress on LGBT policies in the previous administration³² allows for some optimism in the new one. At the time of the writing of this material, President-elect former Mayor of Davao City³³ Rodrigo "Digong" Duterte who won with a relatively big margin over his competitors, was in his first 100 days in office. Many express concern over some of the President's statements and actions that seem to show his lack of respect for the universality of human rights and his insensitivity to women and LGBT people.³⁴ A few times, he has used the term "*bayot*" derogatively, to describe opponents, critics, or personalities that he considers to be weak.³⁵ Conversely, his administration as Mayor of Davao City showcased passage of many gender-sensitive and LGBT-friendly local laws.

Also, in August 2016, the President confirmed the appointment of one of his main supporters, a celebrity, openly transgender man and activist as the newest Chair of the National Youth Commission (NYC). This transgender man's wife was also appointed by the President as the Chair of the Film Development Council of the Philippines.³⁶ While this is a positive step, in the absence of any form of legal gender recognition, the Chairman's official appointment documents are under his name in his birth records, with both title and gender markers based on his assigned sex at birth (female). In addition, he is unable to legally marry his wife in the Philippines.

B. Possible Avenues within Branches of Government

The government is made up of three branches - the Executive represented by the President, the Legislative made up of its lower house and its upper house (the Senate), and the Judiciary. The three branches have built-in checks and balances on each other. The law, enacted or passed by the Legislature, can be vetoed by the President, but can be overridden by a two thirds majority vote by the Congress. The Supreme Court when

31 The winning candidate is simply the person who wins the most votes <http://aceproject.org/ace-en/topics/es/esd/esd01/esd01a/default>

32 Towards the tail-end of President Noynoy Aquino's term, a draft Executive Order mandating executive agencies to adopt a non-discrimination policy on the basis of SOGI was circulated to offices for comments. It did not however reach the signing stage before his term ended.

33 Davao City is located in Mindanao, southern part of the Philippines.

34 (e.g. The repetition of a rape story involving an Australian missionary in Davao City in which the Mayor expressed regrets over not having been part of the rape incident. While making such statements is claimed to be part and parcel of his character, President Digong earned the ire of many including criticisms from foreign governments like Australia and the US, governments he threatened to cut ties with.

35 Bayot is a Visayan term for 'bakla', an effeminate male attracted to other males.

36 (12 August 2016). Duterte appoints Aiza Seguerra as new NYC chairperson. Available at: <http://www.rappler.com/move-ph/142806-aiza-seguerra-chairperson-national-youth-commission> (accessed 1 September 2016)

called upon, has the power to declare statutes enacted or passed by Congress, or agreements entered into by the President, as unconstitutional. The Supreme Court Justices are appointed by the President with terms that are dependent on their retiring age (unless impeached or deceased) and may therefore exceed the term of the appointing President. All three branches have been approached by LGBT activists in attempts to change laws or policies. For instance, the Supreme Court in 2015 has been petitioned by a lawyer³⁷ to rule on the constitutionality of the definition of marriage in the Family Code that is limited to relationships between a “man and woman”.³⁸ In March 2016, the Office of the Solicitor General (OSG) filed its comment recommending that the petition be junked on the ground that the lawyer failed to show that he has suffered “an injury in fact”.³⁹ On the other hand, for almost two decades, both houses of Congress has been lobbied to introduce a National Anti-Discrimination Bill. With varying degrees of possibility, Gender Recognition Law proposals could be advanced through bills in Congress, lobbying for an executive order from the President, or through a pertinent test case via the Supreme Court.

Newly elected senator, boxing champion Manny Pacquiao, angered many with his February 2016 statement that same-sex couples “are worse than animals”. Conversely, in an historic turn of events, Congresswoman Geraldine Roman, overwhelmingly won in the 1st district of Bataan, making her the first elected transgender woman in the Philippine Congress. Congresswoman Geraldine Roman, delivered her first privileged speech on 19 September 2016 and talked about the need for the passage of the Anti-Discrimination Bill. There appears to be greater support for such a proposal in this current 17th Congress compared to the past. Congresswoman Roman has also called attention to how the absence of legal gender recognition impacts on transgender people mostly borne out of her personal experience.

C. System and Sources of Laws

The Philippines operates under a civil law system which means that laws created and crafted by the legislature are deemed more persuasive than case law (or jurisprudence) that stem from the courts.

Statutes: National and Local

While the legislative power is vested in Congress, the Philippines also recognize some customary laws, including those developed within indigenous cultural communities. Certain statutes⁴⁰ have formalized the respect for customs in national laws.⁴¹ An example is the Code of Muslim Personal Laws of the Philippines⁴² that applies to Muslims or those who profess the Muslim faith. It governs laws on family relations and personal statuses. It does not supersede the national criminal laws (except those pertaining to marriages)⁴³. However, if there is a conflict between Muslim personal laws and general laws on family matters, the Muslim personal laws will prevail.

In addition to the Congress and the Senate, local provinces, cities, municipalities and *barangays* can pass ordinances, as long as they are not in conflict with the constitution or the national laws.⁴⁴ Such ordinances

37 Jesus Nicardo Falcis III filed a Petition for Certiorari and Prohibition on 19 May 2015

38 Merueñas, M. (26 May 2015) Available at: <http://www.gmanetwork.com/news/story/493286/news/nation/supreme-court-asked-to-allow-same-sex-marriage-in-phl> (accessed 1 November 2016)

39 Merueñas, M. (29 March 2016) Available at: <http://www.gmanetwork.com/news/story/560734/news/nation/solgen-asks-sc-to-junk-same-sex-marriage-petition> (accessed 15 January 2017)

40 *Presidential Decree 1083 or the Code of Muslim Personal Laws of the Philippines of 1977* states that Muslim personal laws, that apply to all Muslim people in the Philippines, are deemed part of the law of the land.

41 *Republic Act 8371 An Act To Recognize, Protect And Promote The Rights Of Indigenous Cultural Communities/Indigenous Peoples, Creating A National Commission On Indigenous Peoples, Establishing Implementing Mechanisms, Appropriating Funds Therefor, And For Other Purposes.* 1997.

42 *Presidential Decree No. 1083 A Decree To Ordain and Promulgate a Code Recognizing the System of Filipino Muslim Laws, Codifying Muslim Personal Laws, and Providing for Its Administration and for Other Purposes,* 1977

43 i.e. Bigamy

44 According to Department of the Interior and Local Government (DILG), as of December 2015, the country has a total of 81 provinces, 145 cities, 1,489 municipalities, and 42,036 barangays. The provinces have their own Sangguniang Panlalawigan, or the local council who legislate ordinances that are only applicable to the province. Inside the provinces, there are cities and municipalities which have their own local councils who also legislate their respective ordinances, for the former these are called Sangguniang Bayan, while for the latter, Sangguniang Panlungsod. Inside municipalities and cities are the smallest political units called barangay with their own ordinances crafting council called Sangguniang Barangay. Similar to ordinances in the province, those legislated in

may vary in content or in form and are very dependent on the local councils' dynamics, composition, political culture, and priorities.

This legal setting makes an overarching gender recognition law or policy difficult to achieve through local ordinances. Ordinances are easier to pass, due to their localized nature. However, they can never provide encompassing gender recognition rights as this would run counter to national laws that govern name and gender marker change. This is further discussed in Section VI.

Jurisprudence

The courts in the Philippines are tasked with interpreting the provisions of the laws crafted by the legislature. When a new case has similar facts to a previous court decision, the court may be expected to rule in the same manner based on precedent.⁴⁵ To be a judicial doctrine, the case must reach the Supreme Court. Rulings of lower courts do not create precedents that need to be followed by other similar cases. However, such lower court rulings are valid and binding for the individuals involved in that case (the parties) unless they are successfully appealed. In the Philippines, there are instances when lower courts in the provinces have allowed for a change of name and/or gender marker for transgender people, and these have not been challenged through a third party intervention⁴⁶ or appealed by anyone else. This means that the ruling of the court is final and cannot be overturned.

International Commitments

The Philippines has ratified various United Nations human rights treaties.⁴⁷ This notwithstanding, the Philippines has remained inconsistent in its undertakings with respect to upholding SOGI-related international commitments. The constitution (Article 2 Section 11, and Article 3 Section 1) states that the Philippines has committed itself to upholding the dignity, equality and human rights of all persons. Yet, the Permanent Representative of the Philippines to the UN did not support the June 2011 Joint Statement at the UN Human Rights Council (UNHRC) that urged States to end violence, criminal sanctions and related human rights violations based on SOGI. Moreover, in 2016, the Philippine representative also abstained from voting on the UNHRC proposal to appoint an independent expert on SOGI issues. These incidences are evidence that the rights of LGBT people are not always proactively supported by the State.

the Sanggunian shall only apply to the municipality, city, or barangay it governs. Department of Interior and Local Government. Available at: http://www.dilg.gov.ph/PDF_File/factsfigures/dilg-facts-figures-2016421_ef377ebdbf.pdf (accessed 18 June 2016)

45 An adjudged case or decision of a court of justice, considered as furnishing an example or authority for an identical or similar case afterwards arising or a similar question of law. Black Law's Dictionary Online <http://thelawdictionary.org/precedent/>

46 For example, the Solicitor General, in its role as the counsel for the State, could intervene in cases about changes to citizens' birth records in order to protect the state's interest in public documents.

47 These include the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Elimination of all Forms of Racial Discrimination (CERD), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Convention Against Torture (CAT), the United Nations Convention on the Rights of the Child (UNCRC), the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW), and the Convention on the Rights of Persons with Disabilities (CRPD).

V. Overarching Laws, Policies, Court Decisions, and Institutional Mechanisms

A. National Laws and Policies for Human Rights Protection

Laws and Policies

The constitution provides various guarantees that can have a great relevance for upholding the human rights of transgender people. Its overarching mandate is articulated in many statutes and policies, reinforcing that these are rights that are ideally capable of being claimed and utilized.

Equal Protection and Due Process Clause (Philippine Constitution)

The 1987 Philippine Constitution in its Article on State Policies indicates that “The State values the dignity of every human person and guarantees full respect for human rights.” Apart from this, the constitution enshrines in its Due Process and Equal Protection clauses 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.”⁴⁸ As the supreme law of the land, the guarantees on equality, lawful processes, and the paramount consideration on ensuring human dignity and respect for human rights in these provisions serve as the basis for many of the activist endeavors in making government and its agencies accountable to Filipino transgender and LGB people.

Case:

The 2010 Supreme Court Decision in the *Ang Ladlad*⁴⁹ case considered the breadth of the equal protection clause in the Constitution. The court ruled in favor of allowing *Ang Ladlad* to be a party-list reasoning that “From the standpoint of the political process, the lesbian, gay, bisexual, and transgender have the same interest in participating in the party-list system on the same basis as other political parties similarly situated. State intrusion in this case is equally burdensome. Hence, **laws of general application should apply with equal force to LGBTs**, and they deserve to participate in the party-list system⁵⁰ on the same basis as other marginalized and under-represented sectors.”⁵¹ (emphasis supplied)

The Magna Carta of Women (Republic Act 9710)

This landmark legislation enacted on 14 August 2009 comprehensively legislated state policies that sought to “eliminate discrimination against women by recognizing, protecting, fulfilling and promoting the rights of Filipino

48 Article 3, sec 1, 1987 Philippine Constitution

49 A party list organization that sought to represent the interests of the Filipino LGBTs in Congress. *Ang Ladlad LGBT Party vs. Comelec GR 190582 8 April 2010* Available at: <http://sc.judiciary.gov.ph/jurisprudence/2010/april2010/190582.htm> (accessed 22 June 2016)

50 The party-list system is a mechanism of proportional representation in the election of representatives to the House of Representatives from national, regional and sectoral parties or organizations or coalitions thereof registered with the Commission on Elections (COMELEC). <http://www.comelec.gov.ph/?r=References/RelatedLaws/ElectionLaws/RA7941> *Republic Act No. 7941 Party-List System Act. 3 March 3 1995*

51 While the ruling was favorable to *Ang Ladlad*, the party list unfortunately failed to obtain seats in Congress in both 2010 and 2013 elections for insufficiency of votes cast in its favor. As per the Party List System Act of 1995, failing to gain a seat in 2 consecutive elections will prohibit the party-list from being a candidate for one election cycle, in this case that of the recent 2016 elections. Should a similar issue be raised at present however, for any LGBT organization seeking to become a party-list, the new guidelines on party-lists set by the SC last April of 2013 will now open the doors for an easier accreditation. The En Banc ruling clarifies that belonging to a marginalized sector need not be the basis, underscoring that the party list system is “a system of proportional representation open to various kinds of groups and parties”.

women, especially those in marginalized sector.”⁵² Unlike many other laws on gender, the Magna Carta of Women (MCW) explicitly included the term “sexual orientation” as a prohibited basis of discrimination. While it did not cover gender identity explicitly, the inclusion of sexual orientation was significant and has implications in practice for transgender people.

