

# Paralegal Manual

Rainbow Rights Philippines

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## I. Introduction

The creation of this Paralegal Manual is one of the main components of the Rainbow Rights Philippines' (R-Rights) Community Paralegal Program. With support from the Equal Rights in Action Fund of the National Democratic Institute and the Fund for Global Human Rights, R-Rights conducted a Paralegal Training Program from October 25 to October 27, 2019, created a referral system and online platform for chosen paralegals all around the country, and published this manual along with the our Rainbow Cards, a quick outline of the laws for persons of diverse sexual orientation, gender identity, gender expression and sex characteristics (SOGIESC).

This Paralegal Manual presents several legal points that are salient to the lives of persons of diverse SOGIESC. These pieces of legal information and legal know-how were either sourced from the experience of the organization or through legal research by practitioners in the organization.

It is hoped that this Paralegal Manual will serve as a guide for R-Rights accredited paralegals, human rights organizations focusing on SOGIESC rights; and the layperson in protecting rights, claiming relief and remedy, and those using legal tools for the interest of persons of diverse SOGIESC.

## II. How to use this manual

This manual attempts to give a general view of what a paralegal primarily working to protect the legal interests of persons of diverse SOGIESC should be familiar with. First and foremost, this manual is designed under a framework of human rights. Human rights, as inherent in everyone, are not lost for persons of diverse SOGIESC and must be operationalized in the creation and enforcement of all laws.

However, enforcement and codification of human rights of persons of diverse SOGIESC within the legal landscape of the Philippines is not the norm. There is a need for more legal practitioners in the form of paralegals to resound the rights of persons of diverse SOGIESC as granted by law, advocate to fill the gaps if there are any, and actively use the law in the way that will benefit the marginalized and those discriminated against.

Given the responsibilities of the paralegal, the paralegal needs to be armed with legal and technical know-how. Because of this, this manual includes an enumeration of laws that aid the LGBTQ+ community. These laws are presented in table-form to point out specific provisions, its significance and the persons who can benefit from such provision of law. It is designed in such a manner for quick and easy reference of the paralegal. This manual also includes suggested legal and paralegal remedies in enforcing such laws, to combat unjust practices.

If there are laws that benefit the LGBTQ+ community, there are also laws that are used to target the community especially in the form of penal laws. For this reason, we have included a section that enumerates crimes that are used to target the community with the enumeration of its elements and who are considered liable persons. Such enumeration was deemed necessary for an omission of one of the elements of the crime is a total defense against these crimes.

We do not claim that this manual is a perfect guide for paralegals in the conduct of the work that they need to do. What we aimed for is the inclusion of as much information as possible to serve as base knowledge for paralegals working for the LGBTQ+ community.

### III. Human Rights and SOGIE

Human beings, have the inalienable right to life, liberty, property and even security of person<sup>1</sup>, and have such fundamental freedoms as those ideas, beliefs, expression, and assembly<sup>2</sup>.

These basic rights are absolute and unconditional; and are guaranteed by the Philippine Constitution and enshrined in the United Nations Universal Declaration on Human rights, in the International Covenant on Civil and Political Rights, and in the International Covenant on Economic, Social and Cultural Rights, and other universally accepted human rights instruments and international conventions to which the Philippines is a signatory.

A person is guaranteed these rights and freedoms regardless of race, class, ethnicity, religion, political affiliation, sexual orientation, gender identity or expression. Anyone violating these rights and freedoms violates not only the rights of the victims but also their human dignity.

In all situations, we must be mindful of and be prepared to assert our basic human rights as part of the LGBTQ+ community. By asserting our human rights, we are creating the conditions to prevent violations of human rights. Also, the unwavering assertion of rights ensures that those found guilty of violating these rights are held accountable giving indemnification, rehabilitation, and restitution for the victims.

We have to recognize that we are also part of other vulnerable groups and sectors such as farmers, workers, urban poor, indigenous peoples, youth, women and the differently-abled and therefore the recipient of many layers of oppression and exploitation. Moreover, asserting our rights as individuals, groups, communities, and citizens strengthens our capacity to exercise them.

Human rights capture both individual and collective rights. It is also so essential to capture all its dimensions-- for civil and political liberties to be fully actualized, there should be economic, social and cultural rights.

All these human rights are applicable and must be asserted even under situations of political unrest and even during martial law. It is important to point out that human rights should be seen in the context of social realities and not in a vacuum. Conditions of inequality amongst nations and peoples pervade even

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<sup>1</sup> Art. III Sections 1 and 2 of the 1987 Philippine Constitution

<sup>2</sup> Art. III Section 4 of the 1987 Philippine Constitution

with the subsequent ratification of internationally agreed-upon human rights instruments. As human rights advocates and defenders, we should understand the value of asserting and struggling for our rights.

### SOGIE and the Law

Seldom are Philippine laws that award, accord and provide rights for LGBT+ persons and if ever they are mentioned, mostly in prohibitive laws. The promotion of human rights of diverse SOGIE in the Philippines is characterized by violations of their rights. There are enumerable issues experienced by the LGBT+ community many of which are in violation of their basic human rights.

The revised family code explicitly defines marriage as a permanent union between a man and a woman. Even going as far as categorizing homosexuality as an indicator of psychological incapacity as ruled by the Supreme Court, therefore, grounds for void of marriage. They did not stop there. Lesbianism and homosexuality can be grounds for a petition for legal separation.

And by disenfranchising LGBT persons of the right to marriage, they can never be next-of-kin to their partners ridding them of hospital visitation rights, access to medical information and bars them to decide concerning property, on funeral arrangement, among others. Inheritance rights don't apply to them as social security and insurance benefits cannot be transferred to the significant other.

## IV. Paralegal as a Human Rights Defender.

### What is a paralegal

Paralegal, a process and a remedy: legal "first aid" or immediate response to human rights violations.

### Who can be a paralegal?

Anybody can be a paralegal as long as he/she is willing to do the tasks and to undergo training to be an effective paralegal. One of the most important tasks of a paralegal is to assist the lawyer in gathering the necessary facts of a violation or violations committed against individuals, a group of individuals or communities. A paralegal is expected to possess the basic skills of documentation.

### Nature of a paralegal's tasks

	Task Details
<b>Legal</b>	1. Conduct an initial interview with the client
	2. Conduct thorough investigation about the case
	3. Document and gather evidence pertinent to the case
	4. Look into relevant laws and cases related to the case on hand
	5. Assist the lawyer in preparing for trial or hearing of the case
	6. Draft affidavit, letters, and other pertinent documents
	7. Monitor and follow up the case
	8. Facilitate the client's bail and perform other tasks related to the case that may not require the skills of a lawyer
	1. Draw up and implement complementary campaigns that will be undertaken.

<b>Paralegal's tasks</b>	2. Lobby and advocacy work
	3. Provide support for lawyers and victims and their families
	4. Popularize the issue to the public and thru mass media
	5. Conduct Quick Reaction Team (QRT) and Fact-finding missions (FFM)
	6. Conduct training

### Paralegal work with a human rights-based approach

A human rights-sensitive understanding of the laws and the legal system is necessary to be effective paralegals for the LGBT+ community and other vulnerable sectors. The human rights-based approach is characterized by primarily focusing on those who are most excluded, marginalized, disenfranchised or discriminated against. An analysis of gender norms, socio-economic factors, different forms of discrimination and power differences are necessary to ensure that our paralegal work benefits the community and most marginalized segments of the society.

## V. Laws and processes that can aid the LGBT+ community

No matter how lacking and disenfranchising the current legal landscape is towards persons of diverse SOGIE, we have taken the task to outline current laws and parts of them that can be utilized to preempt, protect and, even defend the community. We have to be reminded that these are not alternatives to proposed comprehensive laws that detail and advance the rights of everyone with diverse SOGIE. Also, we recognize that some current laws, akin to human rights, can be referenced and even used for the benefit of the members of the community facing discrimination, requiring protection, and most importantly in demanding justice.

### The right against deprivation of liberty as guaranteed by the 1987 Constitution

At all times, the revised 1987 Constitution guarantees that citizen's rights are respected. Specifically, Article III, Section 12 of the 1987 Constitution or the Bill of Rights makes sure that the right against deprivation of liberty is protected and guaranteed.

<b>Provision/s of the 1987 Constitution or the Bill of Rights</b>	<b>Significance</b>	<b>Who can benefit/be protected</b>
<b>Art. III, Section 2.</b> The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and <b>no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge</b> after examination under oath or affirmation of the complainant and the witnesses he may produce, and	These sections all pertain to the right against deprivation of liberty. Notice that the right to remain silent is stressed because any statement you give can be used against you in court. If one can't afford a lawyer, the state shall provide. Also, it is your right to call a lawyer or have access to one at all times during arrest or detention.	Everyone. This includes all vulnerable sectors such as activists, human rights defenders and LGBT+ persons.

<p>particularly describing the place to be searched and the persons or things to be seized.</p> <p><b>Art. III, Section 12.</b></p> <ol style="list-style-type: none"> <li>1. Any person under investigation for the commission of an offense <b>shall have the right to be informed of his right to remain silent and to have competent and independent counsel</b> preferably of his own choice. If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel.</li> <li>2. <b>No torture, force, violence, threat, intimidation,</b> or any other means which vitiate the free will shall be used against him. Secret detention places, solitary, <i>incommunicado</i>, or other similar forms of detention are prohibited.</li> <li>3. Any confession or admission obtained in violation of this or Section 17 hereof shall be inadmissible in evidence against him.</li> <li>4. The law shall provide for penal and civil sanctions for violations of this section</li> </ol>	<p>These rights cannot be waived "except in writing and in the presence of counsel".</p> <p>Generally, <b>no arrest may be made without a warrant of arrest</b> except for warrantless arrests (for the complete list of exemptions you may refer to the Human Rights Cases section of the manual)</p>	
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## Safe Spaces Act

A fairly new law that has been passed in April of 2019 and has been effective last August of the same year. Unlike its predecessor, the Anti-Sexual Harassment Act of 1995, which only covers sexual harassment committed by persons with authority in workplaces, schools, and training institutions, this new law seeks to include those committed in public places. It also does away completely with the requirement of “moral ascendancy” of the perpetrator over the victim survivor. It also penalizes unwanted comments, gestures, and actions directed at them because of their actual or even perceived sex, gender, gender expression or sexual orientation and identity. One of the few laws that explicitly recognizes the rights of the members of the LGBTQ+ community.

