



# National Dialogue on HIV and Human Rights

High Level National Dialogue Report

Jointly convened by the United Nations Development Programme and the  
Commission on Human Rights of the Philippines



United Nations Development Programme

# National Dialogue on HIV and Human Rights

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The Philippines National Dialogue on HIV and Human Rights was a direct national level follow-up to the Asia-Pacific Regional Dialogue of the Global Commission on HIV and the Law (February 2011, Bangkok) and the Asia-Pacific High-level Intergovernmental Meeting on the Assessment of Progress against Commitments in the Political Declaration on HIV/AIDS and the Millennium Development Goals (February 2012). This meeting was supported by UNDP under the ISEAN-HIVOS Multi-country Global Fund Programme (Round 10) on HIV, MSM and Transgender persons.

## List of Acronyms and Abbreviations

ADB	Anti-Discrimination Bill
AIDS	Acquired Immune Deficiency Syndrome
AMTP	AIDS Medium Term Plan
APAC	Asia Pacific
ART	Antiretroviral Therapy
CHED	Commission on Higher Education
CHR	Commission on Human Rights
DepEd	Department of Education
DILG	Department of Interior and Local Government
DOH	Department of Health
DOJ	Department of Justice
DSWD	Department of Social Welfare and Development
GARPR	Global AIDS Response Progress Report
HB	House Bill
HIV	Human Immunodeficiency Virus
LGBT	Lesbian, Gay, Bisexual and Transgender
MARP	Most at Risk Population
MDG	Millennium Development Goals
MSM	Men who Have Sex with Men
NASA	National AIDS Spending Assessment
NCPI	National Commitment Policy Instrument
NEC	National Epidemiology Center
PLHIV	People Living with HIV
PNAC	Philippine National AIDS Council
PNP	Philippine National Police
PPA	Pinoy Plus Association
PWID	People Who Inject Drugs
RA	Republic Act
SOGI	Sexual Orientation and Gender Identity
TCS	Treatment, Care and Support
TG	Transgender
UN	United Nations
UNAIDS	Joint United Nations Programme on HIV/AIDS
UNDP	United Nations Development Programme
VCT	Voluntary Counseling and Testing

## Executive Summary

Growth in the number of HIV infections has been repeatedly noted in the Philippines, which is one of only seven countries globally that registered more than 25% increase in HIV incidence in the last 10 years, according to the 2010 UNAIDS Report on the Global AIDS Epidemic. It is recognized, however, that to deal with the HIV epidemic, approaches based on human rights need to be developed. This is because – as UNAIDS noted in the 14<sup>th</sup> Session of the Human Rights Council in Geneva, Switzerland – human rights and legal protections are essential to enable people to get the HIV information and services they need to avoid infection, and if HIV positive, to disclose their status and get treatment.

In the Philippines, people living with HIV (PLHIV) are protected by RA 8504, which guarantees the protection of the human rights of PLHIV. However, stigma and discrimination against them remain a major challenge, with one in two Filipinos living with HIV having their rights violated. These violations touch not only on HIV status, but also on sexual orientation and gender identity (SOGI), with many men having sex with men (MSM) and transgender (TG) people – key populations affected by HIV – getting discriminated against.

To discuss the country situation on HIV and human rights, including stigma and discrimination related to AIDS and SOGI, United Nations Development Programme (UNDP), with the Commission on Human Rights (CHR) of the Philippines, convened the National Dialogue on HIV and Human Rights on 6 July 2012. The gathering intended to discuss the country's response related to HIV and human rights; and provide an avenue for discussion between “rights holders” (i.e. PLHIV, MSM and TG) and “duty bearers” (i.e. government leaders).

Participating in the gathering were 21 “duty bearers” (or those from the government) from 12 agencies, and 28 “rights holders” (or those from the civil society, and key affected populations) representing 22 organizations. The dialogue was also witnessed by the media, with four media outlets in attendance, and members of the international community.

Presentations were given, revolving around: the situation of HIV and AIDS, and human rights in the Philippines; and HIV and human rights responses. Speakers included representatives from the executive branch (i.e. Department of Justice, Department of Interior and Local Government, Department of Health); legislative branch (i.e. House of Representatives); a national human rights institution (i.e. CHR); and from community-based PLHIV, MSM and TG groups. The presentations were followed by a dialogue.

Key points came to the fore during the gathering.

Firstly, it was noted that in the Philippines, there are already existing mechanisms for HIV-related stigma and discrimination concerns, as mandated by the law, particularly by Republic Act (RA) 8504. For instance, as noted by Dr. Susan Gregorio, OIC/Executive

Director of Philippine National AIDS Council (PNAC)–Secretariat, initiatives that promote the welfare of PLHIV include the referral system developed by the Department of Social Welfare and Development (DSWD). Similarly, Hon. Leah Armamento, Undersecretary of the Department of Justice, mentioned that those who experience discrimination can actually approach, among others, the barangay, police, guards, DOJ, CHR, Public Attorney’s Office (PAO) and the Integrated Bar of the Philippines (IBP).

Secondly, however, it was noted that there is a lack in the proper implementation of existing laws, and in some instances, a conflicting interpretation of existing laws that lead to discriminatory implementation of the same. Jonas Bagas of TLF SHARE Collective mentioned the raids done in venues frequented by MSM, with the Philippine National Police (PNP) using the presence of condoms as proof of prostitution, thus meriting the raid. While the promotion of safer sex is promoted by RA 8504, these raids discourage these venues to promote safer sex as they risk being raided for doing so.

Thirdly, information dissemination was found lacking. Some of the participants were even unaware that the Department of Health (DOH) publicizes its statistical data on HIV infection in the Philippines; while others were unfamiliar with the government’s already available services for PLHIV, such as the DSWD’s referral system. Redress mechanisms, which government officials said are available, are also not known by many.

Fourthly, there is a need to strengthen existing laws. Already, amendments to RA 8504 are in the works with House Bill (HB) 5312, pushed by the likes of Hon. Janette L. Garin, Senior Deputy Majority Leader of the House of Representatives. HB 5312 has already been consolidated with another version filed earlier last year, and it is awaiting passage in the Committee on Appropriations.