The Magna Carta of Women provided for clear mandates to certain government agencies and local government units to adopt gender mainstreaming via creation of gender and development focal points, generation/maintenance of gender statistics and allocation of budget for gender programs. The overall monitoring and oversight of activities are performed by the Philippine Commission on Women (PCW).

The MCW explicitly provided that the cost of the implementation of the Gender and Development (GAD) programs shall be at least 5% of the government offices or agencies’ total budget, although the way the budget is used in reality varies tremendously. Pertinent to this report, experience on the ground have seen some local government agencies using it for LGBT summits to “consult” the local community, including transgender people in their locality, about potential Anti-Discrimination Ordinances. This may or may not result in any policy change or progress on drafting ordinances. In most other cases, the summits are used for planning for the particular agency’s Gender and Development Plan or agenda.

While there is no law that explicitly defines who is a “woman”, the implementation of gendered provisions in laws or related policies remain based on a person’s assigned sex at birth. So while it is clear in the law that the MCW will protect all women, in practice, government agencies will not include transgender women. Conversely, agencies may consider that transgender men are included, based on their assigned sex at birth. In addition, transgender men are typically reluctant to access services that require them to identify as female or to disclose that they are transgender, particularly if they fear that this will result in further discrimination.

Women’s Edge Plan: The Gender Equality Plan for the Philippines

In 2013, PCW led the development of the Women’s Empowerment, Development and Gender Equality Plan (Women’s EDGE Plan) for 2013-2016 in consultation with other agencies and civil-society organizations. It is “the gender equality guiding plan of the Philippine Development Plan”⁵³ (PDP) 2011-2016.⁵⁴ Despite the fact that the PDP did not explicitly mention the LGBT sector as an area for “inclusive growth”, the Women’s EDGE Plan included a chapter on LGBT people.

“It is the first national sectoral plan in the country that has a specific section on LGBT rights and issues, with focus on LGBTs’ (including LGBT children and Persons with Disability) access to health services, employment opportunities, education, housing, and justice. Gender-based violence experienced by LGBTs was also highlighted, including hate crimes, and corrective rape.”⁵⁵

In addition, the Women’s EDGE Plan included strategies, targets, and indicators for achieving its goals for the LGBT sector.⁵⁶ It considered how the lack of laws that would recognize the civil status of transgender people affects their ability to access rights and government services. An example given was a case where a transgender woman was ordered to appear more masculine for a passport photo. Although she didn’t have to comply at the end her picture was taken “amidst the scornful looks of other applicants and Department personnel.”⁵⁷

However, while looking at these policies closely, implementation of the strategies are still ongoing and not all targets have been met. There has been only sporadic progress in passing the Anti-Discrimination Bill, including

52 *The Magna Carta Of Women (Republic Act 9710) 2009* Available at: <https://psa.gov.ph/content/q-magna-carta-women-republic-act-no-9710>

53 *The Philippine Development Plan 2011-2016* adopts a framework of “inclusive growth”: is high growth that is sustained, generates mass employment, and reduces poverty. With good governance and anticorruption as the overarching theme of each and every intervention, the Plan translates into specific goals, objectives, strategies, programs and projects all the things that we want to accomplish in the medium term. National Economic and Development Authority. Available at: <http://www.neda.gov.ph/2013/10/21/philippine-development-plan-2011-2016/> (accessed 26 June 2016)

54 Versoza, E. (March, 2015) High Level Meeting on the Role of Governments in Ending Violence and Discrimination against Lesbian, Bisexual, Transgender and Intersex Women, Philippine Experience. Delivered by Executive Director of the Philippine Commission on Women.

55 *supra*

56 *Women’s EDGE Plan*, PCW. Available at: http://pcw.gov.ph/sites/default/files/documents/resources/womens_edge_plan.pdf (accessed 22 June 2016)

57 *supra*

any of the versions that have been proposed since the 1990s. This leaves transgender people without any national protection from discrimination on the grounds of gender identity or gender expression.

Sensitivity Trainings for Government Personnel: Magna Carta of Women and Philippine National Police Reform and Reorganization Act of 1998 (RA 8551)

Interviews conducted for this report identified that some agencies have had Gender Sensitivity Trainings⁵⁸ for their personnel to be more gender-fair in providing services to the public. The PCW was even tasked under RA 8551⁵⁹ to develop a module for 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. Compared to the past, government agencies have become relatively more versed in protecting and promoting women's rights but remain less informed and have insufficient understanding of gender identity and expression issues, particularly on how they impact on transgender people. This means that gender sensitivity training is focused almost solely on cisgender (non-transgender) women's rights.

Relevant Institutional Mechanisms

Commission on Human Rights as Gender and Development Ombud

Under the Magna Carta of Women, the Commission on Human Rights is authorized to act as the Gender and Development Ombud. Fleshing out this duty, the Implementing Rules and Regulations (IRR) to the MCW state that:

“It shall advocate for the promotion and protection of women’s human rights, strengthen its Human Rights Education program, investigate violations including those committed by private institutions or by private individuals, monitor compliance, and recommend appropriate measures to the Civil Service Commission or to the concerned department of the government for its effective implementation.”⁶⁰

The 2016 Gender and Development Ombud Guidelines⁶¹ spell out the Commission on Human Rights responsibilities for this role. Importantly, they explicitly state that this includes investigating complaints from “persons of diverse sexual orientation and gender identity and expression”. This is despite the fact that the Magna Carta of Women, itself is silent on this point. The guidelines explicitly note that the Commission on Human Rights’ work shall “be guided by the nine core treaties (eight of which the Philippines is a State Party) as well as with the Yogyakarta Principles”.

With respect to transgender men, the Commission provides a caveat for their inclusion in the Gender Ombud Guidelines, as it “*depends on their willingness to invoke Magna Carta of Women provisions and shall be subject to further consultation with transgender men organizations.*”⁶²

The Commission on Human Rights realized that its ‘Manual on Investigation’ did not provide guidelines for handling cases/complaints from people based on sexual orientation, gender identity or expression. The commission responded by adding a clear protocol precisely for cases that involved person of diverse sexual orientation, gender identity or expression to guide work of their investigators, lawyers, and information officers. The Center for Gender Equality and Women’s Human Rights of the Commission clarified that while there remain gaps in the extent to which Commission investigators are aware of and sensitive to SOGI issues, this remains a priority for the Commission’s ongoing efforts. For example, at the time of writing, the intake form for complaints has yet to be edited and so investigators are instructed to ask for the complainant’s preferred name and to put an asterisk on the person’s legal name. In terms of documentation, however, the legal name is still the one that is maintained in the computerized records.

58 As mandated by the Magna Carta of Women: all government personnel involved in the protection and defense of women must undergo human rights and gender sensitivity trainings. Other government agencies as part of the gender mainstreaming also began to the same.

59 Sec 59, RA 8551 Philippine National Police Reform and Reorganization Act of 1998.

60 *The Magna Carta Of Women (Republic Act 9710) 2009* Available at: <https://psa.gov.ph/content/q-magna-carta-women-republic-act-no-9710>

61 *Commission on Human Rights. CHR Gender Ombud Guidelines. (2016)* Available at: <http://www.chr.gov.ph/MAIN%20PAGES/about%20hr/downloadable/CHR%20Gender%20Ombud%20Guidelines.pdf> (accessed 9 September 2016)

62 *supra*

Law Enforcement

Probably as a result of many civil society⁶³ engagements, the Philippine National Police has made some improvements in its gender policies over recent years.

Interviews conducted with the Women and Children Protection Center of the Philippine National Police⁶⁴ indicate that their Case Investigators' Trainings contain a module on SOGI, equipping police sensitivity in dealing with people of diverse sexual orientation and gender identities. The Center was unclear as to the frequency or consistency of this training. In addition, the head of the Department clarified that while the Women and Children Protection Desks will not accept complaints of violence reported by transgender women, their children however can access the desks. Since there is no policy on cases of transgender women, such complaints will still be received and dealt with only in the complaint desks available to the general public. As one of the most vulnerable groups prone to violence, this creates additional barriers for transgender women when they report gender-based violence and 'hate crimes'⁶⁵. Transgender men, on the other hand, would be able to file under these desks because they are viewed as "women" by the police, according to the interview.

Inquiring as to availability of disaggregated data on any cases lodged by transgender men, the head of the office indicated that they possess no data that are comprehensive enough, at this point in time.

Transgender women in the City of Arago, Cagayan Valley⁶⁶ through dialogues with the police, were able to use the Women and Children Protective Desks to lodge their complaints. Allowing for the possibility that efforts with local police could provide some redress.

Courts and Lawyers

While a cursory survey of a few of the Mandatory Continuing Legal Education (MCLE) providers⁶⁷ yielded a few subjects on LGBT rights, very little else has been done in the legal field to deepen understanding of the causes and legal concerns of transgender people. Most likely due to the absence of legal cases, discussions in the sessions are mostly on terminologies, rather than on legal concerns including gender recognition.

With regard to the judiciary, in 2012, focus group discussions were conducted among the LGBT community and the judges and court personnel in partnership with the Philippine Judicial Academy (PHILJA). The aim was to call attention to the gaps and areas in judicial decisions that needed revisiting, particularly the Supreme Court rulings on name and gender marker changes. The focus groups also enabled the judiciary to glimpse how their decisions affect the experiences of the LGBT community.⁶⁸ While the event aimed to integrate SOGI analysis into future training curriculum at PHILJA, contacts with the Office of the Court Administrator in the Supreme Court and in PHILJA confirm that there continue to be no specific modules for SOGI training.

63 A product of many years of engaging with the Philippine National Police in providing SOGI trainings and dialogues on LGBT issues, OutRight Action International launched on 24 June 2016, its Report on "Addressing Police Abuse and Discrimination Against Persons in the Philippines. Available at: <https://www.outrightinternational.org/content/special-report-philippines-national-police-undergo-lgbt-sensitivity-workshops-part-> (accessed 22 June 2016)

"From 2013 to 2016, OutRight Action International, in partnership with the PNP Human Rights Affairs Office provided learning opportunities for police officers about LGBTI concerns. The training module produced by OutRight on gender, sexuality and human rights for the police has formally been incorporated into the PNP Human Rights refresher seminar for PNP personnel as part of the promotion requirement for police officers of different ranks and from different operational units. Workshops facilitated by Ging Cristobal and Raymund Alikpala. Cumulated data released in a report last June, 2016. June, 2016. Philippines: Working Together to Change Police Attitudes and Conduct Towards the LGBT Community. Available at: <https://www.outrightinternational.org/content/police-attitudes-and-conduct-towards-lgbt-community> (accessed 22 June 2016)

Rainbow Rights Philippines likewise conducts sensitivity and SOGI trainings in the Visayas, among Police Officers from the Region, in particular those that belong to the Women's and Children's Protection Division conducted by Ms. Tisha Ylaya

64 In person interviews of Rosauro, A., Tamayo, C & Acio, R (14 June 2016) Philippine National Police, Camp Crame, Quezon City.

65 The Philippines, to date, still has no Hate Crime law. The media in covering crimes committed against members of the LGBT community often label them as typical crimes like physical injuries or homicide and simply include in the reports the victims Sexual Orientation and/or Gender Identity, regardless of its relevance to the incident. However, the local LGBT community understand and use the term "hate crime" in describing criminal acts against members of the community that are motivated and attended by nothing but prejudice and hate. The Philippine LGBT Hate Crime Watch in 2012 in its attempt to document violence perpetuated against LGBT persons for example use the term regardless of the lack of legislation defining it.

66 In the northern part of the Philippines

67 University of the Philippines Law Center, San Beda College of Law, Arellano Law etc.

68 UNDP, USAID (2014). Being LGBT in Asia: The Philippines Country Report. Bangkok.

Today, terminologies and concepts are covered within subjects on gender, case studies, and small workshops on sensitivity.

Anti-Discriminatory Laws and Policies

This section describes examples of laws that prohibit certain acts of discrimination that are applicable to the experiences of transgender people in the different spheres of their lives.

