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Trans rights on the line: De facto situation of transpinays in relation to the right to freedom of opinion and expression in the Philippines

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About this report

The **Society of Trans Women of the Philippines (STRAP)** is the pioneer support group and human rights advocacy organization of transpinays (Filipina trans women and transfeminine people) in the Philippines. STRAP submits this report to provide information to the Special Rapporteur on freedom of opinion and expression on her country visit to the Philippines on the de facto situation of transpinays (trans women) nonbinary, gender non-conforming, and LGBTQIA+ people in relation to the fulfillment and/or violation to our right to freedom of opinion and expression.

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Positive Aspects, Developments on Laws and Policies

In 2019, the Philippines passed the Safe Spaces Act¹ to penalise sexual harassment which surprisingly covers homophobic and transphobic remarks— a historic first in Philippine legislation to recognise homophobia and transphobia. This is despite the fact that the passage of the Sexual Orientation, Gender Identity, Gender Expression, and Sex Characteristics (SOGIESC) Equality Bill which seeks to prohibit discrimination based on SOGIESC, has been in Congress without much progress for more than 20 years since it was introduced.

In 2018, the Philippine HIV and AIDS Policy Act² was passed which provided a definition to transgender, gender identity and/or expression. In the context of the HIV landscape in the Philippines, gay and bi men, transpinays (trans women), and gender diverse people are identified as the key affected populations³ in the HIV epidemic. Unfortunately, experiences of stigma, discrimination, hate speech and violence faced by people living with, and at heightened risk of HIV, are exacerbated due to their gender identity, expression and sex characteristics. The Philippine HIV and AIDS Policy was able to introduce these concepts so the implementation of the law provides a lens that is sensitive to the population that are most affected by the epidemic.

¹ Safe Spaces Act https://lawphil.net/statutes/repacts/ra2019/ra_11313_2019.html

² Philippine HIV and AIDS Policy Act https://lawphil.net/statutes/repacts/ra2018/ra_11166_2018.html

³ Integrated HIV Behavioral and Serologic Surveillance (IHBSS)
<https://fetpafi.org/project/project-details.php?pid=4>



In the State's effort to implement the Magna Carta of Women, an adoption of CEDAW in the domestic level, the national and local governments are mandated to gender mainstreaming. The Civil Service Commission, a body responsible for the policies, plans, and programs of all civil service employees, provided a guidance on the use of a gender-sensitive language⁴ to eliminate sexist and misogynistic language in public office. The Supreme Court also issued its own gender-fair language etiquette⁵ to combat sexist language in the Judiciary, in line with the Safe Spaces Act and to be inclusive towards persons with diverse sexual orientation, gender identity and expression, and sex characteristics (SOGIESC).

The Anti-Violence Against Women and their Children Act of 2012 also provides protection to victim/survivors against psychological violence which may be experienced through verbal and/or emotional abuse⁶.

Monumental Role of TLGBQIA+ national and local organising and advocacy

With these developments in combating TLGBQIA+phobia and hate speech, TLGBQIA+ organisations and human rights defenders especially LBTI women⁷ have been in the frontlines in pushing and advocating for the fulfillment of our rights⁸. It is crucial that our rights to freedom of expression are protected and celebrated. Any attempts to silence, intimidate and curtail our right to fight for substantive gender equality needs to be taken seriously and addressed in a manner that is in line with international human rights standards.

The Irony of the Right to Freedom of Opinion and Expression: Issues, Challenges, Demands

The universality of the right to freedom of opinion and expression is crucial in claiming the human rights of all, and the right to political opinion and expression is one of the ingredients for meaningful participation and activism of civil society. It is deeply concerning however that despite the progress in combating gender bias, freedom of opinion and expression has been co-opted to perpetuate gender-based discrimination, hate speech, and violence against marginalised groups, particularly women, trans, nonbinary and gender non-conforming human rights defenders.