Similarly noted was the need to strengthen networks to deal with HIV-related human rights abuses. This particularly touched on: 1) the strengthening of liaison with the PNP, which has been criticized for being an occasional human rights violator itself; 2) the need to form partnerships with legal groups to deal with HIV-related cases; and, 3) the need to push for the inclusion of HIV education in the curriculum offered by Department of Education (DepEd), Commission on Higher Education (CHED) and Technical Education and Skills Development Authority (TESDA). As stated by Renaud Meyer, Country Director of the UNDP in the Philippines, to attain the goal of having “zero new HIV infections, zero discrimination and zero HIV related deaths, there is a need for collective action and shared responsibility among all stakeholders.

Lastly, the need to build the capacity of the people was stressed. Particularly, efforts need to be done so that PLHIV and members of key affected populations who experience stigma and discrimination know their rights, and where to go if these are violated.

While efforts are already being done to deal with HIV-related stigma and discrimination, Edmund Settle, policy specialist of UNDP Asia Pacific Regional Center, reminded those

who implement HIV-related programs for PLHIV and key affected populations to include human rights as a component of proposals sent for funding.

## Background

According to the 2010 UNAIDS Report on the Global AIDS Epidemic, the Philippines is one of only seven countries globally that registered more than 25% increase in HIV incidence in the last 10 years. This unenviable position comes as no surprise, nonetheless, since data from the National AIDS Registry of the Department of Health (DOH) revealed an increase in new reported HIV cases in the country, with 60% of the cumulative infections in the country reported in the last three years alone. From 2006 figures showing only one new case every three days, in the first quarter of 2012, one HIV infection has been reported every three hours (or eight per day). Because of this, the Philippines is said to be at a critical stage in its response to HIV and AIDS.

That the response need not solely focus on the figures, but on the very people they embody has been repeatedly emphasized. In almost 30 years of dealing with HIV, what continue to prove effective are approaches based on human rights. During the 14<sup>th</sup> Session of the Human Rights Council in Geneva, Switzerland, UNAIDS noted that “human rights and legal protections are essential to enable people to get the HIV information and services they need to avoid infection, and if HIV positive, to disclose their status and get treatment.”

In the Philippines, stigma and discrimination against people living with HIV (PLHIV) remain a major challenge even after almost three decades of AIDS response. This is also even if the country has a mandate – the Republic Act 8504 (or RA 8504, otherwise known as the Philippine AIDS Prevention and Control Act of 1998, or the Philippine AIDS Law) – that supposedly guarantees the protection of the human rights of PLHIV.

In 2009, the PLHIV Stigma Index Report revealed that one of two Filipinos living with HIV had their rights violated in the year prior to the study. Because of their HIV status, these people were detained, quarantined or segregated, forced to submit themselves to medical or health procedure, refused provision of basic health services, and denied health or life insurance. Sadly, most of those who suffered abuse did not seek legal redress because of fear, limited resources, lack of confidence on the outcome, or perceived obstacles.

This is actually related to discrimination based on sexual orientation and gender identity (SOGI), as it drives members of the lesbian, gay, bisexual and transgender (LGBT) community to situations that place their physical, mental and social well-being at greater risk. This may be illustrated by the growth in the number of those who get infected with HIV among LGBTs, particularly men who have sex with men (MSM) and transgender (TG) people. The DOH reported that eight out of the ten cases registered every day are acquired through same-sex transmission.

As it is, the stigma attached to AIDS and the discrimination actually experienced by PLHIV have resulted in a low uptake of services by the PLHIV themselves, as well as people who are most at risk or are vulnerable to HIV. The 2011 Philippine Country Report on Universal Access to HIV Prevention, Treatment, Care and Support reported

that coverage for HIV prevention services among key populations at higher risk is only 38%, a long way away from the country's Universal Access target of 80%.

Already, the UN in the Philippines warned that the Philippines is unlikely to meet by 2015 the Millennium Development Goal 6, i.e., to halt and begin to reverse the spread of HIV and AIDS. The attainment of this goal is adversely affected not only by the low coverage of prevention services, but also the continuing stigma and discrimination associated with AIDS.

## ***Objectives***

On July 6, 2012, the United Nations Development Programme (UNDP), with the Commission on Human Rights (CHR) of the Philippines, convened the National Dialogue on HIV and Human Rights. This was a follow-up to the Asia-Pacific Regional Dialogue of the Global Commission on HIV and the Law, and the Asia-Pacific High-level Intergovernmental Meeting on the Assessment of Progress against Commitments in the Political Declaration on HIV/AIDS and the MDGs, held in Bangkok from February 6 to 8, 2012.

The dialogue had three objectives. Firstly, it intended to discuss the country situation on HIV and human rights, including stigma and discrimination related to AIDS and SOGI.

Secondly, it intended to discuss the country's response related to HIV and human rights, specifically: 1) The country progress vis-à-vis the Commitments in the Political Declaration on HIV and AIDS, and the Millennium Development Goals (MDGs); 2) Policy reforms on HIV and human rights; and 3) Redress mechanisms on HIV-related human rights violations.

And thirdly, it intended to provide an avenue for discussion between "rights holders" (i.e. PLHIV, MSM and TG) and "duty bearers" (i.e. government leaders).

## ***Participants***

The dialogue's participants may be divided into two broad groups: those who came from the government sector (called the "duty bearers") and those who represented the civil society and key affected populations (called "rights holders").

Particularly, for the "duty bearers", representatives came from the executive branch (i.e. Department of Justice, Department of Interior and Local Government, Department of Health, Department of Social Welfare and Development, Department of Labor and Employment, etc.); the legislative branch (i.e. House of Representatives); and the judiciary (i.e., Supreme Court). There was also representation from a national human

rights institution (i.e. CHR). For the “rights holders”, the participants included members of community-based PLHIV, MSM and TG groups, and other civil society organizations.

Segregated according to type of group affiliated with, in attendance were 21 duty bearers from 12 agencies, and 28 rights holders representing 22 organizations.

The dialogue was similarly witnessed by the media, with four media outlets in attendance, and members of the international community headed by the Philippine UN Resident Coordinator (ad interim), Ugochi Daniels, and representatives from six other UN and international agencies.