Under Article 1, Section 11 of the law, the following acts which includes gender-based harassments shall be penalized:

1. cursing
2. wolf-whistling;
3. catcalling;
4. leering and intrusive gazing;
5. taunting;
6. pursuing;
7. unwanted invitations;
8. misogynistic, transphobic, homophobic, and sexist slurs;
9. persistent unwanted comments on one's appearance;
10. relentless requests for one's personal details such as name, contact and social media details or destination;
11. the use of words, gestures or actions that ridicule on the basis of sex, gender or sexual orientation, identity and/or expression including sexist, homophobic, and transphobic statements and slurs;
12. the persistent telling of sexual jokes, use of sexual names, comments and demands, and any statement that has made an invasion on a person's personal space or threatens the person's sense of personal safety

The law also includes flashing, masturbation in public, groping, stalking and the like as part of the acts that shall be penalized.

In Section 12 of the law, it defines Also defined are online gender-based harassments which include acts that use information communication technology in terrorizing and intimidating victims through:

- physical, psychological, and emotional threats;
- unwanted sexual misogynistic, transphobic, homophobic and sexist remarks and comments online whether publicly or through direct and private messages;
- Invasion of the victim's privacy through cyberstalking and incessant messaging;
- uploading and sharing without the consent of the victim any form of media that contains photos, voice, or video with sexual content, among others.

Provision/s of the SAFE SPACE ACT Republic Act No. 11313	Significance	Who can benefit/be protected
<p><i>Art. 1 Sec.4</i></p> <p><i>Gender-based streets and Public Spaces Sexual Harassment. – The crimes of gender-based streets and public spaces sexual harassment are committed through any unwanted and uninvited sexual actions or remarks against any person regardless of motive for</i></p>	<p>The original Anti-Sexual Harassment law has a limited definition of “the setting” of the sexual harassment and of who can be considered an offender.</p> <p><b>Now, it has expanded it to public spaces and did away with the need for “moral ascendancy” of the offender.</b></p>	<p>Women, Persons of diverse SOGIE, and everyone.</p>



<i>committing such action or remarks...</i>		
<p><i>Art. 1 Sec.4</i></p> <p>...</p> <p><i>Gender-based streets and public spaces sexual harassment includes catcalling, wolf-whistling, unwanted, invitations, <b>misogynistic, transphobic, homophobic, and sexist slurs, persistent uninvited comments and suggestions, public masturbation or flashing of private parts, groping, or any advances, whether verbal or physical, that is unwanted and has threatened one's sense of personal space and physical safety, and committed in public spaces...</b></i></p>	<p>Although not explicitly stated in the Anti- Sexual Harassment Law, these acts may constitute a violation of RA 7877 as any act which would result in an intimidating, hostile, or offensive environment.</p> <p>In Safe Spaces Act it clearly covers misogynistic, transphobic, homophobic, and sexist remarks as gender-based streets and public spaces sexual harassment. NOTE that for these statements NEED NOT BE of sexual nature to qualify as violation.</p> <p>This means such slurs can be grounds for filing a case and can be penalized.</p>	<p>Everyone and LGBTQ+ members who are recipients of such remarks.</p>

### Cybercrime Prevention Act

This law that took effect in 2012 penalizes violations against a person's confidentiality and integrity of digital data such as illegal access, illegal interference, data interference, system interference, misuse of devices, and cybersquatting. The Cybercrime Prevention Act also zeroes in on penalizing content-related offenses such as cybersex, child pornography, and even libel committed through a computer system.

Below are some of the defined crimes under this law:

- Illegal Access—The access to the whole or any part of a computer system without right.
- Cybersex— which is the willful engagement, maintenance, control, or operation, directly or indirectly, of any lascivious exhibition of sexual organs or sexual activity, with the aid of a computer system

<b>Provision/s of the Cybercrime Prevention Act Republic Act No. 10175</b>	<b>Significance</b>	<b>Who can benefit/be protected</b>

<p><b>Section 4. Cybercrime Offenses. —</b>  <i>The following acts constitute the offense of cybercrime punishable under this Act:</i></p> <p>...</p> <p><i>(c) Content-related Offenses:</i></p> <p><i>(1) Cybersex. — The willful engagement, maintenance, control, or operation, directly or indirectly, of any lascivious exhibition of sexual organs or sexual activity, with the aid of a computer system, for favor or consideration.</i></p> <p><i>(2) Child Pornography. — The unlawful or prohibited acts defined and punishable by Republic Act No. 9775 or the Anti-Child Pornography Act of 2009, committed through a computer system: Provided, That the penalty to be imposed shall be (1) one degree higher than that provided for in Republic Act No. 9775.</i></p>	<p>This may be utilized for victims of digital crimes against vulnerable sectors such as women, members of the LGBTQ+ community.</p>	<p>Everyone including women, children, members of the LGBTQ+ who are common victims of cybercrime.</p>
<p><b>Section 4. Cybercrime Offenses. —</b>          ...</p> <p><i>(4) Libel. — The unlawful or prohibited acts of libel as defined in Article 355 of the Revised Penal Code, as amended, committed through a computer system or any other similar means which may be devised in the future.</i></p>	<p>Through the law’s content-related offenses, libel can be committed through a computer system. This may be utilized to aid persons especially members of the community whose SOGIE has been made public without consent via a cyber environment.</p>	<p>Everyone and members of the LGBTQ+ community.</p>

### Anti-Photo and Video Voyeurism Act

LGBTQ+ persons and women are often vulnerable in today’s exchange and the creation of media content. Without the person/s’ consent, the recording or taking of photo or video performing sexual acts or anything similar is considered “photo or video voyeurism.” The Anti-Photo and Video Voyeurism Act tries to prevent the publication, reproduction, distribution of the said media materials regardless of whether or not the persons featured consented to the recording.

Provision/s of the Anti-Photo and Video Voyeurism Act Republic Act no. 9995	Significance	Who can benefit/be protected
<p><b>Section 4. Prohibited Acts.</b> - It is hereby prohibited and declared unlawful for any person:</p> <p>(a) <b>To take photo or video coverage of a person or group of persons performing sexual act</b> or any similar activity or to capture an image of the private area of a person/s such as the naked or undergarment clad genitals, public area, buttocks or female breast without the consent of the person/s involved and under circumstances in which the person/s has/have a reasonable expectation of privacy;</p> <p>(b) <b>To copy or reproduce</b>, or to cause to be copied or reproduced, such photo or video or recording of sexual act or any similar activity with or without consideration;</p> <p>(c) <b>To sell or distribute</b>, or cause to be sold or distributed, such photo or video or recording of sexual act, whether it be the original copy or reproduction thereof; or</p> <p>(d) <b>To publish or broadcast</b>, or cause to be published or broadcast, whether in print or broadcast media, or show or exhibit the photo or video coverage or recordings of such sexual act or any similar activity through VCD/DVD, internet, cellular phones and other similar means or devices.</p>	<p>Video and photo scandals have been aggressively consumed, publicized and distributed. Some of them involve women, children and LGBTQ+ persons. Not only is consent absent in many of the cases but it also forcibly outs individuals of the LGBTQ+ community and therefore putting them in danger or a much more vulnerable situation.</p> <p>We may utilize the law to defend victims in the community of photo/video voyeurism and penalize perpetrators.</p>	<p>Everyone, especially vulnerable sectors such as women, children and the LGBTQ+ community.</p>

## Anti-Violence against Women and Their Children Act of 2004

We can refer to this law when we handle cases of which involve women and children with respect to the woman's intimate partner. Note that persons of diverse SOGIESC can also be perpetrators under this law.

The law defines "violence against women and their children" as any act or a series of acts committed by any person against a woman who is his wife, former wife, or against a woman with whom the person has or had a sexual or dating relationship, or with whom he has a common child, or against her child whether legitimate or illegitimate, within or without the family abode, which result in or is likely to result in physical, sexual, psychological harm or suffering, or economic abuse including threats of such acts; battery, assault, coercion, harassment or arbitrary deprivation of liberty.