1. Violence and Discrimination Against Transgender youth in education

a. Anti-Bullying Act of 2013

The Anti-Bullying Act of 2013 (**Republic Act 10627**) includes gender-based bullying as a prohibited and punishable act. Gender-based bullying is defined by the implementing rules and regulations as “*any act that humiliates or excludes a person on the basis of perceived or actual sexual orientation and gender identity (SOGI)*.”⁶⁹

The constraint in this law is that it only penalizes bullying between and among students and does not cover bullying perpetrated by school personnel. Based on the Department of Education’s data, in 2014, 6363 cases of bullying were reported in both public and private schools. This accounts to a 21% rise compared to 2013.⁷⁰

b. Child Protection Policy 2012

In cases where the bullying is committed by a Principal or a teacher or any other school personnel, a complaint can be filed administratively via the Department of Education Order No. 40 on Child Protection Policy. This policy includes the protection of students from any form of violence regardless of their sexual orientation or gender identity.

Given that the Department of Education has access to cases filed under the Anti-Bullying Law and violations of the Department of Education Order, it would be in the best position to have and maintain disaggregated data on this matter. Unfortunately, they do not maintain disaggregated records, therefore there would be no way of knowing how many of the bullying cases filed involved actual or perceived transgender youth, or other persons of diverse SOGI.⁷¹

c. Special Protection of Children Against Child Abuse, Exploitation, and Discrimination Act of 1992 (Anti-Child Abuse Act)

Parents of children who suffer abuse at the hands of teachers or members of the school’s administration can also file a criminal case under the RA 7610 or the Anti-Child Abuse Act. This option exists even during the pendency of the administrative case mentioned earlier. Such cases can cover instances of physical, psychological injury, or cruelty on the basis of the child’s SOGI. As the following example shows, the effective use of this law to protect gender non-conforming children depends largely on judicial understanding of gender expression and gender identity. In the July 2016 case of *People v. Penonia* in Cagayan De Oro City, the trial court agreed with a principal’s actions in punishing a child’s gender expression, ruling that this did not amount to child abuse.

69 RA 10627 (Anti-Bullying Act of 2013) Implementing Rules and Regulation Available at: <http://www.gov.ph/2013/12/13/implementing-rules-and-regulations-of-republic-act-no-10627/>

70 Diaz, J. (28 September 2015) 31 bullying incidents take place daily in schools – report. Available at: <http://www.philstar.com/headlines/2015/09/28/1504781/31-bullying-incidents-take-place-daily-schools-report> (accessed 2 November 2016)

71 Philippine LGBT Coalition Report for 64th Session of CEDAW. June 2016. Available at: http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/PHL/INT_CEDAW_NGO_PHL_24215_E.pdf (accessed 15 July 2016)

The case is of an 11 year old, grade 4 student in a public elementary school, referred to as AAA. AAA refused to wear the uniform skirt for girls and opted to wear slacks. Sometime in the first week of July of 2012, AAA was repeatedly made to wear a school curtain by the school's principal. AAA in each of these incidents was laughed at and ridiculed by other students. The mother of AAA only discovered what was happening from another student only later on as AAA never mentioned it. The mother did notice that AAA, on several occasions, made efforts to avoid going to school. Using RA 7610, or the Anti-Child Abuse Law, AAA's mother brought the case to court.

Despite the psychological evaluation presented during the trial which stated that the incident has had negative psychological effects on AAA, the judge ruled on May of 2016 that the case for Child Abuse was not proven.

The judge reasoned that the act of making AAA wear a curtain as a skirt "may arguably be incorrect" but the child and parent "surely have a share of the blame for the mess" as the uniform policy was agreed upon by both parents and teachers.

Furthermore, the judge negatively commented on AAA's behavior in court noting that "she was grooming herself as a boy . . . It must have been at this stage in AAA's life that her parents should play a role to guide her for appropriate developmental growth that is geared towards uprightness."

The judge ruled against AAA, upholding the action of the Principal 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."⁷²

This case and the judge's ruling is even more surprising when it has always been clear that the implementation of school uniform policies in public schools are not mandatory.

d. Department of Education Department Order 45: On school uniforms (2008)

In 2008, the Department of Education issued Department Order (DO) 45 that stated "the wearing of a school uniform shall not be required in public schools."⁷³

In cases of transgender children and youth whose access to education in public schools is hindered by the schools' uniform policies, this should be a policy that students are able to invoke. It may also be valuable for other students, including some students, where there is a clash between the relevant school uniform policy and their gender expression. Despite this provision, however, many cases of discrimination experienced by transgender students are related to school uniform policies. This has significant implications given that the right to education is often essential in order to realize other human rights.

The dean of a public university in Zamboanga refused to grant a group of transgender women the required clearance to enroll for the next academic year unless they all cut their hair to appear more masculine. (As an update to this case, upon dialogue with CHR, the school official granted the students their clearances.)

A group of transgender women requested permission to wear female uniforms and make-up in a public college in Visayas. All but one of the transgender women were turned down. When the Dean was asked why the sole transgender woman was allowed, the rationale was because "she is beautiful and could already pass off as a woman".

72 *People vs. Penonia*. April 12, 2016. FCCriminal Case No: R 2013-066, RTC of Misamis Oriental, 10th Judicial Branch 22, Cagayan De Oro City.

73 Department Order (DO) 45. Available at: <http://www.deped.gov.ph/orders/do-45-s-2008>

2. Violence and Discrimination against transgender people in the work place

a. *The Labor Code (PD 442) 1974*

The Labor Code is the national employment law for the private sector in the Philippines. With the exception of prohibitions against discrimination of women, it does not contain any provision that prohibits discrimination on the basis of gender identity. While the law is silent on gender identity and expression, it is clear in its Declaration of Basic Policy (article 3) that the “State shall afford protection to labor, promote full employment, ensure equal work opportunities.”⁷⁴ The mandate for equal opportunity in employment is clear. However, the reality shows a different picture since many transgender people encounter hardship in accessing work opportunities because of discrimination⁷⁵. The lack of national law that explicitly prohibits discrimination on the basis of SOGI makes it easier for employers to hide behind fabricated reasons for not accepting, firing, or depriving LGBT people of their employment benefits. Often, policies on uniform, documents, and use of comfort rooms are used against transgender applicants and employees, being within the so-called “management prerogative”.

A transgender man was denied his request to wear the male-issued uniform on the ground that “other lesbians” in the office were wearing female-issued uniforms anyway.⁷⁶

In a BPO (Business Process Outsourcing) company’s year-end report on its Human Resources, a transgender Human Resource Manager attests to having cited explicit notes where hiring officers failed applicants because they were transgender.⁷⁷

Particularly for the case of transgender employees, the disparity between their documents and what is “expected” to be their gender expression often amplifies the discriminatory experience.

A transgender woman passed the preliminary screening process for a job and was invited for interview. Once on the premises and after the discovery that she is transgender, the interviewer said that there was no longer any vacancy.⁷⁸

In a public office, a transgender woman employee was shamed when her supervisor issued a pronouncement to all subordinate offices ordering other employees to use ONLY her legal male name and not her preferred name.⁷⁹

STRAP, in its 2012 submission to the United Nations’ Human Rights Committee, highlighted how the difficulties transgender people face seeking gainful employment leave them vulnerable.

“Because of this, many transgender women in the Philippines are forced in illegal activities like prostitution to survive. Others revert back to niche industries that traditionally employ them such as the entertainment, fashion and beauty salon industries in spite of holding college degrees that over-qualify them for such work. Some who are able to secure jobs in call centers, considered the country’s sunshine industry, do so to the detriment of their gender identity and expression.”⁸⁰

74 The Labour Code (PD 442) 1974. Available at: http://www.lawphil.net/statutes/presdecs/pd1974/pd_442_1974.html

75 At the writing of this report, there is limited available data on employment opportunities and economic empowerment of transgender people.

76 Team Cebu’s archive of cases of discrimination experienced by transgender men members.

77 Alegre. B. Phone interview. (24 June 2016).

78 2011. Kwentong Bebot: Lived Experiences of Lesbians, Bisexual and Transgender Women in the Philippines. The International Gay and Lesbian Human Rights Commission (IGLHRC) implemented a five-country research and documentation project on violence and discrimination against LBT people. IGLHRC worked with the Rainbow Rights Project, the country team for the Philippines.

79 Phone interview (18 June 2016).

80 The human rights situation of transgender people in the Philippines Submission of the Society of Transsexual Women

This is compounded by the fact that school records remain under a person's legal name. As a result, transitioning to the workplace can be made difficult if a discrepancy exists between name and details in school records and a name that reflects the transgender person's gender identity or expression. These difficulties also occur in apprenticeship or internship settings.

A transgender man who is a physical therapist student, used his preferred name among colleagues. He was faced with great embarrassment when a new clinical instructor who was unfamiliar with him read his endorsement letter and found that his legal name was feminine. The clinical instructor, in a loud voice, unnecessarily asked him several times if it was really him, in front of patients and co-interns.⁸¹

b. LGBT Applicants to government service

The Civil Service exam is the test that someone who wants to enter into government service must take and pass. A transgender woman attending one of the events of Rainbow Rights in 2010 complained of pre-employment discrimination in the taking of the Civil Service exam. An examiner would not let her take the exam because there was a conflict between her appearance and her identification document that bore masculine name. A Civil Service Commission (CSC) officer attending the same event brought the matter to the attention of their head office. In the same year, the Commission issued its *Guidelines in the Processing, Verifying, and Handling of the Applications for Civil Service Examinations of LGBT Applicants*⁸². These guidelines require any applicant who *has changed his/her physical appearance or physical sex to conform with his/her gender identity or orientation* to submit an authenticated copy of their birth certificate *to establish his/her sex identity.*⁸³

This should provide a means for transgender people to verify their identity and therefore take the Civil Service Examinations. However, it does add an additional procedural requirement for transgender people that other applicants do not need to fulfil. This could mean that transgender people are turned away from the exam because they do not have their birth certificates on the day of the exam. In the absence of clear anti-discrimination protections, it may also make a transgender applicant more vulnerable to discrimination.

Interviews conducted for this research revealed frontline services were not familiar with these guidelines or any other policy related to transgender or LGB people, or of more recent applications by transgender people. Civil Service Commission personnel stated they would not discriminate against a transgender applicant provided that the ID card used to apply is the same ID that the person will show on the examination day.⁸⁴ However, staff interviewed pointed out that if the person in charge of processing applications considered the ID to be "suspicious", the applicant could still be asked to produce a birth certificate.⁸⁵ Such provisions, and the subjective nature of such 'suspicions', are likely to have a disproportionate impact on transgender people.

c. Civil Service Commission's Policy on Anti-Sexual Harassment

The Civil Service Commission Administrative Disciplinary Rules on Sexual Harassment Cases includes other less grave, punishable offences. These include prohibiting *"derogatory and degrading remarks or innuendoes directed toward the members of one's sex, or one's sexual orientation or used to describe a person"*.⁸⁶ This Rule

of the Philippines (STRAP) to the 13th Session of the United Nations Human Rights Council Universal Periodic Review 2012 Available at: http://lib.ohchr.org/HRBodies/UPR/Documents/session13/PH/STRAP_UPR_PHL_S13_2012_SocietyofTranssexualWomenofthePhilippines_E.pdf (accessed 22 June 2016)

81 In person interview (12 June 2016) Cebu.

82 Posted by PinayTG. Civil Service Commission (CSC) memorandum on LGBT applicants. Available at: <http://rainbowbloggersphils.blogspot.com/2010/06/civil-service-commission-csc-memorandum.html> (accessed 17 July 2016)

83 The human rights situation of transgender people in the Philippines Submission of the Society of Transsexual Women of the Philippines (STRAP) to the 13th Session of the United Nations Human Rights Council Universal Periodic Review 2012 Available at: http://lib.ohchr.org/HRBodies/UPR/Documents/session13/PH/STRAP_UPR_PHL_S13_2012_SocietyofTranssexualWomenofthePhilippines_E.pdf (accessed 22 June 2016)

84 The ID must not be expired on the day of the test. In the event that the ID expires before the test, the person will be asked to produce his or her birth certificate.