### **Facilitator**

The facilitator responsible not only for keeping the program flowing, but for keeping it upbeat was Joel de Mesa. A veteran facilitator, De Mesa helmed the 2011 LGBT Philippine National Conference, Roundtable discussions for PNAC in 2011, and the leadership development workshops for APN+ and for Purple Sky Network, both also in 2011, among others. Affiliated with TLF SHARE Collective (formerly known as The Library Foundation) since 1992, De Mesa is now a freelance consultant and trainer, bringing with him for the dialogue his expertise on human sexuality, reproductive health, MSM programming and HIV.

## **Proceedings**

### **Opening Remarks**

Opening the day was Renaud Meyer, Country Director of the UNDP in the Philippines and concurrent Chair of the UN Theme Group on AIDS. In welcoming the participants (Annex 1), he noted how the dialogue came in a “very opportune time”, just as HIV incidence in the Philippines has turned from bad to worse. Citing data from the National AIDS Registry of the Department of Health (DOH), Meyer cited the “exponential increase” in newly reported HIV cases in the country, with more than half (60%) of the cumulative infections reported in the last three years alone. In fact, from one new case detected every three days in 2006, the reported HIV incidence increased to about one every two hours, or 10 per day, in the first quarter of 2012. This is a development that, said Meyer, earned the country the “disreputable distinction” of being one of only seven countries globally with more than 25% increase in HIV incidence since 2001, even with the declining trend in the epidemic in most parts of the world.

Meyer, however, said that when talking about HIV and AIDS, there is a need to look beyond the numbers, since HIV and AIDS are much more than statistics. He then pointed out that:

*“It is widely recognized that stigma and discrimination fuels the transmission of HIV, and have greatly increased the negative impact associated with the*

*epidemic. HIV-related stigma and discrimination create major barriers to preventing further infection, alleviating impact and providing adequate treatment, care and support to people who need it most.”*

For Meyer, stigma and discrimination against PLHIV remain major challenges in the Philippines, even if their protection is enshrined in the RA 8504. The PLHIV Stigma Index Report released in 2009 reported that one in two Filipinos living with HIV had their rights violated, including being detained, being quarantined or segregated, refused provision of basic health services, and denied health or life insurance. Worse, most of those who were discriminated against did not seek legal redress.

It is also the stigmatization of HIV and AIDS that Meyer said resulted in the a low uptake of services by people most-at-risk, vulnerable and living with HIV, particularly MSM and TG. UN in the Philippines already warned that the country is unlikely to attain by 2015 the Millennium Development Goal 6 (i.e. to halt and begin to reverse the spread of HIV and AIDS).

There were “bright spots” mentioned by Meyer. For one, under Chair Loretta Ann Rosales, the Commission on Human Rights (CHR) has concluded the second round of orientation for regional directors of the government body. Secondly, there are two proposed bills in both Houses of Congress (House Bill 8312 and Senate Bill 3072) that seek to amend RA 8504 to strengthen the country’s policy on HIV and AIDS prevention, treatment, care and support (TCS). Thirdly, there are two pending House Bills (HB 515 and HB 1483) in Congress that address stigma and discrimination against lesbian, gay, bisexual and transgender people (LGBTs). Fourthly, local ordinances have been enacted to promote anti-discrimination of LGBTs; as well as to create and allocate budget for local AIDS councils. And lastly, 10 heads of states of ASEAN countries, including Philippine President Benigno Aquino III, pledged to halve sexual transmission of HIV transmission and transmission among people who use drugs, as well as accelerate efforts to achieve the goal of universal access to antiretroviral therapy (ART) by 2015. This is to reinforce commitments made at the High Level Meeting on AIDS in June 2011.

The UN, for its part, is slated to embark on a Joint Programme on Comprehensive Prevention among Key Populations at Higher Risk – an effort that intends to: 1) better the quality of HIV prevention services, 2) increase the coverage of these services towards universal access, and 3) address the key barriers to the achievement of the country’s MDG and universal access targets. It has also been supportive of the Human Soul Exhibit, which calls for the passage of the Anti-Discrimination Bill. Similarly, UNDP – through UNAIDS – convened and hosted the Global Commission on HIV and the Law, a body of leaders and experts tasked to develop rights-based and evidence-informed recommendations on rights and law in the context of HIV. On July 9, 2012, the Commission launched its final report.

To attain the goal of having “zero new HIV infections, zero discrimination and zero HIV related deaths,” Meyer stressed the need for collective action and shared responsibility among all stakeholders.

Following the welcome address of Meyer was the start of the presentations by the invited speakers.

The facilitator, De Mesa, at this point pointed out how the day’s program will unfold. The program for the day was actually divided into two parts, i.e. the morning and afternoon sessions. In the morning, all of the presentations were to be done to: firstly, establish the context of the human rights situation in the Philippines (four presentations); and, secondly, ascertain the human rights responses in the Philippines (three presentations). An open forum was scheduled at the end of all the presentations.

In the afternoon, a dialogue was to be held for an interaction between people who represent the government sector and those who represent the civil society and key affected populations. The focus of the dialogue was to answer the question: *How can the law effectively promote the rights of PLHIV and key affected populations?* More than simply openly discussing what were discussed, however, the dialogue was intended to identify to possible solutions to HIV-related stigma and discrimination.

A press conference was done during lunch, with some of the presenters participating.

## **I. HIV and Human Rights Situation in the Philippines**

### ***I.1. HIV and AIDS Situation in the Philippines***

The first speaker was Dr. Joselito Feliciano (Annex 2), Monitoring and Evaluation (M&E) Officer of the Philippine National AIDS Council (PNAC)-Secretariat, who presented on the HIV and AIDS situation in the Philippines.

Feliciano – similar to Meyer – noted that the Philippines is now one of only seven out of 63 reporting countries that registered an increase in rates of HIV infection, which is contrary to the decreasing global trend. With a cumulative number of HIV cases breaching 9,000 as of May 2012 to reach 9,669 HIV infections, data from the National AIDS Registry of the DOH show that most of the new infections were reported to be from sexual transmission from males. He similarly noted that while in 2000, the Philippines only had one case of HIV infection for every three days, in 2012, there is one case every three hours. This trend started in 2009. Fifty percent of the infections happened in the National Capital Region (NCR), with other regions with high HIV infection rates including Region 7 (13%), Region 4A (12%), and Regions 11 and 3, with 7% each. The HIV infection rate from the rest of the country totaled 11%.