Provision/s of the Anti-Violence Against Women and Their Children Act of 2004 Republic Act No. 9262	Significance	Who can benefit/be protected
<b>SECTION 5. Acts of Violence Against Women and Their Children -</b> <b>(a) Causing physical harm to the woman or her child;</b> <b>(b) Threatening and (c) attempting to cause the woman or her child physical harm;</b> <b>(d) Placing the woman or her child in fear of imminent physical harm</b> <b>(e) (1) Attempting to compel or compelling the woman or her child to engage in or desist from conduct which they have the right to desist from or engage in respectively</b> <b>(2) Attempting to or restricting the woman's or her child's freedom of movement This shall include but is not limited to the following:</b> <b>Threatening to deprive or actually depriving the woman or her child of (1) custody; (2) financial support</b> legally due, or deliberately providing insufficient financial support; <b>and (3) of a legal right;</b> <b>(4) Preventing the woman in engaging in any legitimate occupation or business or controlling the victim's money or properties,</b> including the conjugal or community property; <b>(f) Inflicting or threatening to inflict physical harm on oneself to control her actions or decisions;</b> <b>(g) Attempting to or causing the woman or her child to engage in any sexual activity short of rape through threats, physical harm, or through intimidation (h) Engaging in purposeful conduct, personally that alarms or causes</b>	<p>These acts against women and their children may be extended to LGBT persons who are also victims of such abuse.</p>	<p>Women, their biological children and other children under her care who may be part of the LGBTQ+ community.</p>

<p><b>substantial emotional or psychological distress.</b> This shall include, but not be limited to:</p> <p>(1) <b>Stalking</b> or following; (2) <b>Peering</b> in the window or lingering outside the residence; (3) <b>Entering or remaining</b> in the dwelling <b>against their will</b>; (4) <b>Destroying the property and personal belongings</b> or inflicting harm to animals or pets; and (5) <b>Engaging in any form of harassment or violence</b></p> <p>(i) <b>Causing mental or emotional anguish, public ridicule or humiliation</b> including, but not limited to, repeated verbal and emotional abuse, and denial of financial support or custody of minor children of access to the woman's child/children.</p>		
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Another unique aspect of this act is the “**protection order**” which aims to prevent further acts of violence against the woman and her children and granting necessary relief. Section 8 of RA 9262 stipulates that this relief granted under a protection order **serves the purpose of safeguarding the victim from further harm, minimizing any disruption in the victim's daily life, and facilitating the opportunity and ability of the victim to independently regain control over her life.**

Below is the part of Section 8 which elaborates reliefs that can be granted to the offended party.

*The protection orders that may be issued under this Act are the barangay protection order (BPO), temporary protection order (TPO) and permanent protection order (PPO). The protection orders that may be issued under this Act shall include any, some or all of the following reliefs:*

- (a) to prohibit the respondent from threatening or committing any of the prohibited acts under RA9262;*
- (b) to prohibit the respondent from harassing, annoying or communicating with the petitioner, directly or indirectly;*
- (c) to remove and exclude the respondent from the residence of the victim, regardless of ownership of the residence, either temporarily or permanently. If the respondent needs to remove belongings from the victim's home, the court must direct that law enforcement agents escort the respondent.*
- (d) to direct the respondent to stay away from petitioner and designated family or household member, their residence, school, place of employment, or any specified place, at a distance specified by the court*
- (e) to direct lawful possession and use by petitioner of an automobile and other essential personal effects, regardless of ownership, with the assistance of the appropriate law enforcement officer to accompany the petitioner to safely restore to the possession of said item*
- (f) to grant a temporary or permanent custody of a child/children to the petitioner;*
- (g) to direct respondent to provide support to the woman and/or her child if entitled. The court shall order a percentage of the salary of the respondent to be withheld regularly by an employer for automatic*

- remittance directly to the woman. Failure and delay to remit and/or withhold without justifiable cause shall render the respondent or his employer liable for indirect contempt of court;*
- (h) to prohibit respondent from possessing and using and/or to surrender any firearm or deadly weapon to the court. If the offender is a law enforcement agent, the court shall order the offender to surrender said weapons and direct the appropriate authority to investigate and take action.*
- (i) to pay actual damages caused by the violence inflicted, including, but not limited to, property damage, medical expenses, childcare expenses and loss of income;*
- (j) to direct the DSWD or any appropriate agency to provide petitioner may need; and*
- (k) to provide such other forms of relief as the court deems necessary to protect and provide for the safety of the petitioner and any designated family or household member, provided petitioner and any designated family or household member consents to such relief*

The following can serve as a guide in filing of protection orders:

Protection Order	Filed in	Issued by	Effectivity
1. <b>Barangay Protection Order (BPO)</b>	Barangay where the respondent resides.	Punong Barangay or, in absence, any available Barangay Kagawad	15 days
2. <b>Temporary Protection Order (TPO)</b>	Court which has jurisdiction over the petitioner's place of residence. Section 10 of the law states that:  <i>An application for a TPO or PPO may be filed in the <b>regional trial court, metropolitan trial court, municipal trial court, municipal circuit trial court</b> with territorial jurisdiction over the place of residence of the petitioner: Provided, however, That if a <b>family court</b> exists in the place of residence of the petitioner, the application shall be filed with that court.</i>		30 days
3. <b>Permanent Protection Order (PPO)</b>			Permanent

As stated in Section 9, the following can file petitions for protection orders:

1. The offended party;
2. Parents or guardians of the offended party;
3. Ascendants, descendants or collateral relatives within the fourth civil degree of consanguinity or affinity;
4. Officers or social workers of the DSWD or social workers of local government units (LGUs);
5. Police officers, preferably those in charge of women and children's desks;
6. Punong Barangay or Barangay Kagawad;
7. Lawyer, counselor, therapist or healthcare provider of the petitioner
8. At least two (2) concerned responsible citizens of the city or municipality where the violence against women and their children occurred and who has personal knowledge of the offense committed

## Anti-Trafficking in Persons Act of 2003

Below is how the law defines what constitutes as “**trafficking in persons**”:

The act of:	By means of	For the purpose of
<ul style="list-style-type: none"> <li>Recruitment</li> <li>Obtaining</li> <li>Hiring</li> <li>Providing</li> <li>Offering</li> <li>Transportation</li> <li>Transfer</li> <li>Maintaining</li> <li>Harboring</li> <li>Receipt</li> </ul> <p>... of persons (with/out consent/knowledge) (within/across borders)</p>	<ul style="list-style-type: none"> <li>Threat</li> <li>Force</li> <li>Coercion</li> <li>Abduction</li> <li>Fraud</li> <li>Deception</li> <li>Abuse of power or position</li> <li>Taking advantage of the vulnerability of the person</li> <li>Giving/receiving payments or benefits to achieve the consent of a person having control over another person</li> </ul>	<ul style="list-style-type: none"> <li>Exploitation</li> <li>Prostitution</li> <li>Sexual exploitation</li> <li>Forced labor or services</li> <li>Slavery</li> <li>Involuntary servitude</li> <li>Removal or sale of organs</li> </ul>

As stated in Section 5 of RA 9208, it also penalizes the acts that promote trafficking in persons.

In the prosecution of cases, the following can file complaints for trafficking:

1. The trafficked person or offended party
2. Parents or legal guardians
3. Spouse
4. Siblings
5. Children
6. Any person with personal knowledge of the commission of the offense;

## Occupational Safety and Health Standards Law

The law applies to all establishments, projects, sites, and includes workplaces in the Philippine Economic Zone Authority (PEZA) and all other places where work is being undertaken in all branches of economic activity, **except in the public sector**.

Provision/s of the Occupational Safety and Health law  Republic Act No. 11058	Significance	Who can benefit/be protected
<b>Section 1</b>  The State, in protecting the safety and health of the workers, shall promote strict but dynamic, inclusive, and <b>gender-sensitive measures in the formulation and implementation of policies and</b>	The first section articulates the role of the State in the protection of workers’ safety and health and including “gender-sensitive measures” as a standard for policies on occupational safety and health. This by default holds	All workers or employees and including those members of the LGBTQ+ community.  Those employed by the public sector are not covered by the law.

<p><b>programs related to occupational safety and health.</b></p>	<p>employers accountable to their workers of diverse SOGIE in terms of safety and health concerns.</p>	
<p><b>Section 12. Occupational Safety Health (OSH) Program.</b> - Covered workplaces shall have a safety and health program including the following policies, guidelines or information:</p> <p>....</p> <p><b>(c) Human Immunodeficiency Virus (HIV) and Acquired Immune Deficiency Syndrome (AIDS)/tuberculosis/hepatitis prevention control;</b></p> <p>(j) Provision and use of PPE;</p> <p>(m) Provision of workers' welfare facilities;</p> <p>The safety and health program shall be prepared and executed by the employer, contractor or subcontractor, if any, in consultation with the workers and their representatives and shall be submitted to the DOLE which shall approve, disapprove or modify the same according to existing laws, rules and regulations, and other issuances.</p>	<p>In this section of the law, employers shall have in their workplace policies, information and guidelines.</p> <p>This covers HIV and AIDS prevention control. The law requires them to address this health concern paving the way to timely, accurate, adequate, appropriate and relevant HIV education and information. This can help in curbing stigmas associated with people living with HIV (PLHIV) and the members of the LGBTQ+ community.</p>	<p>All workers, workers who are members of the LGBT+ community and workers living with HIV.</p>



## VI. Legal and Paralegal Remedies

### A. Human Rights Cases

#### 1. Extrajudicial Killings and Enforced Disappearance

a. Extrajudicial killings– the act of unlawful and deliberate killing carried out without due process of law and outside of the judicial process by state agents or with their complicity, inducement, tolerance of acquiescence.<sup>3</sup>

In Special Protection of Children in Situations of Armed Conflict Act or R.A. No. 11188 or the which was signed into law on January 2019 defines extrajudicial killings in Section 5 of the law as follows:

*Extrajudicial killings refer to all acts and omissions of State actors that constitute violation of the general recognition of the right to life embodied in the Universal Declaration of Human Rights, the United Nations Covenant on Civil and Political Rights, the UNCRC and similar other human rights treaties to which the Philippines is a State party.*

#### b. Enforced Disappearances –

In Section 3 of R.A. 10353 or the Anti-Enforced or Involuntary Disappearance Act of 2012, enforced disappearances are defined as:

*(b) Enforced or involuntary disappearance refers to the arrest, detention, abduction or any other form of deprivation of liberty committed by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which places such person outside the protection of the law.*

According to the Philippine people’s rights alliance Karapatan, a missing person is considered disappeared if one’s whereabouts remain unknown for more than seventy-two (72) hours.

### Legal Remedies

#### a. Judicial Remedies

- i. **The Writ of Habeas Corpus**-- generally applies to “all cases of illegal confinement or detention by which any person is deprived of his liberty or by which the rightful custody of any person is withheld from the person entitled thereto,” as stated in Rule 102 Section 1 of the Rules of Court.