85 In person interview of Foronda, A. (14 June 2016) Civil Service Commission, Quezon City.

86 *Resolution (No. 01-0940) on Administrative Disciplinary Rules on Sexual Harassment Cases* 2011. Available at: <http://www.chanrobles.com/repúblicaactno7877rules.htm#.V2u8VzUdaL2>

applies to all government entities that fall under the Civil Service jurisdiction.⁸⁷ The policy is important because, unlike the Republic Act 7877 or the Anti-Sexual Harassment Law of 1995, the policy explicitly covers derogatory remarks regarding sex, sexual orientation, or other remarks that are used as description of a person with the intention to insult. In addition, unlike the Sexual Harassment Law, this policy for government agencies does not require that the offender has moral ascendancy over the victim. The fact that the perpetrator and the victim are of the same level or position will not preclude the victim from filing a case. While gender identity is not specifically mentioned as a ground, if a transgender civil servant is harassed verbally by co-workers, they would be able to rely on the generic protection from “derogatory and degrading remarks”.

d. Civil Service Commission’s Uniform Policy

Interviews conducted in government agencies about the Civil Service Rules reveal that though there are mandated uniforms, the rules are not consistently applied as this is widely dependent on the culture of leniency in each agency. In the Department of Social Work and Development for example, a transgender woman who is a civil servant is free to wear the clothing she wants to wear. In the Philippine Statistics Authority, transgender men and women with a masculine gender expression are free to wear the male-issued uniforms. A Civil Service Commission official interviewed for this report said there have been no formal requests to wear clothes that differ from the person’s assigned sex and that civil servants are not precluded from making such a request.⁸⁸ However, without clear anti-discrimination protections, it is likely that many transgender people would be reluctant to make such requests, fearing employment discrimination. This concern was raised in the interviews. Overall, it was remarked that there is more leniency in allowing people whose assigned sex at birth is female to wear masculine clothes than for someone assigned male at birth to wear feminine clothes.

e. Civil Service Commission’s Policy on Accessing Restrooms

There is no standard policy or legal protection enabling people to use gender-segregated bathrooms, toilets, or changing rooms based on their gender identity (or gender expression). Interviews with government agencies indicated more flexibility among offices that are catering to gender-related concerns, such as the PCW, than in other government offices. Similar to the nuance in the uniform policy, in practice, there is more flexibility enabling transgender people who are assigned female at birth to access the comfort room of their choice.

f. Diversity and Inclusivity Policies

While there are many accounts of discrimination in Business Process Outsourcing industries like call centers, it is still important to note that at the time of writing, there have been some multinational companies engaging in such areas of business that have diversity and inclusion programs in place. Mostly because their parent companies located elsewhere in the world mandate diversity, the local counterparts then establish clear non-discrimination policies on the basis of SOGI on matters of hiring, promotion, access to benefits, and organizing. A few even allow for partners of non-married employees to access “partner health benefits” despite the national law being silent on this.⁸⁹

B. Local Legislations: Anti-Discrimination Ordinances

The national Anti-Discrimination Bill has been stuck in the Lower House of Congress since first filed in 2000. Therefore, activists and allies have lobbied for anti-discrimination ordinances in select cities, towns, and municipalities instead. As of 5 November 2016, Dr Eric Julian Manalastas⁹⁰ has tracked that there are now 3 provinces, 12 cities, 1 municipality, and 3 *barangays* with their own ordinances⁹¹

87 Section 2. (1) The civil service embraces all branches, subdivisions, instrumentalities and agencies of the Government, including government-owned or controlled corporations with original charters Article IX-B of the 1987 Constitution

88 In person interview of Foronda, A. (14 June 2016) Civil Service Commission, Quezon City.

89 In focus groups conducted between domestic and multinational company representatives in 2015 that produced the Diversity in the Workplace: A Handbook on Building LGBT-Inclusive Workplaces in the Philippines Rainbow Rights Philippines with funding support from the US Embassy and Fund for Global Human Rights.

90 Faculty Member of the University of the Philippines, Department of Psychology

91 Manalastas, E. Anti-Discrimination Ordinances. Available at: <http://pages.upd.edu.ph/ejmanalastas/policies-ordinances>. (accessed 1 November 2016)

In 2015, Rainbow Rights Philippines, created a handbook that compared the provisions of 6 of the 10 ordinances⁹² then existing. Some of the ordinances solely focused on SOGI-based discrimination, while others opted for ordinances that covered more sectors or grounds of discrimination. Based on discussions with those involved in lobbying for the passage of anti-discrimination ordinances, it is clear that the title and coverage of the ordinance is itself a strategy. In local jurisdictions that are less open, coverage has been extended to include other sectors, as focusing solely on SOGI makes the lobbying more controversial and contentious.

As of the time of writing, the following are the passed ordinances. However, only the Quezon City one has its own Implementing Rules and Regulations and is therefore the only one that is capable of being used in practice in response to discrimination in that local area.

Area	Date of Passage	Coverage
Dagupan City	9/1/2010	Gender Equality
Cebu City	10/17/2012	Gender Identity, Sexual Orientation, and other classes/statuses
Davao City	12/1/2012	Gender Identity, Sexual Orientation, and other classes/statuses
Angeles City	2/1/2013	Sexual Orientation, and other classes/statuses
Bacolod City	5/1/2013	Gender Identity, Sexual Orientation, and other classes/statuses
Province of Cavite	2/3/2014	Gender Identity, Sexual Orientation, and other classes/statuses
Province of Agusan Del Norte	7/1/2014	Gender Identity, Sexual Orientation, and other classes/statuses
Candon City	8/1/2014	Gender Identity, Sexual Orientation
Quezon City	9/1/2014	Gender Identity, Sexual Orientation
Municipality of San Julian	10/13/2014	Gender Identity, Sexual Orientation, and other classes/statuses
Vigan City	11/1/2014	Gender Identity, Sexual Orientation, and other classes/statuses
Antipolo City	1/1/2015	Gender Identity, Sexual Orientation, and other classes/statuses
Puerto Princesa City	6/1/2015	Gender Identity, Sexual Orientation
Mandaue City	4/18/2016	Gender Identity, Sexual Orientation
Butuan City	6/1/2016	Gender Identity, Sexual Orientation, and other classes/statuses
Batangas City	7/18/2016	Gender Identity, Sexual Orientation
Province of Batangas	8/23/2016	Gender Identity, Sexual Orientation

With both minor and major differences, most ordinances define both sexual orientation and gender identity. Some ordinances, cognizant of the frequent conflation of the terms gender and sex, define them separately. Also, not all of the ordinances defined the term transgender. The most elaborative definition can be found in Quezon City's Gender Fair Ordinance:

“(It) is the state of one’s gender identity (self-identification as woman, man or neither) not matching one’s “assigned sex” (identification by others as male or female based on physical/genetic sex). Transgender does not imply any specific form of sexual orientation; transgender people may identify as heterosexual, homosexual, bisexual, pansexual, polysexual or asexual. The precise definition for transgender remains in flux, but includes: - of relating to, or designating a person whose identity does not conform unambiguously to conventional notions of male or female gender roles, but combines or moves between these. - People who were assigned a sex, usually at birth and based on their genitals, but who feels that this is a false or incomplete description of

92 Sexual Orientation and Gender Identity: Access to Justice through Anti-Discrimination Ordinances. A Handbook on Selected Anti-Discrimination Ordinances on Sexual Orientation and Gender Identity Rights. Rainbow Rights Philippines with funding support from Canada Fund for Local Initiatives (CFLI) and the Fund for Global Human Rights (FGHR) 2015

themselves. -non-identification with, or non-presentation as the sex (and assumed gender) one was assigned at birth.”⁹³

The fact however that not all ordinances define the term transgender⁹⁴ should not prevent transgender people from being able to use the ordinances (once Implementing Rules and Regulations are passed), as long as it was the person’s gender identity or expression (or sexual orientation) which was the basis of discrimination.⁹⁵ While there might be variations in some of the provisions, most of them attempt to address discrimination in the following spheres: employment, education, licensing and permits, and access to both public and private services.

1. Employment related provisions

While the ordinances clearly prohibit discrimination on the basis of SOGI in the workplace, a few of the ordinances are ambivalent with respect to the hiring stage⁹⁶. The aspect of pre-employment is where most of the discrimination occur, most particularly for transgender women. Often, they qualify for the job based on their resumes but once the employer sees them during interviews, they are told that there are no longer vacancies, or that the company do not accept “cross dressers”.⁹⁷

2. Education related provisions⁹⁸

While some ordinances cover only public schools, most others prohibit discrimination on the basis of sexual orientation and gender identity and expression in private schools too. It is worth noting that a couple of the ordinances also prohibit discriminating against a student because of the sexual orientation and gender identity and expression of their parent/s or guardian. Quezon City’s ordinance, meanwhile, laudably expanded the bullying definition to include instances where it is perpetrated by school officials.

Throughout the years, many barriers to accessing education have existed including masculinity tests in some schools to expel students considered to be gay men or transgender women, based on their gender expression. “A culture of bullying” and lack of respect for diversity makes it difficult for students to assert their identity, as when a professor at a university refused to use the female pronoun for a transgender woman student.⁹⁹

3. Health services related provisions

The main focus of the ordinances is to protect people from denial of access to public and private services. This includes instances where services are only offered with more onerous terms and conditions. The two examples below illustrate the need for these provisions. They include insurance companies asking transgender and LGB people inappropriate and invasive questions and a transgender woman being subjected to undergo a required physical exam by a male physician.

93 Sexual Orientation and Gender Identity: Access to Justice through Anti-Discrimination Ordinances. A Handbook on Selected Anti-Discrimination Ordinances on Sexual Orientation and Gender Identity Rights. Rainbow Rights Philippines with funding support from Canada Fund for Local Initiatives (CFLI) and the Fund for Global Human Rights (FGHR) 2015

94 The Antipolo City ordinance only includes Gender in its title but based on the definition within the ordinance, the term is used as assigned sex but also as “non-biological, social and cultural differences or preferences, or orientation.”

95 Sexual Orientation and Gender Identity: Access to Justice through Anti-Discrimination Ordinances. A Handbook on Selected Anti-Discrimination Ordinances on Sexual Orientation and Gender Identity Rights. Rainbow Rights Philippines with funding support from Canada Fund for Local Initiatives (CFLI) and the Fund for Global Human Rights (FGHR) 2015

96 Examples of ordinances with ambivalence on pre-employment stage discrimination: Gender Fair Ordinance of Quezon city and that of Dagupan City’s. Sexual Orientation and Gender Identity: Access to Justice through Anti-Discrimination Ordinances. A Handbook on Selected Anti-Discrimination Ordinances on Sexual Orientation and Gender Identity Rights. Rainbow Rights Philippines with funding support from Canada Fund for Local Initiatives (CFLI) and the Fund for Global Human Rights (FGHR) 2015

97 In the Philippines transgender women are widely perceived as males who are simply dressed in the clothing of women rather than according to the gender identity and thus referring to them as “cross dressers”.

98 More information on SOGIE-based school violence and bullying is available at: <https://en.unesco.org/themes/school-violence-and-bullying/resources>

99 UNDP, USAID (2014). Being LGBT in Asia: The Philippines Country Report. Bangkok. Available at: <http://www.undp.org/content/undp/en/home/librarypage/hiv-aids/being-lgbt-in-asia--the-philippine-country-report.html>

A life insurance provider required of clients “perceived” to be LGBT to answer a “confidentiality questionnaire” containing invasive questions about the frequency and manner of their sexual behavior. While this mostly happened to gay men and transgender women seeking insurance coverage, there are cases where transgender men are also subjected to such questionnaires.¹⁰⁰

As part of a requirement for a master’s degree in one of the Universities, a transgender woman had to undergo a physical medical examination. Upon getting to the university clinic, she requested a female doctor. The nurse on duty told her that it is not the policy of the clinic to have a “male person be examined by a female doctor”. Needing to satisfy this requirement and no longer wanting to be further inconvenienced, she felt she had no choice but to acquiesce.¹⁰¹

In cases of surgeries that are related to medical transitioning of transgender people, queries with Philhealth¹⁰² reveal that access to hormones and surgeries are not covered, unless proven to be medically necessary for a non-transition related reason. For example, this might include the removal of breast(s) or testes due to cancerous growths. Cases outside of these will not be granted coverage. Given that Philhealth is a national agency, provisions of the ordinances will yield to the national policy.

Interviews with the Department of Health¹⁰³ revealed that while there is a clear policy of sensitivity for treating cases of women and children, the department is not yet orientated to specifically address the particular health needs of transgender people. Community interviews revealed that most transgender people rely on other individuals in their community, and transgender support and advocacy groups for information about medical transitioning. There are currently no existing Philippine regulations, guidelines or specific policies addressing transgender people’s health needs. Intervention in this regard is best done at the level of national legislation.