Feliciano also provided a bird’s-eye view on the responses of the Philippine government to the epidemic, anchored in the Global AIDS Response Progress Report (GARPR)

2012 (formerly known as UNGASS), submitted every two years to UNAIDS in Geneva, Switzerland. It has three components, namely: 1) National AIDS Spending Assessment (NASA), 2) National Commitment Policy Instrument (NCPI), and 3) indicators to check on the status of responses.

Firstly, for the NASA, the Philippines spent \$12 million (approximately P573 million) for 2009, compared with \$12.5 million for 2010 (approximately P564 million) and for 2011 (P545 million). Feliciano said that this is far from the ideal spending of \$1 per person per capita, as recommended by the National AIDS Commission in Asia. Forty-eight percent of the total spending was sourced from international sources, mainly from the Global Fund. Other partners include different UN agencies, and USAID. Public sources accounted for about 25%, and the private sources accounted for about 27%. Year-on-year, a decline in the contributions of international agencies was noted, as was the increase in the share of the government (from P67 million in 2009 to P198 in 2011) and the private sector (from P89 million to P179 million for the same period).

Secondly, Feliciano reported that NCPI – which compares the scores from 2006 to 2012 of the responses on HIV as perceived by the government sector, as well as civil society organizations – showed varying results.

On the one hand, for the government agencies, there were noted improvements in terms of strategic planning, prevention, and monitoring and evaluation. The political support and leadership was said to have declined. And since it was only in the latest survey that a category on human rights was added, no comparative data is available on this.

On the other hand, in the case of civil society involvement, noted were improvements in terms of prevention, and TCS. However, found in need of improvement were political support and leadership.

Thirdly, the indicators considered in GARPR compared the years 2010 and 2012. Noteworthy was the increase of condom use among male sex workers (from 30% to 84%), as well as MSM (from 32% to 36.29%). However, there was a decrease in the number of MSM reached by HIV prevention programs (29% to 22.73%), as well as HIV testing (7% to 5.17%). People who inject drugs (PWIDs) also showed progress, with an increase in the number of those who got tested (1.5% to 4.77%) and an increase in the number of those who used condoms (for PWIDs who do sex work, from 11% to 45%). However, the number of those who used sterile injecting equipment decreased from 85% to 24.73%.

Feliciano also mentioned that there already exist Philippine laws related to HIV and human rights, particularly RA 9165 (Dangerous Drugs Act), RA 9208 (Anti-Trafficking in Persons), and RA 8504 (AIDS Law).

## ***1.2. AIDS-related Stigma and Discrimination in the Philippines***

Feliciano's presentation was followed by Edu Razon (Annex 3), President of Pinoy Plus Association (PPA).

Razon noted the need to focus on stigma and discrimination when discussing HIV and AIDS because, according to him, it remains to be a main obstacle to the proper care, treatment and support of PLHIV; it discourages people from seeking voluntary counseling and testing (VCT); and it remain the "single most important barrier to public action, and the chief reason why AIDS epidemic continue to devastate societies".

Like Feliciano, Razon noted the presence in the Philippines of AIDS-related anti-discrimination policies. For instance, RA 8504 mandates that compulsory testing shall be considered unlawful unless otherwise provided in the Act, PLHIV's rights to privacy, and the assurance of the provision of basic health care and social services for individual with HIV.

However, even with the presence of the mandate, Razon said that evidences gathered by various studies on HIV and AIDS-related stigma and discrimination in the Philippines show a bleaker picture. The key findings of various studies included:

- 1) How the healthcare setting is the most discriminating area, with cases of refusal of treatment on the grounds of HIV status, offering of various treatments for HIV-positive persons, and testing without the knowledge of the individual.
- 2) In the workplace, there have been cases of mandatory testing before or during employment; lack of confidentiality; and instances when PLHIV were detained, isolated or quarantined.
- 3) In schools, gossiping has led to the need to move out of some, with threats of physical violence to be committed against those suspected to be infected and/or affected by HIV.
- 4) In communities, there have been cases when PLHIV or their families were pressured to leave/forced to change residence; and instances when a PLHIV who died was denied of decent burial.
- 5) For families, there were instances when PLHIV were abandoned by spouse/family members; rejected sexually; and faced other forms of discrimination (for example, their clothes were not washed together with those of the family members, and kitchen utensils were separated).

Given these cases, Razon announced that UNAIDS and PPA developed a manual on how to seek redress.

Similarly noted by Razon was the non-availing of redress mechanisms, with only a few PLHIV who experienced discrimination raising their issues to the CHR. Even those who did so, failed to do a follow-up. Among the reasons cited on why PLHIV do not seek support include: the lack of understanding of their human rights, lack of knowledge where to access redress mechanisms, the unwillingness to come out to file cases, and the prohibitive costs involved in filing cases.

Razon ended his presentation with recommendations on how best to deal with this situation. These included: the taking of concrete actions against HIV-related stigma and discrimination by including these in policies and practices; inform and influence the national review of RA 8504; produce more IEC materials so PLHIV know their rights; formulation of policies and strategies for the health sector; and for PLHIV themselves to be educated on their rights and how to access redress mechanisms.

### ***1.3. Stigma and Discrimination related to SOGI in the Philippines***

In introducing the next speaker, De Mesa noted that when talking about stigma and discrimination, discussions do not only revolve around PLHIV. Also included here are the key affected populations and communities, including the lesbian, gay, bisexual and transgender (LGBT) community, since stigma and discrimination also touch on sexual orientation and gender identity (SOGI).

Jonas Bagas (Annex 4), Executive Director of TLF-SHARE Collective, discussed stigma and discrimination related to SOGI in the Philippines. Emphasizing that the time to have “a frank discussion is now”, Bagas noted the seeming disconnect in the spirit of the Constitution with what is happening in real life. This is because, according to him, while the Constitution enshrines everyone’s fundamental rights to equal protection and human dignity, “it seems like a different Constitution is being used” in the lives of LGBTs. Bagas specifically noted two SOGI-related issues: 1) the abuses committed against members of the LGBT community solely because of their SOGI; and 2) the raids that policemen do on venues frequented by MSM, occurrences he dubbed as “illegal” because they are “baseless” and could well be just a “machinery of extortion”.

For Bagas, there is a need to correct the disjoint between the law and what’s happening in real life. As such, he recommended the push for changes in the law to ensure that no discrimination happens to LGBTs; the enactment of an anti-discrimination law; and the changing of perspectives on same-sex relationships, particularly among government officials who he urged to speak up on the “legitimization of gay relationships”, and that “dignity is our birthright, and happiness is our birthright”, he said.