“The ultimate purpose of the writ of habeas corpus is to relieve a person from unlawful restraint. It is devised as a speedy relief from unlawful restraint. It is a remedy intended to determine whether the person under detention is held under lawful authority.”

### SAMPLE CASES

- Ilagan v. Enrile. 1985 case (139 SCRA 249)
- Umil v. Ramos. 202 187 SCRA 311 (1990) and SCRA 251 (1991)

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<sup>3</sup> Karapatan Glossary of Human Rights Violations (<https://aklatangtibak.files.wordpress.com/2013/05/karapatan-glossary-of-human-rights-violations.pdf>)

**The Writ of Amparo** – “a remedy available to any person whose right to life, liberty and security is violated or threatened with violation by an unlawful act or omission of a public official or employee, or of a private individual or entity, as stated in Section 1 of the A.M. No. 07-9-12-SC (2007) The Rule on the Writ of Amparo.

**The Writ of Habeas Data** – “a remedy available to any person whose right to life, liberty and security is violated or threatened with violation by an unlawful act or omission of a public official or employee, or of a private individual or entity engaged in the gathering, collecting or storing data or information regarding the person, family, home and correspondence of the aggrieved party,” as cited from Section 1 of A.M. No. 08-1-16-SC (2008) The Rule on the Writ of Habeas Data.

## 2. Harassment Cases

The LGBTQ+ community suffers from various forms of discrimination which then leads to harassment ranging from stereotyping to unfair treatment.

Harassment occurs when an individual tries to violate someone’s dignity or creates an intimidating, hostile, degrading, offensive environment. This is the case when transgender persons are refused entry to establishments such as bathrooms, bars, transportation and other public places on the basis of their actual or perceived SOGIE. While there is no national law that covers this kind of harassment, transgender people and the rest of the LGBTQ+ persons will always be at risk of exclusion in society.

From the current law, we can utilize the crimes against personal liberty such as grave coercion and unjust vexation among others to defend victims of SOGIE related harassment and discrimination. Also discussed in the handbook are the Anti-Sexual Harassment Act of 1995 and the Safes Spaces Act which may cover cases of harassed persons of diverse SOGIE.

**Grave coercion** is when “any person who, without authority of law, shall, by means of violence, prevent another from doing something not prohibited by law, or compel him to do something against his will, whether it be right or wrong,” as stipulated in the Article 286 of the Revised Penal Code.

The elements for committing grave coercion are the following:

1. A person prevented another from doing something not prohibited, or compelled him/her to do something against his/her will
2. Through violence, threats, or intimidation
3. Without authority or right

**Unjust vexation** includes any human conduct which, although not productive of some physical or material harm would, however, unjustly annoy or vex an innocent person. Unjust vexation is a crime according to Article 287 Revised Penal Code and defined by the Supreme Court in the case of Melchor G. Maderazo, et al. versus People of the Philippines as:

*...a form of light coercion which is broad enough to include any human conduct which, although not productive of some physical or material harm, would unjustly annoy or irritate an innocent person.*

### 3. Arrest, Search and Detention

#### *What is an arrest?*

Section 1, Rule 113 of the Rules of Court defines Arrest as the “taking of a person into custody so that he may be bound to answer for the commission of an offense.”

#### *Kinds of Arrest*

	<b>Arrest by virtue of a warrant of arrest</b>
<b>Who may issue warrants of arrest?</b>	<ul style="list-style-type: none"><li>After the preliminary investigation and upon a finding of probable cause by the presiding judge tasked to try the case, he/she may issue a warrant of arrest.</li></ul>
<b>Requisites of a valid warrant</b>	<p>(1) it must be issued upon "probable cause"; (2) probable cause must be determined personally by the judge; (3) such judge must examine under oath or affirmation the complainant and the witnesses he or she may produce; and (4) the warrant must particularly describe the place to be searched and the persons or things to be seized.</p> <p>As expounded and stated by the Supreme Court in <i>People v. Tiu Won Chua</i> (405 SCRA 280)</p>
<b>Procedure in the enforcement of a Warrant of Arrest</b>	<ul style="list-style-type: none"><li>A Warrant of Arrest is considered executed when the person against whom it is directed is restrained. “An arrest is made by an actual restraint of a person to be arrested, or by his submission to the custody of the person making the arrest” as stated in Section 2, Rule 113.</li><li>The arresting officer shall inform the accused of the cause of the arrest and that a warrant of arrest has been issued with exceptions stipulated in Section 7, Rule 113).</li><li>In the enforcement of the Warrant, violence and unnecessary force shall not be used, and the person to be arrested shall not be subjected to a greater restraint that is necessary (Section 2, 2nd paragraph, Rule 113)</li><li>The arresting officer is required to inform the person of his Miranda rights (Section 2b of RA No. 7438)</li><li>Upon arrest, the arresting officer is obliged to deliver the accused to the nearest police station or jail without unnecessary delay (Section 3, Rule 113)</li></ul>
<b>Period for the enforcement of a Warrant of Arrest</b>	<ul style="list-style-type: none"><li>A warrant shall be executed within ten (10) days from receipt by the enforcement agency to whom it is directed</li><li>Within ten (10) days from the expiration of the ten (10) day period for enforcement, such enforcement agency is required to make a return to the Court which issued the said Warrant of Arrest</li></ul>

	<b>Warrantless Arrest</b>
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<p><b>Circumstances where an arrest without warrant is considered valid</b></p>	<p>Section 5 of Rule 113 provides 3 instances: (maybe a formatting issue, the word "section" is not fully seen)</p> <p>Rule 113. Section 5. Arrest without warrant; when lawful. — A peace officer or a private person may, without a warrant, arrest a person:</p> <p>(a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;</p> <p>(b) When an offense has just been committed, and he has probable cause to believe based on personal knowledge of facts or circumstances that the person to be arrested has committed it; and</p> <p>(c) When the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment or is temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another.</p> <p>In cases falling under paragraph (a) and (b) above, the person arrested without a warrant shall be forthwith delivered to the nearest police station or jail and shall be proceeded against in accordance with section 7 of Rule 112. (5a)</p>
	<ul style="list-style-type: none"> <li>Since there is no jurisdiction over the person, the arrested should be released immediately as stated in a Supreme Court Jurisprudence Veridiano v. People (826 SCRA 382):</li> </ul> <p><i>The invalidity of an arrest leads to several consequences among which are:</i></p> <p><i>(a) the failure to acquire jurisdiction over the person of an accused;</i></p> <p><i>(b) criminal liability of law enforcers for illegal arrest; and</i></p> <p><i>(c) any search incident to the arrest becomes invalid thus rendering the evidence acquired as constitutionally inadmissible</i></p>
<p><b>Remedies when a person is illegally arrested or detained</b></p>	<ul style="list-style-type: none"> <li>If the accused is arrested by virtue of a Warrant, file Motion to Quash Warrant of Arrest or a Motion to Quash Information as stated in Veridiano v. People:</li> </ul>

	<p><i>Lack of jurisdiction over the person of an accused as a result of an invalid arrest must be raised through a motion to quash before an accused enters his or her plea. Otherwise, the objection is deemed waived and an accused is "estopped from questioning the legality of his [or her] arrest."</i></p> <ul style="list-style-type: none"> <li>● If the accused is arrested without a warrant and any charges, file a Writ of Habeas Corpus. Such remedy may also apply to arrests with warrant wherein according to Section 1, Rule 102:</li> </ul> <p><i>...the writ of habeas corpus <b>extends to all cases of illegal confinement or detention</b> in which any person is deprived of his liberty, or in which the <b>rightful custody of any person is withheld from the person entitled to it.</b></i></p>
<b>Remedies against those who made the illegal arrest</b>	<ul style="list-style-type: none"> <li>● A civil case for damages under the Civil Code of the Philippines</li> <li>● Criminal case for arbitrary detention under Art. 124 of the Revised Penal Code, if the offending party is government official or employee</li> <li>● Criminal case for unlawful arrest (art. 269), arbitrary arrest Art. 124), kidnapping and serious illegal detention (267), slight illegal detention if it involves a private individual</li> </ul>

### *Custodial Investigation*

It refers to any "questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way," as stated in People versus Tan SCRA 207 (1998).

According to Section 2 of RA 7438: "custodial investigation" shall include the practice of issuing an "invitation" to a person who is investigated in connection with an offense he is suspected to have committed, without prejudice to the liability of the "inviting" officer for any violation of the law.

### *Summary of the Rights of a Person Arrested, Detained or Under Custodial Investigation*

- To be informed of his right
- To remain silent.
- To have a competent and independent counsel of his or her own choice
- To be allowed to confer with his or her counsel at all times
- To be assisted by counsel during the custodial investigation at all times
- Allowed to be visited by or to have conferences with any member of his immediate family, any medical doctor, priest/minister chosen by him or by the immediate member of his family, by his counsel, any non-governmental organization duly accredited by the Commission on Human Rights, or by any international non-governmental organization duly accredited by the Office of the President.

### *The Rights of the Accused*

We are all innocent unless proven guilty. That should be the case for all accused citizens under the law.

Since the Bill of Rights in the Constitution protects the following rights, they may not be violated by any law, rule, or ordinance.

Based on Rule 115 of the Revised Rules of Criminal Procedure, the rights of the accused are as follow:

*Section 1. Rights of accused at trial. – In all criminal prosecutions, the accused shall be entitled to the following rights:*

*(a) To be presumed innocent*

*(b) To be informed of the nature and cause of the accusation*

*(c) To be present and defended in person and by counsel at every stage of the proceedings.*

*(d) To testify as a witness in his own behalf but his silence shall not in any manner prejudice him*

*(e) To be exempt from being compelled to be a witness against himself.*

*(f) To confront and cross-examine the witnesses against him at the trial*

*(g) To have compulsory processes issued to secure the attendance of witnesses and production of other evidence on his behalf.*

*(h) To have a speedy, impartial and public trial.*

*(i) To appeal in all cases allowed and, in the manner, prescribed by law.*

#### *The Right to Counsel and Rights of a Person Arrested or Under Custodial Investigation*

Under the Bill of Rights, any person under investigation for the commission of an offense shall have the right to remain silent and to counsel, and to be informed of such right. No force, violence, threat, intimidation, or any other means which vitiates the free will shall be used against him. (Article III, Sec. 12(1), Philippine Constitution)

While, custodial investigation is any questioning initiated by law enforcement authorities after a person is taken into custody or otherwise deprived of his/her freedom of action in any significant manner.