Some of the ordinances also include protection from “forced therapies” and/or psychological tests deemed to be curative measures for the “LGBT condition”¹⁰⁴. These provisions remain necessary as many, particularly young transgender and LGB people are subjected to such therapies by their parents. There continues to be medical practitioners who take on such cases, despite the Psychological Association of the Philippines (PAP) issuing a clear anti-discrimination statement in 2011:

PAP aligns itself with the global initiatives to remove the stigma of mental illness that has long been associated with diverse sexualities and to promote the well-being of LGBT people. Moreover, the PAP Code of Ethics (2010) is clear in its stance against discrimination. Filipino psychologists are called upon to recognize the unique worth and inherent dignity of all human beings; and to respect the diversity among persons and peoples (Principle I, a and b). This means that Filipino psychologists should not discriminate against or demean persons based on actual or perceived differences in characteristics including gender identity and sexual orientation (Ethical Standard III-A and C; V-B.8)¹⁰⁵

Another health aspect that is often neglected is the need for disaggregated data on Transgender People living with HIV (PLHIVs). While there are efforts to correct this, the Philippines still combine transgender women together with the data on MSM (men who have sex with men)¹⁰⁶. This obscures the greater vulnerability of transgender women to HIV as few HIV programs or services are funded to meet their specific needs.¹⁰⁷

100 In person interview. (16 June 2016) Manila.

101 In person interview. (14 May 2016) Cebu.

102 PhilHealth is a government corporation that handles the National Health Insurance Program of the Philippines.

103 In person interviews (15 June 2016) Department of Health, Manila.

104 “Treatment aimed at trying to change a person’s gender identity and expression to become more congruent with sex assigned at birth has been attempted in the past without success (Gelder & Marks, 1969; Greenson, 1964), particularly in the long term (Cohen-Kettenis & Kuiper, 1984; Pauly, 1965). Such treatment is no longer considered ethical.” (Standards of Care for the Health of Transsexual, Transgender, and Gender Nonconforming People by the WPATH (World Professional Association for Transgender Health 7th version)

105 Psychological Association of the Philippines (October 2011) *Statement of the Psychological Association of the Philippines on Non-Discrimination based on Sexual Orientation, Gender Identity and Expression*. Available at: http://www.pap.org.ph/includes/view/default/uploads/statement_on_lgbt.pdf (accessed 12 September 2016)

106 Department of Health, Philippines. Bureau of Epidemiology (April 2016) Available at: http://www.aidsdatahub.org/sites/default/files/publication/NEC_HIV_Apr-AIDSreg2016.pdf (accessed 1 October 2016)

107 Currently there is very limited data on the prevalence of transgender men living with HIV.

Prevention interventions specifically targeting transgender women¹⁰⁸ do not exist, and as a result, leave this group, particularly transgender sex workers, especially vulnerable to HIV. Transgender men and women have special health needs that have been severely neglected in Asia and the Pacific, including the Philippines. Although their needs and expectations are often different from those of MSM,¹⁰⁹ transgender women are often included in MSM services. However, the health needs of transgender men are often ignored entirely.¹¹⁰

4. Provisions related to accessing Public Places

Most of the ordinances listed above also cover refusing entry to any establishment such as restaurants, bars, stores, movie houses, shopping malls, and other places of entertainment or businesses which are open to the general public. This includes refusing to attend to, or serve; or to subject one to discrimination or harassment in transportation, on the basis of actual or perceived SOGI.¹¹¹ The absence of legal gender recognition places transgender people at daily risk of being excluded from gender-specific or sex-segregated facilities, areas, and activities. As illustrated in the case examples below, transgender people are subjected to discrimination in public transportation and even as customers in commercial establishments such as in bars.

“Well, one time I was not allowed to stay in the female section in the LRT (Light Railway Transit) ... also in public toilets, sometimes I do get a lot like, ‘You go to the male area.’” (Transgender woman, Manila)¹¹²

In June 2015, Ms. Veejay Floresca along with her friends were refused entry into Valkyrie, an upscale club. The bouncer of the club asked for ID to prove that she is female and is not “crossdressing” (a term used negatively by the bouncer). In the case of Ms. Floresca, she had with her an ID issued from California stating that she is female, and so was allowed entry. Her other transgender woman friend was refused as her Philippine issued ID listed her as male. The management of the club has since apologized and claimed that they did not have a policy against a person’s “sexual orientation” acknowledging that their staff might need additional training in interacting with patrons.¹¹³

The use of the term sexual orientation in this case illustrates once again the conflation of sexual orientation and gender identity. This is of course not the first case of transgender people being barred access to bars that are generally accessible to others. Dialogues within the community have revealed that in most cases, the rationale for barring transgender women entry is not really what is being articulated, but, a more menacing one rooted in stereotypes and in prioritizing “preferred” customers over transgender people’s rights.

In Cebu in 2016, several transgender women were rounded up and told to enter their personal information into police records by local police patrolling the area. This was in an area near bars frequented by foreigners. Apparently, there had been complaints from bar owners that transgender women were disrupting public order by “stalking” foreigners. As a result, these transgender women were singled out without regard to their rights, and had little choice but to provide their details for the purpose of creating a database to track them. At no point where they provided with the opportunity to explain what they were doing or why they were in the area, they were instead targeted because they were transgender.

108 The term transgender people is widely used in discussion of transgender people living with HIV but refers to transgender women only and not transgender men or gender non-conforming people who are assigned female at birth.

109 World Health Organization. (2013). World Health Organizations External Review of the National Health Sector Response to HIV and Sexually Transmitted Infections for the Philippines. Available at: http://iris.wpro.who.int/bitstream/handle/10665.1/11217/9789290617068_eng.pdf (accessed 12 September 2016)

110 Health Policy Project, Asia Pacific Transgender Network, United Nations Development Programme. 2015. Blueprint for the Provision of Comprehensive Care for Trans People and Trans Communities. Washington, DC: Futures Group, Health Policy Project.

111 Sexual Orientation and Gender Identity: Access to Justice through Anti-Discrimination Ordinances. A Handbook on Selected Anti-Discrimination Ordinances on Sexual Orientation and Gender Identity Rights. Rainbow Rights Philippines with funding support from Canada Fund for Local Initiatives (CFLI) and the Fund for Global Human Rights (FGHR) 2015

112 In focus groups conducted between domestic and multinational company representatives in 2015 that produced the Diversity in the Workplace: A Handbook on Building LGBT-Inclusive Workplaces in the Philippines Rainbow Rights Philippines with funding support from the US Embassy and Fund for Global Human Rights.

113 ABS-CBN News. June 2015. How Valkyrie incident happened. Available at: <http://news.abs-cbn.com/lifestyle/06/23/15/how-valkyrie-incident-happened> (accessed 22 October 2016)

Below are other examples of discrimination in accessing other kinds of services from the private sector. The first is a case of a transgender man who experienced discrimination from a money-remittance service provider and the case of basketball players whose gender expression were not conforming to the league's president's expectations of "women" basketball players.

A transgender man claiming remittance money from a parent abroad opts to go to the branches where there are only a few people, to avoid the embarrassment he often encounters. In one instance, in an unavoidably crowded branch, he was addressed as 'Sir' upon approaching the counter by the teller. Once the teller read his name, however, the teller kept referring to him as 'Miss' and despite his insistence to call him 'Sir', the teller, in a loud voice, deliberately shaming him in the crowd, kept using his legal name. He had no other choice but to suffer through this as all his IDs bear his feminine name.

On 31 March 2015, Commissioner Chito Narvasa of the Philippine Basketball Association (PBA) came out with a memo¹¹⁴ prohibiting women basketball players from playing in the league if they had "boy-cut" hairstyles. The Association argued that audiences were confused about whether they were looking at boy or girl players. As the Association is a private league, it can create its own uniform policies. Prescribed haircuts form a part of these policies. Narvasa, further asserting the Association's policy, argued that some of the players grew their hair anyway to comply so they could play. He reiterates that anyway, they weren't prohibiting short haircuts, ONLY BOY-CUTS.¹¹⁵

Without legal gender recognition, transgender people are at the risk of having their gender identity challenged as fraudulent deception. Such perceptions have been used to justify 'hate crimes', under the guise of a 'trans panic' defense. They are also inherently stigmatizing, transphobic and homophobic – implying that transgender women do not have the right to define their gender identity, denying their identity and justifying discrimination if their transgender status is revealed.

5. Ordinances related to accessing Public Comfort Rooms

Only a few ordinances¹¹⁶ deal with access to comfort rooms of individual choice. In the Angeles City version, transgender people are allowed to use the comfort room of their own choice. In the case of Quezon City, it provides "that all government agencies, private offices, and commercial/industrial establishments shall designate toilet rooms and lavatories labeled as 'all gender CR' after a lapse of time from the passage of the ordinance."

Transgender men and women encounter barriers to accessing comfort rooms based on their gender identity, or feel unwelcome or unsafe using these facilities. For example, often when transgender women enter public female comfort rooms, they are either told by other women or security guards that they are not allowed there.

6. Provisions related to accessing Permits and Licenses

Most of the ordinances also prohibit the use of a person's SOGI as a basis to discriminate against them when seeking a permit or license, or when registering an organization. It needs to be clarified here that these provisions in ordinances do not include change of names or personal details on those documents. It only prohibits discrimination when applicants who have submitted all required documents and complied with all regulations are prohibited from obtaining or renewing permits solely on the basis of their SOGI status. This is mainly because ordinances, being of local application, cannot contradict the national laws or be used to assert rights, such as legal gender recognition, that are not provided for in the national laws.

114 Badua, S. (10 June 2016). PBA under fire for 'discriminatory' rule banning boy-cut hairdos from women's league. Available at: <http://www.spin.ph/basketball/pba/news/pba-comes-under-fire-for-discriminatory-rule-banning-boys-haircuts-from-womens-league> (accessed 7 July 2016)

115 With Reports by Brancher, J. (11 June 2016). Narvasa explains 'boy-cut hairdos' memo for PBA women's 3x3. Available at: <http://www.rappler.com/sports/by-sport/basketball/pba/136105-commissioner-narvasa-explains-boy-cut-memo-women-3x3> (accessed 7 July 2016)

116 Quezon City's Gender Fair Ordinance and the Anti-Discrimination ordinance of Angeles City

In summary, while ordinances are an emerging avenue to assert transgender and broader LGBT rights, there are implementation challenges. All of the ordinances, with the exception of those from the *barangays*, require an IRR before they are enforceable. As mentioned earlier, only one, the Quezon City Gender-Fair Ordinance, has passed its IRR. The effect therefore is that any violation of the provisions of the ordinances in the areas where IRRs have yet to be made will NOT amount to a case that can be filed and heard. Despite explicit provisions in some of the ordinances regarding a period within which IRRs should have been drafted, efforts to meet this requirement have been tardy and piecemeal.

C. Proposed Legislations and Initiatives

In the current 17th Congress, 10¹¹⁷ members of the lower house have filed their versions of the national Anti-Discrimination Bill.¹¹⁸ The first deliberation of the Committee on Women and Gender Equality was held on 17 October 2016. It included LGBT community members as resource people and participation by government agencies and other sectoral representatives from the Church, employers, and private schools.

The equivalent champion for the Senate Bill is Senator Risa Hontiveros. In the first ever hearing on the Senate Bill on 31 August 2016, members of the LGBT community were also invited to give inputs to the current version. The next stage in the Senate level will be a technical working group to further polish the bill. In Congress, no less than 100 members of the house have expressed support for the House Bill on Anti-Discrimination. While it is no guarantee, at no other time has there been more optimism about the Bill's potential passage.

D. Pertinent Court Decisions about Sexual Orientation

Some court decisions involving lesbian, gay or bisexual people may also have relevance to transgender people, particularly if being transgender is erroneously deemed synonymous to being gay or lesbian such that a transgender man is considered to be female and lesbian, and a transgender woman is considered to be male and gay.

The Philippines does not criminalize homosexual relations. In the case of *City of Manila v Laguio*¹¹⁹, the Supreme Court upheld adults' right to privacy and included the right to have sexual relations in the confines of their private lives.

In the *Gualberto v CA* case of 2005¹²⁰, in a custody dispute between a husband and wife, the Supreme Court awarded custody of a 4-year old child to his mother despite the father's argument of immorality against his wife who was "allegedly" in a lesbian relationship. This was primarily because the court gives preferential custody to a mother when the child is below 7 years of age in the absence of a showing of her unfitness to be a mother.