### ***1.4. Legal Reports on MSM and Transgender Persons in Asia and the Pacific***

Bagas’ presentation was followed by the discussion also on HIV and the law by Edmund Settle, Policy Specialist of UNDP Asia Pacific Regional Center (Annex 5).

Settle first observed that the Philippines is the only country that still segregates data from homosexual and bisexual, even if they are the same (under MSM); and that it is the only developing country where the virus transitioned from mainly heterosexual epidemic to homosexual epidemic, so that it now mirrors the West. He noted, however, that “there’s still time to act”.

Acting, for Settle, means recognizing that in order to prevent and control the spread of HIV, focus must be given on the protection and promotion of the human rights of those

most vulnerable who are typically the most marginalized members of society. As Settle said:

*“In the context of HIV, where human rights are protected and promoted, people are empowered: to access information, to access non-discriminatory prevention services, to access life-saving treatment, and to access care and support. Conversely, where human rights are violated, people are driven underground far out the reach of essential information, services and support.”*

According to Settle, there are commitments looking at dealing with HIV-related stigma and discrimination worth mentioning. In the Asia Pacific (APAC) region, there are the ESCAP regional resolutions (66/10 and 67/9), which look at the undertaking of measures to address and eliminate all forms of stigma and discrimination; and for the first time a UN General Assembly resolution specifically includes MSM, even if it does not include TG yet. Settle also mentioned the UNAIDS Joint Action for Results 2011 – 2015, which calls for a collaboration with civil society and all stakeholders to uphold non-discrimination efforts.

Settle said that APAC has already made significant progress in halting and reversing HIV, though an increase in investments in targeting populations that drive HIV epidemics may help decrease new infections even more in the next few years. As it is, total expenditures for MSM prevention services in 38 countries total \$3 million, but the needed money is pegged at \$29 million.

But Settle said that “even more spending won’t further decrease HIV infections, unless the policy environment is improved as well” since “efficiency and effectiveness of HIV programming depends on people being able to seek essential services and support and live their lives free from stigmatization, discrimination, homophobia, transphobia, blackmail, violence, and criminalization”.

Settle also mentioned the Global Commission on HIV and the Law, which was established in 2010 by UNDP to analyze current situations and existing evidence to develop rights-based and evidence-informed recommendations regarding laws that impact on HIV responses and people affected by HIV. The global commission comprises of: 15 commissioners from around the world, and 23 members of the technical advisory group to build consensus around evidences. The commission has been working for the past 18 months.

Since the dialogue was held prior to the July 9 release of the results of the study of the commission, Settle was only able to mention some of its key findings. Particularly, how “law and the legal environment is essential for effective, affordable and sustainable responses to HIV, even if the right laws cannot by themselves stop the epidemic”. As such, he said that countries must pay attention to: laws on the books, law on the streets, and access to justice.

To deal with MSM and TG, in particular, Settle noted the need to reform laws that criminalize same-sex behavior, cease law enforcement harassment or selective

enforcement, legally recognize TG in identity documents, and enact anti-discrimination protection.

Settle noted some successes on this front, particularly in the APAC region. These include the judicial repeal of sodomy laws in India in 2009; police sensitization with MSM and TG in Thailand, Australia and Papua New Guinea; and legal recognition of TG in China, Indonesia, Japan, Nepal, Pakistan, Korea and Singapore. There are, nonetheless, ongoing challenges, including the continuing criminalization, discrimination, lack of healthy law enforcement, and violence (including gender-based violence).

As he wound down his presentation, Settle mentioned a “new type of response” to HIV-related stigma and discrimination. Particularly, he mentioned the need to tailor agenda to local contexts, since solutions must be locally driven and owned, within a framework of universal human rights principles, for them to work. In a country like the Philippines, this could mean focusing on municipal responses. There is also the need to shift coverage to follow programmatic expenditure and coverage and move it to cover those really vulnerable. Similarly, there is a need to shift content to programs that empower, address legal and social vulnerabilities and other structural issues.

Adding to these, Settle also mentioned the need to take HIV out of isolation, by engaging national and regional human rights institutions; aligning of the justice sector with national HIV plans; implementing of policies at municipal/city levels; engaging of the local police, judges, lawyers and legislators through partnerships; providing of legal aid and legal literacy; and involving of the media in the promotion of human rights.

Just before he finished his presentation, Settle noted that in most times, colleagues from government health departments – who are the principal recipients of Global Fund grants – do not include human rights as a component of proposals sent for funding. Instead, these still focus on health-sector responses, such as buying drugs, *et cetera*. Notably, community strengthening, advocacies, *et cetera* are not included. Settle appealed for those in the health departments to start including these in the proposals sent out during the next round of call for proposals.

Settle closed his presentation by announcing the release on the following Monday, July 9, of the Global Commission on HIV and the Law report, available at [www.hivlawcommission.org](http://www.hivlawcommission.org).

At this point, the facilitator, De Mesa, asked the participants if there were pressing issues they wanted to raise. There were some that were raised.

One issue raised was the lack of information on various issues.

One participant, for instance, asked where the funding will come from to finance for the treatment of the increasing number of PLHIV, considering that the Global Fund will no longer provide funds for this in the future in the country. Dr. Feliciano of the PNAC–

Secretariat answered this, saying that the government, particularly the DOH, already budgeted for this, as it takes over from Global Fund starting November 2012.

Another participant raised the lack of information on the available services for PLHIV, as well as the people they leave behind when they pass away. Specifically, a participant from Davao City belonged to a group that had a member who died from AIDS-related complications, but they remain unaware about available treatment, care and support (TCS) services; just as they remain unaware of the burial rights of PLHIV.

In response to this, Dr. Susan Gregorio of the PNAC-Secretariat said that the government body is strengthening its efforts for the PLHIV community to enroll in PhilHealth for them to avail of TCS. Also, there already exists a referral system developed so that they can get support not just from LGUs but even from other members of the community.

The facilitator pointed out the availability of mechanisms for PLHIV, as stated by the PNAC official; but he similarly pointed out how this information may not be known by many in the community. As such, this could be a key point to discuss during the later dialogue.

Another issue raised was the need for political will to implement the desired changes.