The Supreme Court's adherence to the Miranda Doctrine in its decisions strengthens or reinforces the protection of the Bill of Rights. For reference, the Miranda doctrine states the following:

1. You have the right to remain silent
2. Anything you say can and will be used against you in a court of law
3. You have the right to an attorney
4. If you cannot afford an attorney, one will be appointed for you

The right to counsel is detailed in the Republic Act no. 7438 or titled as the act Defining Certain Rights of Person Arrested, Detained or Under Custodial Investigation as well as the Duties of the Arresting, Detaining and Investigating officers, and Providing Penalties for Violations thereof.

*When can you demand counsel?*

First, any person arrested, detained or under custodial investigation shall at all times be assisted by counsel. A person has the right to demand counsel when the investigation ceases to be a general inquiry into an unsolved crime and begins to focus on a particular suspect. Also, this covers instances where a person is “invited” for questioning.

A person’s right to counsel can only be waived when it is voluntary, knowing, and intelligent.

*What can you do when under custodial investigation?*

Again, any person under **custodial investigation** has the right to remain silent. It is also important to note that any confession or admission obtained in violation of the rights of persons under custodial investigation cannot be used in evidence against the accused.

There is also the right against self-incrimination which can be invoked by an accused or witness in all proceedings instituted by the government when an incriminating question is asked. The right against self-incrimination covers testimonial compulsion only.

Article III, Section 12 (2) of the Constitution and laws such as the Anti-Torture Act of 2009 ensures that torture and secret detention places, solitary, incommunicado or other similar forms of detention, where torture may be carried out with impunity, **are prohibited**.

RA No. 7438 Section 2(c) states that:

*(c) The **custodial investigation** report shall be reduced to writing by the investigating officer, provided that before such report is signed, or thumb-marked if the person arrested or detained does not know how to read and write, it shall be read and adequately explained to him by his counsel or by the assisting counsel provided by the investigating officer in the language or dialect known to such arrested or detained person, otherwise, such investigation report shall be null and void and of no effect whatsoever.*

#### **Are there costs and fees in filing a complaint?**

Article III, Section 11 of the Constitution also states that free access to the courts and quasi-judicial bodies and adequate legal assistance shall not be denied to any person by reason of poverty.

However, the court rules also state that when an action is filed in court, the complaint must be accompanied by the payment of the requisite docket and filing fees. If the complaint is filed but the prescribed fees are not paid at the time of filing, the courts acquire jurisdiction only upon the full payment of such fees within a reasonable time as the courts may grant, barring prescription.

A law also exempts indigent complainants from payment of legal fees through Republic Act No. 9406. The following exemption of fees are detailed in the section of the law below:

*Section 16-D. Exemption from Fees and Costs of the Suit. - **The clients of the PAO shall be exempt from payment of docket and other fees incidental to instituting an action in court and other quasi-judicial bodies, as an original proceeding or on appeal.** The costs of the suit, attorney's fees and contingent fees imposed upon the adversary of the PAO clients after a successful litigation shall be deposited in the National Treasury as trust fund and shall be disbursed for special allowances of authorized officials and lawyers of the PAO.*

### *Who can be an indigent complainant?*

Section 19, Rule 141 of the Rules of Court, as amended by A.M. No. 00-2-01-SC and A.M. No. 04-2-04-SC states that “Indigent litigants are those whose **gross income** and that of their immediate family **do not exceed an amount double the monthly minimum wage of an employee** and who does not own real property with a fair market value as stated in the current tax declaration of more than three hundred thousand (₱300,000.00) pesos.”

Under R. A. 9406, the PAO shall independently discharge its mandate to render, free of charge, legal representation, assistance and counseling to indigent persons in criminal, civil, labor, administrative and other quasi-judicial cases.

### *Inquest proceeding*

An inquest is an informal and summary investigation conducted by the public prosecutor in a criminal case involving persons arrested and detained without the benefit of a warrant of arrest issued by the court (New Rules on Inquest, DOJ Department Circular No. 61 (September 21, 1993), Secs. 13 & 15). It is for the purpose of determining whether said persons should remain under custody and correspondingly charged in court, or be released.

### *What are the procedures in an inquest proceeding? (Rule 112 Section 6 and RA No. 7438)*

1. The Inquest officer will determine if it is a valid warrantless arrest.
2. Release the person or forward it to the Prosecutor for appropriate action.
3. Conduct of Preliminary Investigation if requested. Waiver, Art. 125 of RPC.
4. If probable cause exists, preparation of complaint/information and if none, recommend the release of the detained person.

In cases of warrantless arrests, the arresting officer must bring the arrested before the inquest fiscal to determine whether the person should remain in custody and charged in court or if he should be released for lack of evidence or further investigation.

If arrested, the following should help you assert your rights:

1. Demand to know the reason for your arrest
2. Ask for the identity and authority of the arresting officer
3. Know that you have the right to promptly brought before a judge and be "entitled to a trial within a reasonable time"
4. Demand physical examination by an independent and competent doctor of your choice before and after interrogation, as stated in the Anti-Torture Act

### *Admissibility of extrajudicial confessions made during custodial investigations*

<b>Extrajudicial confession is admissible in evidence if:</b>	<ul style="list-style-type: none"><li>• The same is made in writing;</li><li>• He is assisted by counsel in executing the extra-judicial confession</li><li>• The contents and effect thereof are duly explained to him in the language that he can understand</li></ul>
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	<ul style="list-style-type: none"> <li>The confession is signed in the presence of his counsel, or the latter's absence by his, in the presence of his any of his parents, elder brothers and sisters, his or her spouse, the municipal mayor, municipal judge, district school supervisor, priest, imam or religious minister chosen by him or her.</li> </ul>
<b>The extrajudicial confession is inadmissible as evidence if:</b>	The authorities failed to observe the procedure enumerated above.

#### 4. Labor issues

Employment-related discrimination against LGBTQ+ individuals is still pervasive. For many, employment-related SOGIE discrimination starts even before one gets a job. Employers often turn down Trans women and Trans men and if hired they are required to change how they present themselves—from the way they dress to the way they act. For those employed, cases of discrimination may persist in the form of unequal treatment in terms of designation of wages, benefits, opportunities and even retention. In worst cases, LGBTQ+ employees are terminated directly or indirectly because of their SOGIE.

In this part of the manual we will discuss parts of the law in which workers and employees, in general, may be protected and may benefit from. The law, however lacking and often skewed against LGBTQ+ persons, it is necessary to refer to certain labor standards and policies to assert equality in the workplace. Also, certain specific policies and events concerning LGBTQ+ individuals will be discussed in order to aid in handling employment-related SOGIE cases.

##### *Type of employees*

There is more than one type of employee and these categories and hierarchies helped to legitimize contractualization schemes and unjust labor practices across the country. Security of tenure and the right to unionize have been subverted in the process. This has been the case in the private sector for many Filipino workers in which women employees and workers of diverse SOGIE are part of.

Type	Characterized by
1. Regular Employee (Art. 295 of the Labor Code)	Engaged to perform activities which are <b>“usually necessary or desirable”</b> in the usual trade or business of the employer;  Rendered at least one year of service, whether continuous or broken, is considered a regular employee while such activity exists.
2. Probationary employees (Art. 296 of the Labor Code)	An employment that shall <b>not exceed 6 months</b> from the date the employee started working.  It is important to note that the employer must notify the employee of the probationary period and the standards they must satisfy on or before the end of the probationary employment. <b>If the employee is not properly notified of the arrangement, then they are prescribed by law to be</b>

	<b>classified as a regular employee</b> from the time they started working for the company.
3. Project employees (Art. 295 of the Labor Code)	A fixed <b>for a specific project or undertaking</b> the completion or termination of which has been determined at the time of the engagement of the employee.
4. Fixed-period employees (recognized in jurisprudence: GMA Network Inc. v. Pabriga (710 SCRA 690))	<p>As being contracted to work for a specified period according to the Labor Code.</p> <p>Allowed when the following requisites concur:</p> <ul style="list-style-type: none"> <li>(1) parties have equal bargaining positions;</li> <li>(2) contract was entered into voluntarily;</li> <li>(3) no coercion or any other vice of consent was employed; and</li> <li>(4) no circumvention of labor laws</li> </ul> <p>The Supreme Court in Labayog v. M.Y. San Biscuits Inc (494 SCRA 486 (2006) states that there are two criteria to validate a contract of employment with a fixed period:</p> <ul style="list-style-type: none"> <li>(1) the fixed period of employment was knowingly and voluntarily agreed upon by the parties without any force, duress or improper pressure being brought to bear on the employee and without any circumstances vitiating consent or,</li> <li>(2) it satisfactorily appears that the employer and employee dealt with each other on more or less equal terms with no moral dominance whatever being exercised by the former on the latter.</li> </ul>
5. Casual employment (Art. 295 of the Labor Code)	<p>Work or services that are not <b>“usually necessary or desirable”</b> to the usual trade or business of the employer and are not project or seasonal employees.</p> <p>If casual work is performed for at least a year, whether continuous or broken, such activity will be considered regular.</p>
6. Seasonal Employees (Art. 295 of the Labor Code)	The work to be performed is seasonal in nature and the employment is for the duration of the season.