⁴ Civil Service Commission's Memo Promoting the Use of Gender Sensitive Language https://pcw.gov.ph/assets/files/2019/04/PCW-MC_2014-06_Promoting-the-Use-of-Gender-Sensitive-Language-in-the-Drafting-and-Review-of-Legislative-Measures.pdf

⁵ Guidelines on the Use of Gender-Fair Language in the Judiciary and Gender-Fair Courtroom Etiquette <https://sc.judiciary.gov.ph/sc-issues-organic-guidelines-on-the-use-of-gender-fair-language-in-the-judiciary-and-gender-fair-courtroom-etiquette/>

⁶ Anti-VAWC FAQs <https://pcw.gov.ph/faq-republic-act-9262/>

⁷ At least 20 arrested at Pride March in Manila <https://www.rappler.com/nation/264919-cops-arrest-individuals-pride-month-protest-manila-june-2020/>

⁸ LGBT groups hold 'stronger' Pride March, bats for passage of SOGIE Equality Bill <https://news.abs-cbn.com/life/06/24/23/free-to-protest-as-one-lgbt-groups-hold-stronger-pride-march>



Position of transpinays (trans women and transfeminine people) in experiencing intersectional discrimination in relation to freedom of opinion and expression

The concept of transness is not new in Philippine history. Spiritual leaders in pre-colonial “Philippines” are known to be women or feminine, regardless of their assumed gender at birth. Throughout the precolonial Philippine islands, the presence of transpinay spiritual leaders popularly known as *asogs*, *babaylans* and *catalonans* have been recorded in our theirstory⁹. Unfortunately it was through colonisation and genocide that our rich gender diverse communities were pushed to the margins up to this day.

In the Philippines, aside from there is no comprehensive anti-discrimination law that covers discrimination based on SOGIESC, transgender Filipinos have no mechanism to legally change their name and gender marker that is in line with their current lived gender. Because of this, even if there is de jure equality that protects women from discrimination and gender based violence as our government claims it to be, trans women are still excluded from these laws and we continually experience misogyny, hate speech, transphobia and queerphobia on a daily basis¹⁰. Because of the lack of legal gender recognition, news sites¹¹ get away with misgendering trans people by using both the dead name and the lived name of transgender people in their articles.

Archaic, draconian laws that are incompatible to the right to freedom of opinion and expression

Just recently, Pura Luka Vega, a well known case of a drag artist who portrayed Jesus Christ¹² for a drag show, was arrested using Philippines’ immorality laws under Article 201 of the Revised Penal Code¹³ “for immoral doctrines, obscene publications and exhibitions, and indecent shows”, and Article 133 for offending “religious feelings”. Pura Luka Vega was also charged under the Cybercrime Prevention Act¹⁴ because their performance was shared online and it was alleged that by publishing it online, it constituted an online crime and is punishable under the cybercrime law.

⁹ From Asog to Bakla to Transpinay: Weaving a Complex History of Transness and Decolonizing the Future <https://www.jstor.org/stable/48656850>

¹⁰ A Call for Healing: Transphobia, Homophobia, and Historical Trauma in Filipina/o/x American Activist Organizations <https://www.jstor.org/stable/45153646>

¹¹ Example of news articles misgendering trans women <https://news.abs-cbn.com/news/01/26/23/transgender-filipina-found-dead-in-nyc-hotel>

¹² Philippine drag queen Pura Luka Vega arrested after Jesus performance sparks Catholic backlash <https://www.cnn.com/2023/10/06/asia/philippines-drag-queen-pura-luka-vega-arrest-intl-hnk/index.html>

¹³ PD No 960 Article 201 of the Revised Penal Code https://lawphil.net/statutes/presdecs/pd1976/pd_960_1976.html

¹⁴ Socmed group files cybercrime raps vs. Pura Luka Vega <https://www.pna.gov.ph/articles/1212337#:~:text=4%20in%20connection%20with%20the.singing%20a%20punk%20rock%20remix>



Pura Luka Vega was also tagged as *persona non grata* through a resolution passed by politicians in local and provincial government units¹⁵ for their performance portraying religious figures. Adoption of *persona non grata* is a nonbinding but formal process of saying that one is not welcome in their city/municipality.