For instance, one TG participant made note of the presentation of UNDP's Settle, which cited the resolutions in use in some APAC countries to promote anti-discrimination. For her, the recommendations can actually be applied locally, but for this to happen, there should be parallel efforts done by local officials. The issue she raised was also a call for action to those from the government in the gathering.

Similarly, one participant called for politicians to look closely into the inter-connections of HIV-related stigma and discrimination with other issues encountered by LGBTs. As summed up by the facilitator, there is a need to look at establishing a closer link with general stigma and violence, and if this has anything to do with HIV; and if it does, who should look into this.

Another issue raised was the need to “flag the role of religion on HIV discourse and human rights.” As ACHIEVE’s Malu Marin stated:

*“We need to really come up with... solutions on how to identify the role of the Roman Catholic Church (in these discussions). Whether we like it or not, they do exert a lot of influence, so we need clearer strategies on this.”*

The facilitator stated that while invitations may have been sent to religious organizations, there may be a need to ascertain how to make sure that they attend, if only to start a dialogue. The need for religious groups to attend was considered important because of the need for more “objective, scientific based approaches to deal with the issue at hand”.

Another open forum was promised by the facilitator in the afternoon, as he introduced the next speaker, Dr. Susan Gregorio, OIC/Executive Director of PNAC–Secretariat.

## **II. HIV and Human Rights Responses in the Philippines**

### ***II.1. Country Progress against Commitments in the Political Declaration on HIV and AIDS and the MDGs***

Gregorio (Annex 6), who did a presentation on the responses on the HIV and AIDS situation in the Philippines, spoke on behalf of Hon. Austere Panadero, Undersecretary of the Department of Interior and Local Government (DILG) and vice chair of PNAC. Particularly, she presented the report prepared by Department of Health (DOH) Undersecretary Dr. David J. Lozada Jr. on MDG 6.

Gregorio started her presentation by noting the situation of HIV and AIDS in the country, particularly its status as one of only seven countries to register an increase in HIV infections. In fact, she said, the NEC estimates that by 2015, 35,000 Filipinos will be infected.

In the Philippines, the drivers of the HIV epidemic include the continuing high prevalence of HIV among high risk groups, particularly MSM and PWIDs. Related to this is the noted high prevalence of unsafe behaviors among key populations at higher risk. Also noted is the increasing numbers of vulnerable areas. In the past, only metropolitan areas were prioritized, but now, the NEC has identified over 70 priority areas. Also mentioned were: increasing financial gap, funding problems, below-target coverage, and legal barriers.

Gregorio said that there are facts needed to be faced in dealing with HIV. These include: a decrease in foreign funding, the lack of prevention efforts in the country, the country's lack of capacity to support expensive HIV treatment, and the continuing increasing number of HIV cases.

Gregorio nonetheless reported that efforts have been done to deal with HIV in the Philippines. In 1998, for instance, the Philippines became one of the first countries in the world to have a law touching on HIV through RA 8504. She admitted all the same that the implementation has been found wanting, even as amendments are already in the works.

Gregorio similarly noted efforts done in various sectors. For instance, in the health sector, cited were: treatment and care of PLHIV as the primary aim; ensuring adequate safe blood supply; good M&E; and development of prevention of mother-to-child-transmission (PMTCT) efforts. In the labor sector, a policy was done by the Department of Labor and Employment (DOLE) touching on HIV in the workforce, and this was also incorporated in trainings given by the government body. The social welfare sector

response is focused on Department of Social Welfare and Development's (DSWD) referral system so PLHIV are provided with referral to agencies that could help them.

Gregorio also mentioned the responses coming from the education sector, particularly Commission on Higher Education (CHED) and Department of Education's (DepEd) policy to integrate HIV education. She admitted, however, that this hasn't been done to the full extent. On their end, various local government units (LGUs) in 17 regions already formed functional Regional AIDS Assistance Teams, as well as revitalize AIDS councils. Under the Department of Foreign Affairs (DFA), there are trainings done in embassies for Filipinos outside the Philippines to be trained on HIV. Meanwhile, for the civil society, approximately 50 organizations have been working with DOH to reach MARPs, with some of them even classified as faith-based organizations, since even the Catholic Bishops' Conference of the Philippines (CBCP) already developed and rolled out its own HIV and AIDS module for pastoral workers.

Gregorio also noted that, through Announcement no. 21, series of 2010, the Civil Service Commission already mandated that by 2010, all government agencies or institutions should have HIV policy in the workplace. Already, the DILG, Department of Tourism (DOT), DepEd, Philippine Drug Enforcement Agency (PDEA) and the Philippine National Police (PNP) complied.

Gregorio reported that efforts in the Philippines are aligned with the goals set in the 5<sup>th</sup> AMTP Strategies Framework, which aims to halt the spread of HIV through partnerships. For the DOH, the investment framework is focused on prevention, health systems strengthening, and TCS. She particularly mentioned the need of investments for key populations at risk, cost-effective core interventions, identification of priority areas of hazards and risks, and establishment of collaboration for resource sharing.

There is also an effort to adapt the *Kalusugang Pangkalahatan* (Universal Health) program to address the HIV situation of the country. For this to happen, though, PLHIV are encouraged to enroll in the Philippine Health Insurance Corporation (PhilHealth) for them to get benefits, such as access to AIDS treatment hubs, social hygiene clinics, and HIV diagnostic facilities.

Gregorio announced that to deal with the 70 aforementioned priority areas cited as prone to the HIV epidemic, there will be an LGU Summit for these priority areas by September 5.

Gregorio ended her presentation with the posing of the dilemma that the Philippines has. According to her, for the 2013-2016 period, needed is P3,568,722,978 to deal with the epidemic; but the government does not know where to get the same. For her, though, this is more than a monetary need, but also a matter of prioritization, particularly of the key populations at risk for HIV infection. Gregorio said that they are already addressing this (i.e. prioritization) in the updated AMTP.

## ***II.2. Policy Reforms on HIV and Human Rights***

Speaking on policy reforms on HIV and human rights was Hon. Janette L. Garin, Senior Deputy Majority Leader of the House of Representatives (Annex 7). Garin's office participated in the consultations that resulted in the drafting of HB 5312, a bill that seeks to amend RA 8504.

Garin said that “the current challenges far outweigh what the law has to offer”, since RA 8504 may have been good when it was made 14 years ago, but the “epidemic profile has changed drastically (since then), requiring for more focused interventions.”