#### *General Labor Standards*

Standard	Reference	What you need to know

<b>Minimum Wage</b>	Labor Code Art. 99, as amended by RA 6727	<p><b>There is no national minimum wage. The rates vary in each Region.</b></p> <p><b>No employer shall pay the wages of an employee by means of promissory notes, vouchers, coupons, tokens, tickets, chits, or any object other than legal tender, even when expressly requested by the employee.</b></p> <p>Options of time of payment:</p> <ol style="list-style-type: none"> <li>1. once every two weeks or</li> <li>2. twice a month at intervals not exceeding 16 days</li> </ol>
<b>Holiday Pay</b>	Labor Code Art. 94	<p>Holiday pay refers to the payment of the regular daily wage for any unworked regular holidays.</p> <p><b>Regular holidays: 200% pay (if worked) 100% pay (if unworked)</b></p> <p><b>Special days: 130% pay (if worked) No pay (if unworked)</b></p>
<b>Premium Pay</b>	Labor Code Art. 91-93	<p><b>Premium pay</b> refers to the additional compensation required by law for work performed within 8 hours on non-working days such as rest days and special days.</p> <p><b>Rules on rest day premium:</b></p> <ul style="list-style-type: none"> <li>• 30% premium of regular wage for work done on a rest day</li> <li>• If the employee has no regular workdays and regular rest days, the rate is 30% premium for work done on Sundays and holidays</li> <li>• Premium is also 30% for work done on a special holiday</li> <li>• Premium is 50% of regular wage if work is done on a rest day which is also a special non-working holiday</li> </ul>
<b>Overtime Work</b>	Labor Code Art. 87	<p><b>Overtime work.</b> Work may be performed beyond eight (8) hours a day <b>provided that the employee is paid for the overtime work</b>, an additional compensation equivalent to his regular wage plus at least twenty-five percent (25%) thereof.</p> <p>Work performed beyond eight hours on a holiday or rest day shall be paid an additional compensation equivalent to the rate of the first eight hours on a</p>

		holiday or rest day plus at least thirty percent (30%) thereof.
<b>Night Shift Differential</b>	Labor Code Art. 86	<p>It refers to the <b>additional compensation of 10% of an employee's regular wage</b> for each hour of work done between 10 in the evening to 6 in the morning.</p> <p>NOTE: If the work between 10 pm and 6 am is overtime work, the base should be the overtime rate.</p>
<b>Service Incentive Leave</b>	Labor Code Art. 95	<p>Every covered employee as described in Art. 82 of the Labor Code, who has rendered at least (1) one year of service is <b>entitled to a yearly leave of 5 days with pay.</b></p> <p>“One year of service” shall be defined as service within twelve (12) months, whether continuous or broken, reckoned from the date the employee started working, including authorized absences and paid regular holidays.</p> <ul style="list-style-type: none"> <li>• It is commutable to cash if unused at the end of the year.</li> <li>• The basis of computation of service incentive leave is the salary rate at the date of commutation.</li> <li>• May be substituted by the grant of vacation or sick leave.</li> </ul>
<b>Maternity Leave</b>	RA 1161 as amended by RA 8282 and RA 11210	<p>Every pregnant woman in the private sector and public sector, whether married or unmarried is entitled to a <b>maternity leave of 105 days with benefits equivalent to 100% of the average daily salary</b> credit of the employee.</p> <p>With an option to extend for an additional 30 <b>days without pay</b> and granting an <b>additional 15 days for solo mothers.</b></p>
<b>Paternity Leave</b>	RA 8187	<p>The leave shall be for 7 days with full pay consisting of basic salary and mandatory allowances, if any.</p> <p>This is granted to all married male employees in the private sector, regardless of employment status.</p>
<b>Parental Leave for Solo Parents</b>	RA 8972	<p>This is granted to any solo parent or individual who is left alone with the responsibility of parenthood to respond to parental duties and responsibilities where physical presence is required. <b>The parental leave shall</b></p>

		<p><b>be 7 workdays every year with full pay</b> and mandatory allowance, if any.</p> <p><b>This is on top of leave privileges</b> under existing laws and emergency/contingency leave provided under company policy or a collective bargaining agreement.</p>
<b>Leave for victims of VAWC</b>	RA 9262	<p>This is granted to private-sector women employees who are victims of VAWC as defined by the law. The leave benefit shall cover the days that women employees have to attend to medical and legal concerns. The qualified victim employee is <b>entitled to a leave up to 10 days with full pay</b> and mandatory allowances, if any.</p>
<b>Special Leave Benefits Leave for Women</b>	RA 9710	<p>A woman employee having rendered continuous aggregate employment service of at least six 6 months for the last twelve 12 months <b>shall be entitled to a special leave benefit of two 2 months with full pay</b> based on her gross monthly compensation following <b>surgery caused by gynecological disorders.</b></p>
<b>13<sup>th</sup>-month pay</b>	PD 851	<p><b>13th-month pay</b> is a mandatory benefit provided to employees pursuant to PD No. 851 which requires employers to grant to their rank and file employees <b>not less than 1/12 of the total basic salary earned</b> by an employee within a calendar year.</p>
<b>Separation Pay</b>	Labor Code Art. 283 and 284	<p>This is given to employees <b>terminated due to authorized causes</b> such as an installation of labor-saving devices; redundancy; retrenchment to prevent losses; closing or cessation of operation; and disease as ground for termination.</p> <p>Provided, that he is paid separation pay equivalent to <b>at least 1-month salary or to ½ month salary for every year of service</b>, whichever is greater, a fraction of at least 6 months being considered as 1 whole year</p>

#### *Security of Tenure and Illegal Dismissal*

For those proven to have been unjustly dismissed or as we call it victims of illegal dismissal, “shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.” If reinstatement is not possible a separation pay, as defined above, is given to the employee together with backwages.

Employers may also be required to pay damages if the dismissal was done in bad faith (Aurora Land Project Corp. vs NLRC, 266 SCRA 48).

<b>unjustly dismissed</b> (victims of illegal dismissal)	<b>just causes for termination<sup>4</sup></b>	<b>authorized causes for termination</b>
1. No just or authorized cause; 2. No due process; 3. Cause was non-existent	1. Serious misconduct or willful disobedience by the employee of lawful orders of the employer or representative in connection with the employee's work; 2. Gross and habitual neglect of duties by the employee; 3. Fraud or willful breach of the trust reposed to the employee; 4. Commission of a crime or offense against the employee or immediate family member by the employee; 5. sexual harassment	1. Installation of labor-saving devices; 2. Redundancy; 3. Retrenchment to prevent losses; 4. Closing or cessation of operation

#### *Where can employees question the legality of one's dismissal?*

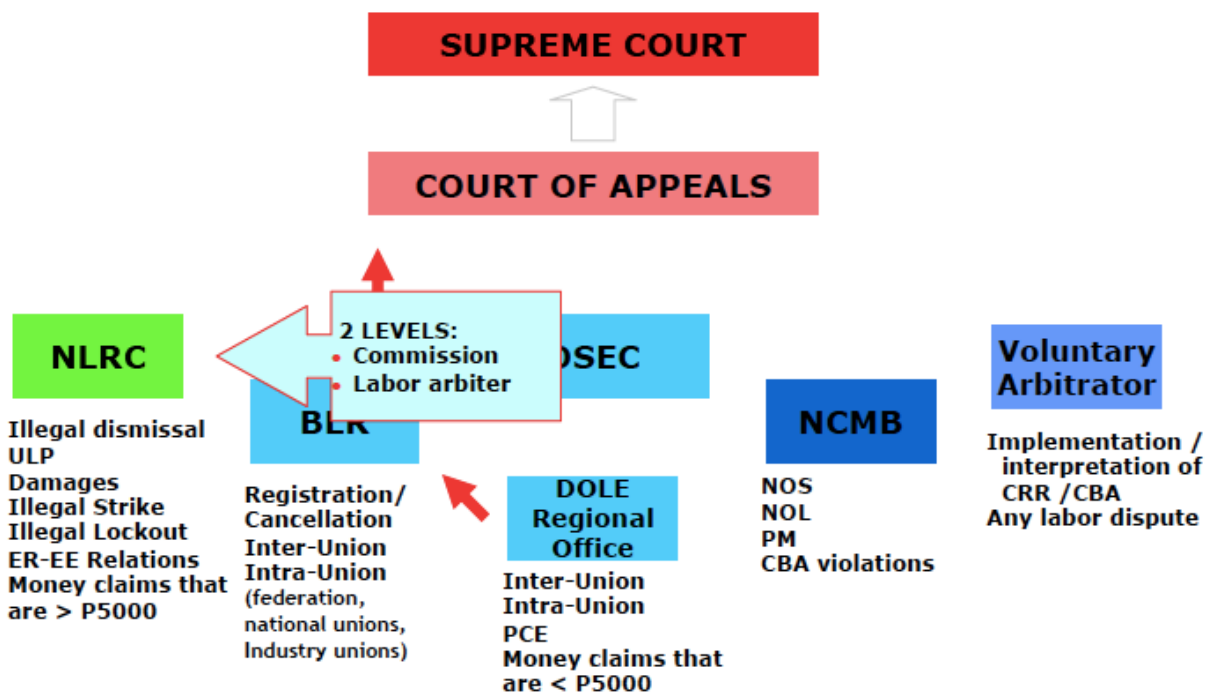
The legality of a dismissal may be questioned before the Labor Arbiter of a Regional Arbitration Branch of the National Labor Relations Commission (NLRC), **through a complaint for illegal dismissal**. If there are collective bargaining agreements (CBAs), the dismissal may be questioned through the grievance machinery established under the CBA. If unresolved at this level, the employee may submit a complaint to voluntary arbitration.