This latter decision may have implications if a transgender man with a child under the age of 7 was involved in a similar custody case. This would be a win for him as a parent but a loss in terms of not recognizing him as a male. In the same vein, a transgender woman, who will only be seen legally as a father will not be recognized as a female or mother. This is likely to exclude her from being granted custody of a child below the age of 7.

117 Rep. Kaka Bag-ao, Rep. Geraldine Roman, Rep. Emmeline Aglipay-Villar, Rep. Salvador Belaro, Rep. Linabella Ruth Villarica, Rep. Rosenda Ann Ocampo, Rep. Winnie Castelo, Rep. Teddy Builat, Rep. Tom Villarin, and Rep. Sol Aragones,

118 Cepeda, M. (27 July 2016) What bills have been refiled in the 17th Congress? Available at: <http://www.rappler.com/newsbreak/in-depth/140749-bills-refiled-17th-congress> (accessed 18 September 2016)

119 *City of Manila v Laguio* (12 April 2005) G.R. No. 118127

120 *Gualberto v. CA* (28 June 2005) G.R. No. 156254.

VI. Legal Provisions, Policy, and Court decisions on Gender Recognition Law

In the Philippines, the birth certificate¹²¹ is the primary document from which many other legal documents spring forth. It is the basis for obtaining a passport and other publicly-issued IDs that will be subsequently discussed. Consequently, all other documents are expected to be in harmony with the contents of a person's birth certificate.

Unlike in other progressive jurisdictions¹²² where citizens are able to change their legal documents easily, through an administrative process, changing entries that are not "clerical errors" in a birth certificate is not a matter of course in the Philippines. This project included exploring options where it is possible for details to be amended on a birth certificate. For example, in adoption cases, an amended birth certificate reflecting the name change of the adopted person is issued during the finalization of the adoption proceedings. There are no additional requirements other than those needed for the adoption process.

When it comes to public documents acquired later in life, such as new or renewed passports, it is possible for women to change their surname on documents, if they marry and wish to use their husband's surname. In those instances, all that is needed is a presentation of the woman's marriage certificate¹²³. However, it is not easy for a woman to revert back to her maiden name unless her marriage has been annulled or her spouse has died.¹²⁴

There are no options for transgender people to change their first names or their gender markers on official documents, as there is no legal gender recognition law, policy, or regulation enabling this to happen.

Below is an overview of related laws and policies used in changing entries to one's birth certificate in the Philippines.

A. Changes on the Birth Certificate

There are two ways to make changes to a birth certificate in the Philippines. One is via the Civil Code provisions governing substantial changes that would require judicial orders (Articles 407 and 408) and the second is the simpler, less costly manner of correcting clerical errors under RA 9048 of 2001.

Substantial Changes under the Civil Code

Substantial changes in the birth certificate under Articles 407 and 408 of the Civil Code will require a verified petition filed at the court that covers the civil registry that registered this specific birth certificate. In accordance with Article 408 of the Civil Code, the following are considered "substantial changes":

¹²¹ Also known as the Certificate of Live Birth

¹²² In May 2012, Argentina was the first country to pass a gender identity law that enables gender markers to be changed on birth certificates and all associated documents, based solely on a person's request for such a change. This simple administrative process does not require a medical diagnosis, surgeries or hormonal treatment. There are no age or other restrictions on who can access the provisions and there are additional protections for children. (Ley 26743: Derecho a la identidad de género. [Law No. 26743: Right to gender identity]. An English translation of this Act can be accessed at: <https://globaltransaction.files.wordpress.com/2012/05/argentina-gender-identity-law/>)

Similarly, the 2015 Gender Identity, Gender Expression and Sex Characteristics Act in Malta sets out an accessible process that recognises a universal right to gender identity, with no age restrictions. (Malta's Gender Identity, Gender Expression and Sex Characteristics Act and Transgender Europe's media release, accessed 29 November 2016 at: <http://tgeu.org/malta-adopts-ground-breaking-trans-intersex-law/>)

¹²³ Unlike other countries, the Philippines has no divorce laws. Nullifying marriages are subjected to very strict grounds and processes that are prohibitive as to costs.

¹²⁴ It is important to note that divorce is not legal in the Philippines and the only way for a marriage to end is through annulment or death. *Maria Virginia V. Remo vs. The Honorable Secretary of Foreign Affairs (5 March 2010)* G.R. No. 169202

(1) Births; (2) marriages; (3) deaths; (4) legal separations; (5) annulments of marriage; (6) judgments declaring marriages void from the beginning; (7) legitimations; (8) adoptions; (9) acknowledgments of natural children; (10) naturalization; (11) loss, or (12) recovery of citizenship; (13) civil interdiction; (14) judicial determination of filiation; (15) voluntary emancipation of a minor; and (16) **changes of name**.

Note that changes of name here refer to substantial ones, such as for example surnames or changes that do not fall under what RA 9048 would consider to be “clerical errors”.

The process¹²⁵ begins with the filing of a verified petition with the court accompanied by supporting documents to prove the need for change. A publication of the notice for hearing must be done, once a week for 3 consecutive weeks in a newspaper of general circulation. The cost of this notice is paid by the applicant. It is vital that the civil registrar and all persons who have or claim any interest which would be affected by the change shall be made parties to the proceeding.¹²⁶ Failure to include the right parties could be a ground to question the ruling of the court in appeal.¹²⁷ Cost includes publication expenses and filing fees.

The Clerical Error Law (RA 9048) of 2001

The other way to make changes in one’s birth certificate is via the Clerical Error Law of 2001. The law¹²⁸ requires that the petition should be in the form of an affidavit that is notarized. It should contain the merits of the case, competency of the petitioner (that they are of legal age and are the interested party to the correction/change), point out the original error and the proposed change.¹²⁹ The petition must be accompanied by supporting documents¹³⁰. It is filed with the Local Civil Registry Office (LCRO) where the record containing the clerical error to be corrected or first name to be changed is kept.

Note that a person younger than 18 years old cannot file the petition, however, a parent/legal guardian could. Petition under this law is less costly than with substantial changes. It costs P1,000.00 for the correction of clerical error and P3,000.00 for the change of first name (cost of the required publication not yet included).

According to the law, clerical errors are “mistakes that are harmless and innocuous, visible to the eyes or obvious to the understanding”. What is most relevant here is the explicit prohibition stating that the law shall not be used for correction involving change of sex of petitioner.¹³¹

For change of first name, there are additional identity vetting requirements. These require certificates from an employer, the National Bureau of Investigation and the Philippine National Police that the person has no pending administrative, civil or criminal case, or no criminal record

- a certification that the petitioner has no pending administrative, civil or criminal case, or no criminal record, which shall be obtained from employer, National Bureau of Investigation and the Philippine National Police
- Apart from the posting above, the petition should be published in a newspaper of general circulation, once a week for 3 consecutive weeks. Affidavit of publication from the publisher and a copy of the newspaper clipping.

While the law is clear that no change in “sex” is permitted in the clerical error law, in practice, the law is still used for typographical errors on gender markers for as long as there is a certification issued by an accredited government physician attesting to the fact that the person HAS NOT undergone “sex change or sex transplant”.¹³² This is where the law becomes prejudicial to transgender people, without specifically naming

125 Rules of Court, Rule 108. Cancellation Or Correction Of Entries In The Civil Registry

126 Supra

127 The civil registrar (or (Office of the Solicitor General) or and any person having or claiming any interest under the entry whose cancellation or correction is sought may, within (15) days from notice of the petition, or from the last date of publication of such notice, file his opposition.

128 Section 5 of RA 9048 Clerical Error Law of 2001 and Rule 8 of Administrative Order No. 1, S. 2001

129 RA 9048 Clerical Error Law

130 Found in the ANNEX section

131 Implementing Rules and Regulations of RA 9048 (Clerical Error Law) 2001

132 Acosta, P. (29 March 2014). Gender error in birth certificate. Available at: <http://www.manilatimes.net/gender-error-in-birth-certificate/86168/> (accessed 10 September 2016)

them. It has explicitly carved out a group of citizens who could have availed of the right to change details on their birth certificate had it not been for their explicit exclusion. The law does not clarify whether having undergone hormone therapy will be considered a “sex transplant”, or if failing to disclose those details would be considered fraudulent. However, since the requirement is based on the finding of a physician, this matter will be based solely on the doctor’s determination.

In 2008, the case of Zoila Villanueva illustrates this issue. Zoila, who was granted leave by a lower court to correct her birth certificate entry from male to female, lost upon appeal. The Court of Appeals reversed the decision on the ground that Zoila failed to submit in time a certification from a government doctor attesting to her sex.¹³³

The law also provides only a few valid grounds a person can use in order to have a first name changed:

- (1) The petitioner finds the first name or nickname to be ridiculous, tainted with dishonor or extremely difficult to write or pronounce;
- (2) The new first name or nickname has been habitually and continuously used by the petitioner and he has been publicly known by that first name or nickname in the community; or,
- (3) The change will avoid confusion.

The second ground is the most commonly used ground for transgender petitions for first name change. The next section on court decisions relating to change of name or gender marker clarifies the extent to which transgender people have been able to use the above provisions for these purposes.

Court Decisions on Name and Gender Marker Change

Prior to 2007, many transgender women had been able to change their sex on their birth records.¹³⁴ Taking advantage of RA 9048, anecdotal evidence from the community indicate that transgender women would petition their local civil registrar, on the ground of clerical error on their gender markers (and their first names). As this was done in local (often provincial) civil registrars, there were infrequent interventions from government, and so, the processes of changing these details were not questioned.

However, things changed after the 2007 Silverio Ruling.

Silverio Ruling: A person’s first name and sex cannot be changed on the ground of sex reassignment

In the 2007 case of *Silverio v Republic of the Philippines*¹³⁵, the Supreme Court (SC) ruled against petitioner Silverio’s wish to change her first name and gender marker on her birth certificate. Mely Silverio who underwent “sexual reassignment surgery” initially won in the trial court. The Office of the Solicitor General (OSG) intervened thereafter arguing in the Court of Appeals (CA) that the Regional Trial Court of Manila was mistaken in its ruling due to the fact that there is no law allowing change of first name on the basis of “sexual alteration”. The CA ruled against Mely Silverio and the SC affirmed the CA ruling.

The Supreme Court ruled that there was no mistake to be corrected as the birth records is not in dispute, as the sex of the person was determined by the birth attendant at the time of birth. It elaborated that “sex” as a term does not contemplate inclusion of persons who have undergone “sex reassignment”. Likewise, it argued that allowing her to change her name and gender marker will alter established laws on marriage and family relations, something that the Court cannot agree with.

The Silverio ruling has now made it very difficult for a transgender person to invoke RA 9048 in its strictest sense. Firstly, in order to change their first name to reflect their gender identity, a transgender person has to prove prejudice from their current name and a compelling reason to change it. If on the other hand, a

¹³³ http://pcw.gov.ph/sites/default/files/documents/resources/womens_edge_plan.pdf cited from Philippine Daily Inquirer, March 2008

¹³⁴ Sassot, S. (1 June 2013) Our Brave New World: The Birth of Transgender Liberation in the Philippines. Available at: <http://www.philippine-transgender-movement.com/news/philippine-transgender-liberation/> (accessed 18 July 2016)

¹³⁵ *Silverio v Republic of the Philippines* (22 October 2007) G.R. No. 174689.

transgender person is able to prove one of the three grounds¹³⁶ earlier mentioned and is able to change the first name, this will not automatically lead to a change of gender marker. This is because, unlike first names, gender marker change is governed by the substantial changes provisions in the Civil Code that would require the longer and more costly judicial proceeding.

So, hypothetically, a transgender woman seeking to change her gender marker on the ground of clerical error would have to find a government doctor who will attest that she has been born female and that no gender affirming surgery took place (even if it did). This is a legally precarious position for both the transgender woman and her doctor.

This is not to mean, however, that no change of name or change of gender marker for transgender person has happened since, just not under the strict application of these provisions. In some cases, the androgynous quality of an original name may help someone change the name slightly, especially if there is evidence of habitual and continuous use of the new name.