Even though trans people do not have access to legal gender recognition, we continue to use our lived names in our daily lives. This puts us at a higher risk of violating the following laws; Anti-alias Law or RA 6085, Commonwealth Act no. 142 also known as the Act to regulate aliases, and Article 178 of the Revised Penal Code which covers the improper use of names¹⁶. These laws could put trans people in prisons with a maximum sentence of five years for using our lived name consistently.

With the passage of the Anti-Terrorism Act of 2020, there have been more blatant red-tagging of LGBTQIA+ organisations by the National Intelligence Coordination Agency and media agency without proof¹⁷ that endangers the safety and security of TLGBQIA+ human rights defenders (HRDs). A known lesbian HRD who fought and supported the rights of trans students to use uniforms that reflect their gender identity in public schools and universities was red-tagged¹⁸, and had to flee and seek asylum outside the country because of the state-sponsored threats to her security.

Anti-rights rhetoric masked as freedom of opinion and expression are against substantial gender equality

Despite the very few progressive laws that seek to protect trans, nonbinary and gender non-conforming people in the Philippines, the right to freedom of opinion and expression has been weaponised to restrict, discriminate and violate rights of marginalised groups specially trans, nonbinary and gender non-conforming people in cases such as hate speech against TLGBQIA+, Pura Luka Vega and the use of lived names. Here are more cases of how anti-rights, religious rhetoric are used to restrict rights in the Philippines.

Archaic understanding of gender in the Philippines is rooted from an unfounded belief of stereotypical assumptions that subscribes to cisheteropatriarchal, feudal and religious standards of gender relations. Unfortunately these beliefs could be seen in the chambers of Congress and are most scintillating during proceedings that relate to abortion and anti-discrimination bills. Religious legislators have used anti-rights religious rhetoric to deprive TLGBQIA+ people representation and protection. A known Christian legislator does not want to pass the SOGIESC

¹⁵ More LGUs declare Pura Luka Vega persona non grata
<https://philstarlife.com/news-and-views/522467-more-lgus-declare-pura-luka-vega-persona-non-grata>

¹⁶ Revised Penal Code https://lawphil.net/statutes/acts/act_3815_1930.html

¹⁷ Statement of Commission on Human Rights - Region IX on the recent red-tagging issue in Zamboanga City <https://www.facebook.com/photo?fbid=599208715714488&set=pcb.599205975714762>

¹⁸ CHR takes up cudgels for LGBTQI leader 'red-tagged as CPP member' in Iloilo City
<https://mb.com.ph/2022/10/28/chr-takes-up-cudgels-for-lgbtqi-leaderred-tagged-as-cpp-member-in-iloilo-city/>



equality bill because he claims it was against the word of god¹⁹. When TLGBQIA+ are included in the public school's curriculum, the same legislator called it anti-god²⁰ and requested Congress to probe the issue.

In 2023, right after receiving the concluding recommendations from CEDAW and CRC to decriminalise and legalise abortion, senators threatened to delay the funding of the Commission on Human Rights because of its stance to decriminalise abortion. These same Senators said that their "religious beliefs" contradict the position of the Commission on Human Rights and therefore the the right to safe abortion should be abandoned by the Commission. This resulted for the Commission to recant its earlier support to abortion²¹.

A legislator also tried to pass a heterosexual bill to freely express views on homosexuality and religious beliefs²². The bill uses the language of freedom of opinion and expression to sow hate speech against the TLGBQIA+ community.

The Movie and Television Review and Classification Board (MTRCB), an agency tasked for the classification of movies and television programs, suspended a noon time show for indecent acts²³ due to its hosts, a queer couple who licked (cake) icing from their fingers. However, the same penalties are not applied to straight couples who kiss their partners neck²⁴ on live television.