#### *Process of Initiation of Cases*

Through a single entry approach, a complainant may filed in any Department of Labor and Employment office. They cover any issues arising from any labor dispute. Below is the diagram detailing the process of initiation of cases:

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<sup>4</sup> Refer to Department Order No. 147-15, series of 2015: Amending the Implementing Rules and Regulations of Book VI of the Labor Code of the Philippines, (Rules governing the application of the just and authorized causes of termination of employment under Article 297-299 of the Labor code), as amended



## 5. Child Victims

Children are among the most vulnerable groups in the country. At least 31 percent of Filipino children live below the poverty line according to the United Nations Children’s Fund.<sup>5</sup> And most of them belong to families of landless farmers, workers and the urban poor.<sup>6</sup> On top of that, children with disabilities, indigenous and minority children, and children whose gender expression differ from their sex assigned at birth have been targets of abuses, neglect, exploitation, and discrimination.

A UNICEF national baseline study on violence against children found that LGBT+ children who identified as homosexuals have the highest prevalence of physical violence. The same study also noted that LGBT boys experiencing sexual violence are higher than LGBT girls.<sup>7</sup> And these data only cover the reported cases. There are accounts of sexual abuses committed against LGBT youth with the purpose of “correcting” sexual orientation or because of the belief that they are “worthy” of such sexual violence.<sup>8</sup>

### *Laws and Guides for Children’s Rights*

The rights of children with diverse SOGIE are often unprotected by the law. Moreover, the aspects of their gender identity and expression are left overlooked, if not invalidated in efforts to first meet their

<sup>5</sup> <https://www.unicef.org/philippines/media/556/file>

<sup>6</sup> Among the nine basic sectors, farmers, fishermen and children belonging to families with income below the official poverty threshold or poor families posted the highest poverty incidences in 2015 at 34.3%, 34.0% and 31.4%, respectively. These sectors consistently registered as the three sectors with the highest poverty incidence in 2006, 2009 and 2012. (<https://psa.gov.ph/poverty-press-releases/nid/120251>)

<sup>7</sup> <https://www.unicef.org/philippines/reports/national-baseline-study-violence-against-children-philippines>

<sup>8</sup> Dangerous lives: Being LGBT in Muslim Mindanao (<https://outragemag.com/dangerous-lives-lgbt-muslim-mindanao/>)

“basic needs.” In handling cases of minors who are part of the LGBT+ community, we still have to utilize the current laws that serve to protect children in general.

a. Relevant Laws and Codes

Law and Codes	What you need to know
Child and Youth Welfare Code or PD 603 as amended	<p>This is one of the first specific laws which recognizes the rights of the child and it states that “All children shall be entitled to the rights herein set forth without distinction as to legitimacy or illegitimacy, sex, social status, religion, political antecedents, and other factors.”</p> <p>It is through this law that the Council for the Welfare of Children (CWC) was created and operates under the Office of the President. It is mandated to coordinate the implementation and enforcement of all laws, formulate, monitor and evaluate policies, programs, and measures for children.</p>
Child Protection Act or RA No. 7610	<p>Under this law <b>“children” is defined as a “person below eighteen (18) years of age</b> or those over but are unable to fully take care of themselves or protect themselves from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition.</p> <p>It is also the first child protection law enacted after the ratification of the Convention on the Rights of the Child.</p> <p>Focused on cases of:</p> <ul style="list-style-type: none"> <li>● Child abuse</li> <li>● Neglect, abandonment and exploitation</li> <li>● Cruelty</li> <li>● Discrimination</li> <li>● Sexual abuse,</li> <li>● Sexual exploitation,</li> <li>● Armed conflict,</li> <li>● Street children,</li> <li>● Working children and worst forms of child labor</li> </ul> <p>These categories of acts are penalized:</p> <ol style="list-style-type: none"> <li>1. Child prostitution and other sexual abuse</li> <li>2. Child Trafficking</li> <li>3. Child Pornography</li> <li>4. Child Prostitution</li> </ol>
Juvenile Justice and Welfare Act or RA No. 9344	<p>This is the law that deals with juvenile justice and the system dealing with children at risk together with <b>children in conflict with the law</b> or CICL.</p> <p>A <b>“Child at Risk”</b> is defined as a child who is vulnerable to and at the risk of committing criminal offenses because of personal, family and social circumstances.</p>



	<p><b>“Child in conflict with the law”</b> or CICL refers to a child who is alleged as, accused of, or adjudged as, having committed an offense under Philippine laws.</p> <p>Prior to this law, there is no distinction between children at risk/CICL or adult offenders. A child is left with no protection and treated as an adult. Thus, after the enactment of the law, the age of <b>criminal responsibility</b> was raised for 9 years of age <b>to a minimum of 15 years old</b>.</p> <p>NOTE: “A child above fifteen (15) years but below eighteen (18) years of age shall likewise be exempt from criminal liability” unless the prosecution proves they have the capacity to distinguish right from wrong (acted with discernment).</p> <p>Through the <b>“presumption of minority”</b> a child offender “shall enjoy all the rights of a child in conflict with the law until he/she is proven to be eighteen (18) years old or older.”</p> <p>Stipulated under this Act is that the “State shall apply the principles of <b>restorative justice</b> in all its laws, policies and programs applicable to children in conflict with the law.” As opposed to retributive justice, it aims to attain “reparation for the victim; reconciliation of the offender, the offended and the community; and reassurance to the offender that he/she can be reintegrated into society. It also enhances public safety by activating the offender, the victim and the community in prevention strategies.”</p>
Anti-Bullying Act of 2013	<p>Bullying is defined as “any severe or repeated use by one or more students of a written, verbal or electronic expression, or a physical act or gesture, or any combination thereof, directed at another student that has the effect of actually causing or placing the latter in reasonable fear of physical or emotional harm or damage to his property; creating a hostile environment at school for the other student; infringing on the rights of the other student at school; or materially and substantially disrupting the education process or the orderly operation of a school...”</p> <p><b>This law only covers that elementary and secondary schools are required to “adopt policies to address the existence of bullying in their respective institutions.”</b></p> <p>In the Implementing Rules and Regulations of the law it includes <b>“gender-based bullying”</b> which is defined as “any act that humiliates or excludes a person on the basis of perceived or actual sexual orientation and gender identity.”</p>
Act Providing for the Elimination of the	<p>It defines the worst forms of labor as:</p> <ol style="list-style-type: none"> <li>1. Slavery</li> <li>2. Prostitution and pornography</li> <li>3. Use of children for illegal activities</li> </ol>

<p>Worst Forms of Child Labor or RA 9231</p>	<p>4. Work that is hazardous and harmful to the health, safety and moral of the child</p> <p>This law has limited the employment of children below 15 years old with certain exemptions for:</p> <ol style="list-style-type: none"> <li>1. When the child works directly under parents/legal guardian and only members of the family are employed</li> <li>2. When the child is employed in public entertainment or information through cinema, theater, radio, television or other forms of media is essential</li> </ol> <p>It regulates working hours for children which means:</p> <ul style="list-style-type: none"> <li>• children below 15 years old may work not more than 20 hours a week at most 4 hours a day</li> <li>• children 15-17 years old limits to not more than 8 hours a day or 40 hours a week.</li> <li>• Night work from 8 pm to 6 am is prohibited.</li> </ul> <p>The law explicitly states that:</p> <p><i>(3) No child below fifteen (15) years of age shall be allowed to work between eight o'clock in the evening and six o'clock in the morning of the following day and no child fifteen (15) years of age but below eighteen (18) shall be allowed to work between ten o'clock in the evening and six o'clock in the morning of the following day.</i></p>
<p>Anti-Child Pornography Act of 2009 or RA 9775</p>	<p>It defines child pornography as “any representation, whether visual, audio, or written combination thereof, by electronic, mechanical, digital, optical, magnetic or any other means, of a child engaged or involved in real or simulated explicit sexual activities.”</p> <p>The unlawful and prohibited acts are the following:</p> <p>(a) To hire, employ, use, persuade, induce or coerce a child to perform in the creation or production of any form of child pornography;</p> <p>(b) To produce, direct, manufacture or create any form of child pornography;</p> <p>(c) To publish offer, transmit, sell, distribute, broadcast, advertise, promote, export or import any form of child pornography;</p> <p>(d) <b>To possess any form of child pornography with the intent to sell, distribute, publish, or broadcast:</b> Provided. That possession of three (3) or more articles of child pornography of the same form shall be prima facie evidence of the intent to sell, distribute, publish or broadcast;</p> <p>(e) To knowingly, willfully and intentionally provide a venue for the commission of prohibited acts as, but not limited to, dens, private rooms, cubicles, cinemas, houses or in establishments purporting to be a legitimate business;</p>

	<p>(f) For film distributors, theaters and telecommunication companies, by themselves or in cooperation with other entities, to distribute any form of child pornography;</p> <p>(g) For a parent, legal guardian or person having custody or control of a child to knowingly permit the child to engage, participate or assist in any form of child pornography;</p> <p>(h) To engage in the luring or grooming of a child;</p> <p>(i) To engage in pandering of any form of child pornography;</p> <p>(j) <b>To willfully access any form of child pornography;</b></p> <p>(k) To conspire to commit any of the prohibited acts stated in this section. Conspiracy to commit any form of child pornography shall be committed when two (2) or more persons come to an agreement concerning the commission of any of the said prohibited acts and decide to commit it; and</p> <p>(l) <b>To possess any form of child pornography.</b></p>
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#### b. Case Management of Children's Cases

The Department of Justice released a protocol<sup>9</sup> for case management of child victims as part of their implementation of RA 7610 or the Anti-Child Abuse Law. In the protocol, approaches in the management of child abuse, neglect and exploitation are detailed and part of it was to adopt a gender-sensitive approach. The gender-sensitive approach according to the protocol is the "ability to recognize that girls and women's perceptions, experiences and interests may be different from those of boys and men, arising from an understanding of their different social position and gender roles." It did not explicitly recognize the special needs of child victims with diverse SOGIE however it aims to give gender-sensitive services that respond to the peculiar needs of victims at all times and in all stages, affording them respect, and promoting dignity as their inherent right.