Garin mentioned some of the major features of HB 5312, which include:

- The inclusion of HIV and AIDS education as a right of an individual as part and parcel of his right to health and information;
- Establishment of the State of policies and programs to prevent the spread of HIV and deliver TCS services to Filipino PLHIV in accordance with evidence-based strategies and approaches that follow the principles of human rights, gender equality, and meaningful participation of communities affected by the epidemic;
- The removal of the State of all barriers to HIV and AIDS-related services; and
- Elimination of the climate of stigma that surrounds the epidemic and the people directly and indirectly affected by it.

According to Garin, the funding for the law's implementation, should it be approved, will come from the sin taxes.

HB 5312 has already been consolidated with another version filed earlier last year. It is now awaiting passage in the Committee on Appropriations.

## ***II.3. Redress Mechanisms on HIV-related Human Right Violations***

Discussing redress mechanisms on HIV-related human rights violations, Hon. Leah Armamento, Undersecretary of the Department of Justice (DOJ) (Annex 8), first defined human rights as a set of “universal entitlements... inherent to human beings”, and these are “inalienable fundamental rights” entitled to one simply because he/she is a human being.

Human rights is guaranteed under the Bill of Rights (Article III) of the Constitution, and is upheld in major international human rights instruments ratified by the Philippines, including the Universal Declaration of Human Rights, International Covenant on Civil and Political Rights, and Convention to Eliminate All forms of Discrimination Against Women.

Armamento also noted the presence of national laws that guarantee the rights of vulnerable groups, including the Labor Code, Migrant Workers Act, Family Code, and the RA 9208 for trafficked persons.

Armamento, nonetheless, admitted that even if the country has RA 8504, there are “no binding instruments that are specifically for the protection of PLHIV”. What the country has, instead, are “non-binding instruments that have elaborated on some rights specific to PLHIV”, including the International Guidelines on HIV/AIDS and Human Rights, and the International Labor Organization Code of Practice on HIV/AIDS and the World of Work.

Armamento stressed in her presentation that as members of a vulnerable group, Filipino PLHIV actually also have other rights on top of those guaranteed by the Constitution. These include the rights to: freedom from discrimination, freedom from mandatory/compulsory testing, right to confidential medical records, right to pre- and post-test counseling, right to decent burial, and right to insurance.

For those whose rights are violated, Armamento reported that there are redress mechanisms available in the country. Redress may be done through: mediation, litigation, grievance procedures, or administrative proceedings. In choosing any of these, a PLHIV just has to ascertain: the type of litigation to be done (whether it is a criminal or civil case), the purpose of the filing, the status of the perpetrator, and the gravity of the offense.

Armamento said that there are offices that can be approached when subjected to discrimination, including the *barangay*, police, guards, any adult, DOJ, CHR, Public Attorney’s Office (PAO), and the Integrated Bar of the Philippines (IBP).

At this point, the facilitator noted the surprise of some of the participants on the existence of redress mechanisms that may also be available for PLHIV Filipinos. As such, he raised this issue – i.e. on how to make the laws be known, and be applied – in the discussion slated for later in the day.

The gathering was ended for lunch.

Select speakers had a press conference.

### **III. Dialogue between Community (PLHIV, and MSM and TG) and Government**

The afternoon session was started with an open forum that allowed the participants to bring up their concerns. Again, various issues were raised.

To start, noted was the lack of information about the HIV and AIDS situation, even among the key populations. One TG participant, for instance, asked if there is available data on the populations infected by HIV; and whether these can be readily accessed. A representative from the DOH said that the information is actually readily available at DOH’s Website.

One participant noted the presentation done by DOJ's Armamento (on the redress mechanisms on HIV-related human rights violations), particularly since a study has been done looking into this. In this study, out of the surveyed 103 PLHIV who experienced stigma and discrimination, only 43 sought redress. And among the 43 who sought redress, only four ended up actually filing cases. For this participant, the study's results highlight various issues that need to be considered, particularly:

- The provision of right information, what with the PLHIV who sought redress first approached hospitals, not legal systems;
- If there are mechanisms that can be developed to deal with the costs accompanying filing cases; and
- If the system can actually handle a growth in the number of those who will seek redress, if this should happen.

As this particular participant said, "there really are a lot of gaps here."

While discussing the need to establish networks with various agencies when dealing with HIV in the Philippines, dealings with the country's educational system came to the fore. Particular issues raised at this point included: the inclusion of HIV education in DepEd, CHED and Technical Education and Skills Development Authority's (TESDA) curricula; and a timeline on when this can be done. A representative from PNAC said that the integration of HIV education in the curriculum will take a lot of effort, but it has already started with teaching the educators themselves. The same is done for TESDA and CHED. A complete roll-out in the country's educational system is yet to be done. With this, the facilitator included among the key points that should be discussed the timeline identification in program implementation.

To discuss the issues raised during the presentations earlier in the day, the participants were divided into four groups that represented the sectors present in the gathering, namely: government sector, civil society organizations, support groups, and MSM and TG groups.

The groups were asked to answer one question, in particular: *How can we use the law to effectively protect and promote the rights of PLHIV and key affected populations?*

They were allocated with one hour and thirty minutes to discuss.

### ***Presentations of Discussions***

The first group to present was the gathering of support groups (Annex 9). How they went about their report was to, first, identify perceived problems in the four areas where discrimination usually happens (i.e. family, community, health sector, and the workforce), and then provide proposed solutions for these.

For discrimination in families, noted were the silence of RA 8504 on discrimination that happens within families; as well as the silence of the Family Code when PLHIV are evicted from their homes because of their status. The solution proposed was focused

on RA 8504, particularly the inclusion of a clause to address any form of discrimination within the family.

For discrimination in communities, a problem identified was involuntary disclosure, which may be remedied by the development of a standardized HIV and AIDS ordinance to be disseminated and implemented down to the *barangay* level. Also mentioned was the refusal to render death and/or funeral services for PLHIV, which may be dealt with by the training of those who render death and burial services on HIV and AIDS; and for this to be made a national policy.

For the health sector, identified as problematic were the lack of preservation of confidentiality in the extending of health services to PLHIV; and the disallowing of PLHIV from getting fully covered by insurance. The recommended solution was the amendment of RA 8504 to cover HIV-related issues in healthcare settings, and allow the full coverage of HMO services.