Cagandahan Ruling

In the 2008 case of **Republic of the Philippines v Jennifer Cagandahan**,¹³⁷ the Court ruled in favor of a name change to Jeff Cagandahan on the ground that Jeff had an intersex variation, Congenital Adrenal Hyperplasia (CAH). The Court agreed with Jeff's ability to self-define his sex because he *"has simply let nature take its course and has not taken unnatural steps to arrest or interfere with what he was born with"*. This focus on biological sex is consistent with the Court's contrary position for transgender people, who are deemed to be attempting to change their biological sex. This is apparent when the Court favorably notes that Jeff *"could have undergone treatment and taken steps, like taking lifelong medication to force his body into the categorical mold of a female, but, he did not"*.

Furthermore, the Court in ruling for the change of name, clarified its effect on Jeff's gender marker. *"Such a change will conform with the change of the entry in his birth certificate from female to male."*

In summary, these cases show that biases among judiciary and the legal profession stem from the lack of knowledge and understanding of the concepts of gender identity or gender expression and related concerns and issues for transgender people. This includes a perception that a person's gender is based solely on biological sex that cannot and should not be altered, and is limited to simple binary options (male or female). Such views fail to take into account that *"each person's self-defined gender identity is integral to their personality and is one of the most basic aspects of self-determination, dignity and freedom"*¹³⁸. Nor do they recognize that everyone has the right to recognition before the law.

Effect of Valid Changes to name or gender marker

When it comes to the effect on records, the law prescribes that a change on the birth certificate may be done only once and that the Philippine Statistics Authority (PSA), based on its legal mandate, retains old records in order to track changes on documents. Therefore, in cases of changes under RA 9048 or under the Civil Code, the old names and gender markers remain searchable.

There has been a rising number of individuals using delayed registration as a way to create new birth certificates with the hopes of maneuvering around compulsory retirement ages. Therefore, both Social Security System and PSA have become stricter in their dealings with late registration birth certificates. Likewise, the intensified computerization of all documents at the PSA will eventually reveal if people have multiple birth certificates.

136 1. Ridiculousness of the name, tainted with dishonor 2. Habitual use of the preferred name, and 3. Avoiding confusion

137 Republic of the Philippines v Jennifer Cagandahan (12 September 2008) G.R. No. 166676

138 Principle 3 of the Yogyakarta Principles: The Right to recognition before the law. Available at: http://www.yogyakartaprinciples.org/principles_en.htm

B. Changes on other Public Documents

Apart from the birth certificate, other public documents bearing names and gender markers are important to transgender people as they conduct their business, in their profession, and when accessing government services. The most significant of these are discussed below.

Passports

When a person applies for their first passport, it is mandatory to present a certified true copy of their birth certificate.¹³⁹ If the applicant has no birth certificate, they must apply for delayed registration of birth at the local civil registry office located at their place of birth.

Interviews with the community and the agencies concerned indicate a need for a more streamlined approach to transgender applicants. There are varying accounts of experiences on this matter. While not all transgender men have masculine gender expression, in some instances, passport agents automatically record transgender men's gender marker as male, based on the applicant's gender expression. Fearing possible complications from having a passport document that does not match other legal documents, transgender men were quick to point out that their assigned sex at birth was female. Based on accounts from the community, this happens more frequently to transgender men than transgender women, and is more likely to occur when a passport is being renewed, rather than when it is first issued. This may reflect the lower awareness and visibility of transgender men, so their male gender expression, is less likely to be questioned.

An extreme example happened to a transgender man who wanted to obtain a passport for himself. The agent assigned to him refused to recognize his sex assigned at birth (female), demanding proof from a doctor that he used to be female. This was despite the transgender man showing the agent pictures from before and after his transition. What resolved the issue was another agent pointing out that the applicant "could have lied about his sex assigned at birth" but, didn't and so, the female passport should be issued as requested.

The reverse experience is common for transgender women. Many are asked to dress like men or wear their hair like men for passport pictures. When leaving the country, they are often presumed to be "sex workers" and are made to undergo humiliating interrogations and searches that others are not subjected to. Transgender women experience this from¹⁴⁰ both local and international border control officials.

In an interview with the Bureau of Immigration¹⁴¹, it was mentioned that although there is no explicit policy, they practice non-discrimination. As long as there are no material discrepancies in the documents presented, the traveler will not be subjected to the Bureau's "wide latitude of discretion" when questioning or inspecting people. While comforting, in practice, the difference between gender expression and gender documentation could be considered to be a material discrepancy. For example, an interviewee in the Bureau quickly noted that a transgender woman entering the Philippines with a female passport will "*encounter no problem as long as the document is in order*". However, for transgender women travelling on a Philippine passport, it is almost impossible for their document "to be in order" as it might have a male name and male gender marker.

Another angle on migration that has yet to be resolved in the Philippines is the matter of conflict of laws. An example is when a transgender woman is able to be recognized in another country that allows for gender recognition but retains her Philippine passport where no similar change can be made. In the following case, another pioneer transgender activist, Ms. Sass Sassot, highlighted how this forces transgender people to have conflicting documents. This places them at risk of being suspected of identity fraud or of trying to hold dual identities under different names and genders:

139 Department of Foreign Affairs. Passport Requirements. Available at: <http://www.dfa.gov.ph/consular-services/passport-information/passport-requirements> (accessed 13 July 2016)

140 In focus groups conducted between domestic and multinational company representatives in 2015 that produced the Diversity in the Workplace: A Handbook on Building LGBT-Inclusive Workplaces in the Philippines Rainbow Rights Philippines with funding support from the US Embassy and Fund for Global Human Rights 2015

141 In person interview of Santos, C. 15 June 2016. Bureau of Immigration, Manila. 15 June 2016.

“I wrote in February 2010 about the case of Jenny Ramsey when the Philippine Embassy in Germany refused to renew her passport because they said she couldn’t have dual identity. She is legally recognized as female in Germany, while she is legally male in the Philippines”.¹⁴²

Professional Licenses

For citizens who have passed professional licensure exams, a publicly-issued ID bears proof of their professional status. In dealing with their clients, it is one of the recognized ways of showing real credentials. These IDs are subject to renewals. Based on interviews in the community, it was found that many transgender professionals have had their rights to practice their profession infringed by the process of renewals. Such was the case of a teacher in Mindanao.

A transgender woman in Mindanao who has passed the licensure exam for teaching wanted to renew her license to finally practice the profession. She was told by the agent of the Professional Regulation Commission (PRC) that she had to change the color of her hair, cut it short, and appear masculine for the picture requirement. Thinking that she already encountered this kind of experience in government, she felt she couldn’t expect anything better in the schools so she decided not to renew.

In a training on Inclusive Workspaces at the Professional Regulation Commission, civil servants revealed that they have encountered a transgender woman in the main branch who wanted to renew her nursing license after having been abroad for a few years. Since she no longer looked like the same person as in the picture on file, they asked her to come back two days later, looking like a man. They claim that as a regulatory commission tasked with guarding against the possibility of criminals who would fraudulently offer services without being real professionals, they felt that their approach was warranted.¹⁴³

Documents that do not require a passport or birth certificate as proof of identity

Applications for some ID cards do allow for alternate proof of identity, and do not require someone to show a birth certificate and passport. These are the National Bureau of Investigation Clearance, in the Social Security System (SSS), Philhealth¹⁴⁴, Licenses issued by the Professional Regulation Commission, the Pag-ibig Fund¹⁴⁵, a Police Clearance, and the Philippine Postal ID.¹⁴⁶

However, there is a caveat for the SSS card. While the birth certificate is not initially required, it is needed to complete the person’s profile in order to access benefits. Interviews in the agency revealed that when there are discrepancies in a person’s birth certificate and their other documents on file, unless documents are harmonized, the member will not be able to access pre-retirement benefits such as loans.¹⁴⁷ Likewise, in the event of retirement, retirement benefits will be put on hold until these discrepancies are resolved. Data discrepancies in official SSS documents can be very inconvenient if not addressed early, as explained in the case below.

142 Sassot, S. (1 June 2013) Our Brave New World: The Birth of Transgender Liberation in the Philippines. Available at: <http://www.philippine-transgender-movement.com/news/philippine-transgender-liberation/> (accessed 18 July 2016)

143 Conducted by Rainbow Rights Philippines, October 2015.

144 PHILHEALTH. Government mandated health insurance program in the Philippines. Requirements. Available at: <http://www.philhealth.gov.ph/members/lifetime/registration.html> (accessed 12 July 2016)

145 PAG-IBIG Fund: Provides loans for housing. Requirements. Available at: <http://faq.ph/how-to-apply-as-a-voluntary-member-with-the-pag-ibig-fund/> (accessed 12 July 2016)

146 Postal ID Requirements. Available at: <http://philpad.com/new-postal-id-card-requirements-procedures-and-fees/> (accessed 12 July 2016)

147 In person interview of the Dalmacio, C and Lique C. (14 June 2016). Social Security System Main Office, Quezon City.

A transgender man who filled out his E1 Form¹⁴⁸ according to his birth certificate encountered a problem when the officer encoding his details placed male on his gender marker. When seeking to obtain a loan from the SSS later on he was precluded from doing so. According to SSS, it was due to the discrepancy between his driver's license bearing a female gender marker and his SSS records. It was only resolved when he obtained a certified copy of his birth certificate from the Philippine Statistics Office.

In summary, if a transgender person is able to obtain government-issued IDs bearing a preferred name, and these are used in SSS as a supporting or alternate document, a conflict between the birth certificate and these documents will arise. This will bar the transgender person from being able to access SSS benefits.

All other documents that do not require the birth certificate to be submitted as proof of identity, theoretically could be used to establish a transgender person's habitual and continuous use of a new name. This could be used to petition for change of first name. As of yet, there has been no transgender case that has reached the Supreme Court using this provision for changing one's first name. Therefore, there is no guarantee that such a petition would be granted.

148 Application form for issuance of Social Security ID

VI. Transgender Persons and the Criminal Justice System

This section will deal with penal laws and penal system that impact transgender persons in the Philippines. Impact on transgender persons may be a direct result of the provisions in the laws themselves or by the implementation of the law.

A. Criminal Laws

Article 200 of the Revised Penal Code¹⁴⁹ on Grave Scandal penalizes any person who shall “offend against decency or good customs by any highly scandalous conduct”. Due to the subjectivity of the determination of what offends decency and good customs, this provision has been used against transgender women and gay men when they are seen in the streets. The cases are rarely pursued and prosecuted, but, arrests and detentions under such provisions have been known to occur.

Article 201 b of the Revised Penal Code also prohibits exhibition of “indecent or immoral plays, scenes, acts or shows” including those that are “contrary to law, public order, morals, and good customs”.¹⁵⁰ Raids conducted in entertainment establishments frequented by transgender women and gay men often lead to arrests of the clientele and not the owners who, in the strict application of the law, are the actual violators of this law.

Article 172 of the Revised Penal Code penalizes falsification of documents by private individuals.¹⁵¹ Accounts from transgender men indicate that there were instances where the Land Transportation Office agents would indicate in their online records for driver’s license, without asking them, a gender marker of male resulting in the printed version of the license to contain a male gender marker¹⁵². The concern is how this will affect transgender men possessing these driver’s licenses legally, particularly when they renew. However, in an interview in the Land Transportation Office¹⁵³, it was clarified that the charge of falsification will not apply to these incidences given that the ones who entered the data were LTO agents, not the transgender men themselves. Comparing it with discrepancies on birthdates, agents would more likely consider this a typographical error and not a case where one seeks to defraud.

B. Criminal System

Transgender women in the prison system are detained separately, when there are spaces available. With prison overcrowding as a major issue in the Philippines, this is rare. Generally, transgender women are often mixed with male inmates, where many abuses occur as illustrated in the instance below. On the other hand, transgender men are placed with women prisoners in consideration of their “safety”.

Transgender women and gay men are mixed with the general male population in prison. On knowing that abuses occur at night, the Warden decided to segregate the gay men and transgender women from the general population of men. ‘Boyfriends’ soon complained that they want to be with their transgender or gay partners. So, they are allowed to mingle during free time. The jail guards asked that the transgender women be transferred to the women’s cell if it is vacant, or that guards are posted to protect gay men and transgender women from harassment by other inmates.¹⁵⁴

149 The Revised Penal Code of Philippines (8 December 1930). Available at: http://www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/PHL_revised_penal_code.pdf

150 Revised Penal Code Book 2. Article 201.

151 Revised Penal Code Book 2. Article 172.

152 Noted during the consultative meeting with transgender community participants held on 21 April 2016 in Manila.

153 In person interview with Manaho, A. (6 November 2016) Land Transportation Office. Manila.

154 In focus groups conducted between domestic and multinational company representatives in 2015 that produced the Diversity in the

Here, the policy that the Warden came up with was through the requests of the boyfriends of the transgender women and gay prisoners. Whether or not they would actually mingle during the free time is up to the transgender women. In other countries, the move is towards taking a transgender person's gender identity into account prior to placement in gender-segregated detention facilities and providing opportunities to appeal placement decisions.¹⁵⁵ At this point in time, apart from the consideration on availability of space in the jails, no other provision of law can compel the Bureau of Jail and Management to make sure that transgender people will have the choice to be assigned to a detention facility based on their gender identity.