During the COVID19 pandemic, transpinay students were able to grow their hair and present the gender they identify with. However, when students were allowed to have in person classes, transpinay students were forced to cut their hair and wear male uniforms²⁵. Whenever they wear a uniform that aligns to their lived gender, they are in a constant risk of being called out and/or penalised for "violating" school rules²⁶. A group of transpinays who were graduating had to fight

¹⁹ The blasphemy of the Villanuevas: Don't judge, but no to SOGIESC bill

<https://republicasiamedia.com/the-blasphemy-of-the-villanuevas-dont-judge-but-no-to-sogiesc-bill/>

²⁰ 'Anti-God': Bro Eddie wants to probe inclusion of LGBTQ-related topics in DepEd's draft curriculum

<https://mb.com.ph/2023/5/2/anti-god-bro-eddie-wants-to-probe-inclusion-of-lgbtq-related-topics-in-dep-ed-s-draft-curriculum>

²¹ CHR against abortion except in 'extreme circumstances'

<https://www.rappler.com/philippines/commission-human-rights-against-abortion-except-extreme-circumstances/>

²² What's in the proposed heterosexual bill? How is it different from the SOGIESC Equality bill?

<https://verafiles.org/articles/vera-files-fact-sheet-whats-in-the-proposed-heterosexual-bill-how-is-it-different-from-the-sogiesc-equality-bill>

²³ ABS-CBN won't appeal 'It's Showtime' suspension. Retrieved from

<https://www.cnnphilippines.com/entertainment/2023/10/6/abs-cbn-wont-appeal-its-showtime-suspension.html>

²⁴ MTRCB Chair Lala Sotto dismisses complaints over Tito, Helen's kiss on EAT

<https://filipinotimes.net/latest-news/2023/08/02/mtrcb-chair-lala-sotto-dismisses-complaints-over-tito-helen-s-kiss-on-eat/>

²⁵ City Council meeting CHED, schools on 'rules bias' vs LGBTQ

<https://cebucity.news/2022/09/14/city-council-meeting-ched-schools-on-rules-bias-vs-lgbtq/>

²⁶ Collective Letter of CSOs to Dep-Ed and CHED against Gender-based Discriminatory Policies in Basic and Higher Education

<https://www.facebook.com/photo/?fbid=5428662717225610&set=pcb.5428672240557991>



for their right to graduate with clothes that aligned with their gender. They were eventually allowed only because there was a heavy campaign in favor of them in social media. There are also documented cases of modules and school curricula perpetuating harmful gender stereotypes that affect gender nonconforming students and their families negatively. Harmful gender stereotypes have been weaponised to bully, humiliate, and instill a culture of queerphobia in schools and education settings.

Recommendations

The following are the recommendations of the Society of Trans Women of the Philippines (STRAP) to the Special Rapporteur on Freedom of Expression that they should adopt in her country visit:

Pass legislation for a legal gender recognition for trans and intersex people with a simple administrative procedure recognising and affirming our rights to dignity, self-determination and bodily autonomy;

Take steps to prohibit and criminalize sexist, misogynist and other forms of gender-related hate speech including TLGBQIA+phobic remarks;

Abolish morality laws under the Revised Penal Code that are used to the right to freedom of opinion and expression and provide adequate protections against TLGBQIA+ people;

Publicly condemn TLGBQIA+phobic discourse and gender-based violence against TLGBQIA+ community and ensure, through mandatory and continuous capacity-building for judges, prosecutors, police officers and other law enforcement officials to enforce the legal prohibition of hate crimes and hate speech;

Ensure that human rights defenders, including TLGBQIA+ people can freely carry out our advocacy for TLGBTQIA+ human rights and exercise their rights to freedom of expression, peaceful assembly and association free from harassment, surveillance or undue restrictions, including arbitrary arrest and arbitrary prosecution;

Prevent, investigate, prosecute, and adequately punish perpetrators of hate crimes against the TLGBQIA+ people and develop a system for the collection and analysis of data on online violence and hate speech against TLGBQIA+ people.

Integrate a special focus on eliminating sexual and gender stereotypes that hinder the access to education for TLGBQIA+ students;

Ensure that school curricula do not perpetuate harmful gender norms; and cases of bullying are investigated against TLGBQIA+ and gender diverse students;

Allow students to wear uniforms that affirm their current gender and provide measures to prevent the policing of gender presentation of children in public and private spaces.