Lastly, focusing on discrimination in the workforce, the group identified as problematic security of tenure of PLHIV upon disclosure of their seropositive status. The proposed solution was the institutionalization of comprehensive HIV and AIDS policies in workplaces.

The MSM and TG group (Annex 10) followed this presentation with three identified challenges and corresponding proposed solutions. Particularly identified were: the lack of MSM and TG laws related to HIV; lack of local ordinances, AOs, EOs or local laws that define SOGI; and the opposition to the proposed ADB since there are, supposedly, already existing laws that promote the anti-discrimination of MSM and TG.

The proposed actions to be taken include: maximization of existing laws to deal with MSM and TG groups; pushing for the passage of ADB; pushing for LGBT representation in Congress; and the inclusion of MSM and TG representation at local AIDS councils, and gender and development councils.

The group composed of those from civil society organizations presented next (Annex 11). Prior to their presentation, the group provided a preamble, i.e. that access to justice should be primarily the State's responsibility. CSOs have been told that access to justice should be included in their services, but sans receiving support themselves, the call for additional support from CSOs is "unfair, unrealistic and not feasible".

The group identified five key areas deemed important for the responses pertaining to stigma and discrimination reduction. Cited first was political leadership, which the group found lacking. To deal with this, the group recommended: 1) recognition of all relevant government agencies of the issue through an articulated position from government offices; and 2) the coming up of a unified position, particularly from DOH, DSWD, DOJ, and others.

For laws, the group believed that there is a need for RA 8504 to be amended to cover: harm reduction, VCT for minors, and condom use.

The third area mentioned was the need to tap the general population. This includes the need to expand ranks of advocates; reinforcement of human rights in the formal educational setting; and the mainstreaming of stigma reduction campaigns.

As for service providers, as well as the perpetrators of stigma and discrimination, the group recommended the coming up of a unified message. Strategies here include: training of service providers, follow-up trainings, identification of champions who are not necessarily MSM or TG, and developing of campaigns targeting service providers (e.g. use of celebrities).

Lastly, for PLHIV themselves, recommendations included the promotion of laws relevant to PLHIV among the PLHIV; borrowing from models like that of the Juvenile Justice Act and Anti-rape Law to protect identities of PLHIV; making available court procedures for familiarization among PLHIV; and the forming of a group of lawyers to assist PLHIV, patterned after PFLAG's (referring to the US-based association of families and friends of LGBTs, the Parents and Friends of Lesbians and Gays).

At this point, one participant noted the need to include gender and sexuality in trainings, particularly TG 101.

The last group to present was those from the government sector (Annex 12), which included members from five government agencies from all over the Philippines. The issues they raised were agency-specific.

First raised was the PNP, cited for: 1) having the existing gap in the PNP policy on raiding bars with the presence of condoms as evidence; and 2) arrest of MSM on the basis of prostitution. The recommendations for the PNP were: 1) for PNP to review its policies on raids; and 2) for PNAC to recommend review of PNP policies on raids, so that the presence of condoms will not be a basis for any legal action against bars or any person.

For the PNP, additional recommendations given by the other participants who were not members of this group included: 1) the inclusion of MSM and TGs in the review of PNP policies for them to be able to provide their perspectives on the PNP policies that affect them; and 2) to hasten PNAC's process in dealing with the PNP and its raids.

The Public Attorney's Office (PAO) was also cited by the last group, as it could help PLHIV file cases. To do this, however, recommended were the: 1) capacity building of PAO lawyers on HIV; 2) designation of PAO as the default lawyer of PLHIV in times of litigation; 3) urging of PAO to have their HIV workplace policy; and 4) the formation of a partnership between PAO and National Prosecution Service (NPS) to provide legal assistance to PLHIV.

Also included was CHR, which was asked to engage the Regional AIDS Assistance Teams (RAATs) in terms of access to justice; to have its own HIV workplace policy; and to provide legal assistance to PLHIV.

### ***Processing of Presentation Results***

In processing the results of the group discussions, the facilitator De Mesa summed up the key points repeatedly brought up by the groups, just as these were repeatedly brought up in the discussions the whole day. These key points were:

1. The importance of policy reforms in dealing with HIV-related stigma and discrimination. This was repeatedly noted by the participants even if reforming policies was not a direct mandate of many of the agencies participating in the dialogue. The policies noted to be in need of amendments or needed to be made varied, including national policies like RA 8504 and the Anti-Discrimination Bill, local policies like the formation of AIDS Councils in LGU, HIV-related workplace policies, and others.
2. The necessity of a big reorientation of services, since, even if policies are actually existent, if the frontline healthcare workers are not trained to implement them, these were said to be of no use.
3. The broadening of the scope of services related to HIV prevention and TCS. For instance, support in the burial is needed, and must be looked into.
4. The need to better the education in two ways: firstly, by having campaigns, which were said to almost always work if done properly; and secondly, by developing continuing education, with the efforts not just one-off, else the efforts are easily forgotten.
5. Building the capacity of the people in being familiar with the law, so that they know when their rights are being violated, and where to go for redress mechanisms.

De Mesa underscored that the recommendations generated in the National Dialogue, as well as the Global Commission Report, will help inform efforts on policy reforms in the Philippines.

### ***Closing Remarks***

After a summation of the presentations done for the day was provided by the gathering's documenter, CHR's Chairperson Loretta Ann Rosales closed the dialogue. In her speech (Annex 13), she admitted the existence of human rights violations, and that these need to be faced.

*“From our engagements and dialogues with different marginalized communities and in our partnerships with international organizations like the UNDP, UNICEF, and UNAIDS, we know that HIV-related human rights violations persist, and that most of them remain undocumented and do not get into existing human rights*

*redress mechanism. This is a challenge that the CHR is aware of, and is committed to address.”*

Rosales stated that the State should, therefore, open “all available means to address human rights violations, and that State institutions... do not worsen the situation by perpetrating human rights violations themselves.”

Already, CHR has been working with the civil society and the international community to “collaborate with the affected and vulnerable communities and embrace them as partners that deserve respect, whose rights and dignity we need to recognize and promote”. Also, the CHR has been working with PNAC to build the capacities, as well as to promote policy reforms in various government agencies, with approaches anchored on human rights.