C. Children and Adolescents

Children, particularly those living on the streets, whose gender expressions differ from their assigned sex at birth could fall outside the protection of the law mostly because of the lack of knowledge on how to handle their cases. In the attempt to meet their “basic needs”, the aspect of their SOGI is often glossed over. The Department of Social Work and Development (DSWD)¹⁵⁶ has stated that the challenges lie within Local Government Units that run facilities caring for the youth. They claim that whether or not the staff will have any SOGI sensitivity training depends largely on the policies of particular local governments, not on the DSWD policies.

The Juvenile Justice and Welfare Act of 2006¹⁵⁷ provides for how children in conflict with the law and children at risk, such as children found in the streets, are to be handled. Pertinent provision include Section 47 that deals squarely with female children and the gender sensitivity training required of rehabilitation/training centre personnel in Section 48. Section 47 says that special attention as to the personal needs and problems of female children must be given. They are to be handled only by female doctors, correction officers and social workers, and shall be accommodated separately from male children in conflict with the law. Similar to earlier discussions, these provisions are interpreted to apply only to those whose sex assigned at birth is female. Likewise, the gender sensitivity training contemplated is not necessarily one that has a SOGI component. The law doesn't contain any mention of SOGI.

In a case documented by Rainbow Rights in 2012, a child rights expert relayed a story of a child assigned male at birth who had a feminine gender expression. This child was placed in a facility with boys. When the social workers returned to visit this child after a few weeks, the child was no longer recognizable. In the interim, the child had been forced to conform and act like the boys in this facility. When spoken to and asked as to what happened, the child who was once observed to be cheerful expressed fear and maintained the belief that in order to stay in the facility there was no other way, but to conform.

However, in this particular case, despite the silence on SOGI, the prohibited acts in Section 60 and 61 should be capable of being invoked, theoretically. Section 60 prohibits derogatory and discriminating remarks used against a child, while Section 61 prohibits other acts that can be considered prejudicial and detrimental to the psychological, emotional, social, spiritual, moral and physical health and well-being of the child.

While these provisions exist, in reality, just like for those in adult prisons, the plight of LGBT youth (or those perceived to be LGBT) who are at risk, or in conflict with the law is in dire need of attention. While not formally reported, there are many accounts of sexual abuses perpetrated against children whose gender expressions are different from their assigned sex at birth, under the guise of “correction” or in the belief that they are “deserving” of the acts of violence and abuse committed against them.

Workplace: A Handbook on Building LGBT-Inclusive Workplaces in the Philippines Rainbow Rights Philippines with funding support from the US Embassy and Fund for Global Human Rights 2015

155 UN Human Rights Council, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, 5 January 2016, A/HRC/31/57, paras 34—36, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/000/97/PDF/G1600097.pdf?OpenElement> ; Patterson, B. (25 March 2016) Justice Department Takes Steps to Protect Transgender Prisoners Available at: <http://www.motherjones.com/politics/2016/03/doj-trans-inmate-guidelines> (accessed 4 November 2016)

156 In person interviews of Mazo, E and Porio, M. (14 June 2016) Department of Social Work and Development Office, Quezon City.

157 *Juvenile Justice and Welfare Act of 2006 Republic Act No. 9344*

VIII. Conclusions and Recommendations

This report has illustrated how the lived reality of transgender people depends in part on what measures the State, including the government, parliament, the judiciary, and independent human rights mechanisms puts in place to realise human rights based legal gender recognition in the Philippines. It also depends on whether responsible stakeholders are identified as accountable for specific actions.

Currently, in the Philippines, there is no comprehensive attention paid in any regulation, law or policy towards the protection from discrimination and legal gender recognition for transgender people. In fact, the Implementing Rules and Regulations of the Clerical Error Law (2001) explicitly prohibits this law being used to correct entries involving a petitioner who is seeking to change their gender marker. This has been further reinforced by the 2007 Silverio Supreme Court Judgement which ruled against a transgender woman seeking to have her gender marker and name corrected on her birth certificate stating that the sex of the person is determined by the birth attendant at the time of birth. It elaborated that “sex” as a term does not contemplate inclusion of persons who have undergone “sex reassignment”. This judgement represents a significant barrier to transgender people seeking legal gender recognition in the Philippines as Supreme Court judgements set precedent.

However, there has also been some progress in this regard recently. Local ordinances that protect LGBT people from discrimination on the basis of SOGI have been passed in 3 provinces, 12 cities, 1 municipality and 3 *barangays*. While a draft comprehensive Anti-Discrimination Bill holds promise that transgender people will eventually be legally protected from discrimination at the national level, having reached its first Senate level hearing and several Committee hearings in the 17 year effort to get the bill passed. Also, the 2016 Gender Ombud Guidelines explicitly state that the mandate of the Commission on Human Rights in this role includes investigating complaints from “persons of diverse sexual orientation and gender identity and expression”.

Within the context of accountability, the State has an obligation to respect, protect and fulfil human rights. The respect of transgender people’s human rights encompasses the obligation to refrain from doing actions that violate those human rights. These include that States cannot criminalise gender expression, or put abusive eligibility criteria in place for legal gender recognition. States also have positive obligations to protect people’s human rights (for example, against discriminatory practices), and also to fulfil them, by putting all necessary legislative, budgetary and other measures in place.

Through the process of writing this report and in consultation with key stakeholders as part of the multi-stakeholder roundtable discussions, the following key issues and recommendations have been identified.

Resources

The existence of some progressive gender laws as discussed in this report may provide avenues in advocating for the human rights of transgender people. For example, the 5% budget allocation for gender and development could be optimized and used for projects and programmes that could help government agencies and local government units become more equipped in handling transgender concerns.

The dearth of transgender data, whether on demography or lived experiences, make it very difficult to lobby and create programmes that are responsive to the needs of transgender people. State-sponsored data gathering often gloss over the transgender population. A more systematic, accurate, updated, and disaggregated data is vital in order to make effective changes in government policies and programs.

Awareness

Existing gender sensitivity training modules could be revisited and be revised in consultation with members of the LGBT community, to include SOGI related concepts, LGB and particularly transgender issues and concerns.

The modules could form part of continuous trainings in law enforcement, judiciary, lawyer organizations, professional organizations, local government units, government owned and controlled corporations, government agencies, state colleges and universities, and even media outlets.

The pronouncements of the Psychological Association of the Philippines with regard to transgender people should be cascaded to medical practitioners, including guidance counselors in both public and private schools.

Law and Policy

National Law

Ultimately, the passage of the Anti-Discrimination Bill could protect transgender persons from discrimination in employment, accessing public/private education, health and other services.

Expansion of the Women and Children Protective Desks in the Magna Carta of Women into Gender Desks could encompass cases of violence and discrimination perpetrated against transgender persons.

An inclusion of transgender women in the Magna Carta of Women's definition of women in marginalized sector could allow transgender women to access the benefits of the MCW.

Amendment of the Labor Code to make explicit Sexual Orientation, Gender Identity and Expression as a prohibited basis of discrimination

While the Child Abuse Law protects a child from any form of abuse, the Anti-Bullying law should be amended as to include bullying perpetuated by school personnel and provide for its necessary punishment.

Amendment of the Civil Code to remove "change of name" as a substantial change necessitating a judicial order could help ease name change for transgender people.

Eventually, enactment of a legislation that would allow transgender people currently deemed to be in a same-sex partnership access to partner benefits and next of kin status enjoyed by married couples.

Eventually, enactment of legislation that would provide an affordable and convenient way of affecting changes in one's birth records and public documents.

Local Legislations

Establishment of gender-neutral comfort room facilities in areas open to general public could be locally legislated via ordinances.

Cities and provinces with Anti-Discrimination Ordinances could be lobbied to fulfill responsibilities of creating the IRRs of their local legislations.

Government Agency Policies

As in the case of the City of Arago, dialogues with law enforcement can address the lack of clear and explicit national policies. Engaging with local counterparts of national agencies/departments could yield to protection of transgender persons, albeit limited to local areas.

Mainstreaming of gender-neutral policies on uniforms, haircuts, access to comfort rooms or sleeping quarters.

Circulars and Department Orders that will prohibit gender markers as basis for denial of services or rational to demand for additional requirements.

Jurisprudence

With the composition of the judiciary ever changing, the possibility of the test case to challenge the Silverio ruling could also be explored. In such test case, to allow first name change, if shown that the name has been

customarily used, removing further the need for a doctor certifying that the person is not doing it for sex change.

In the same manner, a redefining of gender and sex in jurisprudence that includes the correct and appropriate understanding of what is being a transgender and what is being an intersex.

In the occasion of the test case, to disabuse minds of the validity of “transpanic” as a mitigating circumstance in crimes against transgender persons.

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Annexes

Annex A:

Supporting Documents for Clerical Error Law Petition

The following are supporting documents required of the petitioner under this law:

- Certified machine copy of the certificate containing the alleged erroneous entry or entries
- No less than 2 public or private documents upon which the correction shall be based. Examples of these documents are the following:
 - baptismal certificate: depending on the denomination, birth certificate may or may not be required
 - voter's ID: relatively easy as even library cards, office IDs, or postal IDs are allowed
 - employment record: dependent on company policy, but often National Bureau of Investigation Clearance and Police Clearance must have been presented before employment.
 - GSIS/SSS record: requires one's birth certificate as an alternate on paper, but in practice, is required
 - medical record: to have medical records under a name is just a matter of filling up a form. However, accessing medical records would require government-issued IDs. The same as when one uses public health card to pay for medical expenses, additional proof of identity will be asked.
 - school record: birth certificates are required though could be submitted any time during the year
 - business record: requires government-issued IDs
 - driver's license: requires birth certificate for new application, student-permit
 - insurance: requires government-issued IDs
 - land titles, certificate of land transfer, bank passbook: requires government-issued IDs
 - NBI/police clearance: allows for other ID's apart from birth certificate and passport
 - civil registry records of ascendants,
 - and others.

Annex B:

Silverio v Republic of the Philippines G.R. No. 174689 22 October 2007

The Court rejected Mely's claim that amending the name assigned to her at birth would avoid confusion. It argued that making such a change "may only create grave complications in the civil registry and the public interest". In addition, the Court said that Mely failed to show how she would suffer from the continued use of her "true and official name".

The Court said that the law was clear, change of sex on the birth certificate is a substantive change that should be governed by the Civil Code. Also, that there was no mistake as the "Birth certificate is a historical record of facts as they existed at the time of birth. Thus, the sex of a person is determined at birth, visually done by the birth attendant (the physician or midwife) by examining the genitals of the infant."

According to this argument, the change of gender marker is a substantive change, not subject to clerical error law. Not a "correction" that is contemplated by the law as there was no mistake in the recording of entries during time of birth that needed correcting. Sex is determined at the time of birth.

The court decision also stated that terms sex, female and male, do not include persons who have undergone sex reassignment:

The Court said that -sex is defined as the sum of peculiarities of structure and function that distinguish a male from a female or the distinction between male and female. Female is the sex that produces ova or bears young and male is the sex that has organs to produce spermatozoa for fertilizing ova. Thus, the words male and female in everyday understanding do not include persons who have undergone sex reassignment. Furthermore, the words employed in a statute which had a well-known meaning at that time are presumed to have been used in that sense unless there is a compelling counter argument.

It is expected that to grant the changes sought by petitioner will substantially reconfigure and greatly alter the laws on marriage and family relations. It will allow the union of a man with another man who has undergone sex reassignment (a male-to-female post-operative transsexual).

The decision also lead to the interpretation that while the Court should not decline to render judgment by reason of silence of the law, it is only the Congress who can legislate:

The Court said that while no judge "shall decline to render judgment by reason of the silence, obscurity or insufficiency of the law, it still "has no authority to fashion a law on that matter, or on anything else. The Court cannot enact a law where no law exists. It can only apply or interpret the written word of its co-equal branch of government, Congress."



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