#### c. Reporting and Coverage of Cases Involving Children

A document was released by the Department of Justice entitled Guide for Media Practitioners in the Reporting and Coverage of Cases Involving Children<sup>10</sup>. It aims to "raise media awareness on issues concerning the rights of the child and at the same time reinforce journalistic standards, through self-regulation, and contribute to the protection and promotion of these rights." There are legal bases for the guide such as the Republic Act No. 7610 which requires "strict confidentiality" on the identity of child abuse victims and to all records pertaining to the case.

Moreover, this is in recognition that children need special safeguards and protection of privacy especially when reporting and covering child victims, child in conflict with the law (CICL), and children involved in armed conflict (CIAC).

Principles	Guide
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<sup>9</sup> [https://www.doj.gov.ph/files/transparency\\_seal/2016-Jan/CPN-CSPC%20Protocol%2026Nov2014.pdf](https://www.doj.gov.ph/files/transparency_seal/2016-Jan/CPN-CSPC%20Protocol%2026Nov2014.pdf)

<sup>10</sup> <https://www.doj.gov.ph/files/2016/THE%20GUIDE%20FOR%20MEDIA%20PRACTITIONERS.pdf>

<p>1. <b>Children have an absolute right to privacy.</b></p>	<p><b>Identity of a child</b> victim of abuse, child witness, children involved in armed conflict (CIAC) or a CICL <b>shall not be disclosed whether directly or indirectly.</b></p> <p>Photographs, images, or video footage of the face or any distinguishing feature or information of a child victim of abuse, child witness, CIAC or a CICL including his or her family members shall not be taken, published, or shown to the public in any manner.</p>
<p>2. <b>The child's dignity must be respected at all times.</b></p>	<p><b>The use of sexualized images of children is a violation of the child's rights.</b></p> <p>Crimes of violence by or against children must be reported factually and seriously without passing judgment, stereotyping, or sensationalism.</p> <p>There should be a conscious effort to avoid sensationalism and exploitation of the child in need of any assistance.</p> <p>The child's life should not be treated as a movie.</p>
<p>3. <b>Children have the right to be heard. Access to media by children should be encouraged.</b></p>	<p>Whenever possible, give children access to media for them to be able to express their own opinions without the inducement of any kind, in any manner or procedure affecting them.</p> <p>When the <b>child is the source of crime-related news</b> or information, <b>his/her identity should be protected at all times.</b></p>
<p>4. <b>The mass media is a partner in the promotion of child rights and the prevention of child delinquency and is encouraged to relay consistent messages through a balanced approach.</b></p>	<p>On media coverage of specific cases, <b>the present as well as the long-term implications for the child's recovery, rehabilitation and reintegration</b> shall be taken into consideration by all those involved in deciding on and implementing the said approaches to media coverage.</p> <p><b>Media organizations are encouraged</b> to exercise self-regulation through responsibility in programming, publication or posting of any information affecting the physical, social, emotional, mental and moral development of the child.</p>

## 6. Violation of the Right to Privacy

Though it may not fall under criminal offense the Civil Code cites the following acts that will be dealt with action damages, prevention, and other relief:

1. Prying into the privacy of another's residence;
2. Meddling with or disturbing the private life or family relations of another;
3. Intriguing to cause another to be alienated from his friends;
4. Vexing or humiliating another on account of his religious beliefs, lowly station in life, place of birth, physical defect, or other personal condition

Outing members of the LGBTQ+ community constitute as a violation of the right to privacy. In fact, for some LGBT persons, it can mean losing one's job or livelihood or even endangerment of life. If we further look at it, it can harm individuals whose privacy has been invaded through humiliation and attack to reputation.

### *Libel*

Since there is no current law that makes it illegal for someone to publicly disclose a person's SOGIE, we can look at how libel can be utilized.

### Filing of Cases

#### a. Commission on Human Rights as Gender Ombud

The CHR as the Gender and Development Ombud has the power to investigate (i) violations against women and persons with diverse sexual orientation and gender identity and expression (SOGIE) and (ii) specific acts of discrimination committed by an individual against another individual, or that committed by an institution (public or private) as against an individual or group of individuals, both requiring sensitivity in handling women victim-survivors. Filing cases for investigation under these grounds follow the CHR's Guidelines and Procedures in the Investigation and Monitoring of Human Rights Violations and Abuses and the Provision of CHR Assistance.

Under the guidelines, any concerned individual or group may file a complaint with the Office of the Chairperson or any regional or sub-office of the CHR. An anonymous complaint may be filed however, this will be subject to the verification on the basis of the details outlined in the anonymous complaint.

#### b. Administrative

Generally, administrative cases are those before quasi-judicial agencies with regard to violations of administrative laws of the Philippines usually done by a public officer or a person performing functions that are imbued with public interest. Examples of quasi-judicial agencies that hear administrative cases are the Civil Service Commission, the Ombudsman, National Police Commission etc.

In relation to persons of diverse SOGIES, administrative cases may be filed against public officers who refuse to render their mandated services on the basis of actual or

perceived SOGIE, for those who vilified persons of diverse SOGIE or implemented policies that discriminate against persons of diverse SOGIE.

Each quasi-judicial agency has a distinct set of rules on filing of such cases. The paralegal is therefore asked to use, for this purpose, the Revised Rules in Administrative Cases in the Civil Service, the Rules of Procedure of the Office of the Ombudsman, or the Revised Rules of Procedure before the Administrative Disciplinary Authorities and the Internal Affairs Service of the Philippine National Police, to name a few.

c. Criminal cases

As this manual already discussed inquest proceedings, this part will only contain criminal cases filed other than those undergoing inquest proceedings.

It will always help to have the incident to be put on the blotter of either the barangay or local police. Copies of these blotters may be attached as pieces of evidence when you finally file the Complaint-affidavit with the Office of the Prosecutor. A lawyer is technically not required in the drafting of the Complaint-Affidavit, however, an experienced lawyer or paralegal may prove to be invaluable in drafting a complaint affidavit to prove every element of the crime.

After this, for jurisdictions with multiple prosecutors, the case will be assigned to a prosecutor who will issue a *subpoena* against the accused to appear and submit a Counter-Affidavit. A preliminary investigation will be then set by the prosecutor after all the pleadings have been filed. Usually the prosecutor will require the parties to appear for the preliminary investigation. If the prosecutor finds probable cause, a resolution will be issued by the prosecutor. This resolution may still be questioned through a motion for reconsideration or an appeal to the Secretary of Justice. If no appeal has been filed or if an appeal has been denied with finality, the case will be elevated to the proper court where the prosecutor will now be the lawyer for the state but may be assisted by private prosecutors procured by the complainant.

d. Civil cases

A civil case may be filed with the court of proper jurisdiction through a complaint and upon payment of the proper docket fees. Civil cases are filed to vindicate a wrong amounting to damages such as breach of contracts. The docket fees are computed on the basis of the damages and monetary relief sought. However, in valid cases, docket fees may be waived such as in the case of indigent parties. It is advised that a lawyer or an experienced practitioner drafts a complaint and guides the complainant throughout the process.

e. Small Claims Case

In lieu of a civil case, a small claims case may be filed with the small claims court but only exclusively for payment or reimbursement of a sum of money not exceeding P300,000.00. This means that only actual damages may be collected

by an applicant. Small claims action include those arising from contracts of lease, loan, services, sale or mortgage; for liquidated damages as indicated in the contract, or for barangay amicable settlement or arbitration award on a money claim. A small claims case is filed by accomplishing a form and filing it with a Municipal Trial Court or equivalent courts. It is also required that small claims be filed in the court where the plaintiff or the defendant's residence or in the case of those in the business of lending in the court where the defendant resides.

f. Katarungang Pambarangay

The Local Government Code (LGC) of 1991 is the governing law as regards the Katarungang Pambarangay. According to the LGC, the Katarungang Pambarangay's essence is to promote peaceful and harmonious conflict within the barangay instead of adversarial proceedings in court. Hence, civil disputes between parties who reside in the same barangay need to bring their dispute first to their respective Lupon ng Tagapamayapa. Cases filed directly to the courts without going through the lupon may be dismissed upon proper motion of the adverse party or may be referred to motu proprio back (for non-criminal cases only) to the appropriate Lupon.

To initiate the Katarungang Pambarangay process any person who has a cause of action against another involving any matter within the authority of the lupon may complain orally or in writing to the barangay lupon chairman upon payment of filing fee.

There is no need for amicable settlement proceedings in the Katarungang Pambarangay for the following cases:

- (a) Where one party is the government, or any subdivision or instrumentality thereof;
  - (b) Where one party is a public officer or employee, and the dispute relates to the performance of his official functions;
  - (c) Offenses punishable by imprisonment exceeding one (1) year or a fine exceeding Five thousand pesos (P5,000.00);
  - (d) Offenses where there is no private offended party;
  - (e) Where the dispute involves real properties located in different cities or municipalities unless the parties hereto agree to submit their differences to amicable settlement by an appropriate lupon;
  - (f) Disputes involving parties who actually reside in barangays of different cities or municipalities, except where such barangay units adjoin each other and the parties hereto agree to submit their differences to amicable settlement by an appropriate lupon;
  - (g) Such other classes of disputes which the President may determine in the interest of Justice or upon the recommendation of the Secretary of Justice.
- In addition to the abovementioned exceptions, Supreme Court Administrative Circular 14-93 added the following:

1. Disputes where urgent legal action is necessary to prevent injustice from being committed or further continued, specifically the following:
  - a. Criminal cases where accused is under police custody or detention [See Sec. 412 (b) (1), Revised Katarungang Pambarangay Law];
  - b. Petitions for habeas corpus by a person illegally deprived of his rightful custody over another or a person illegally deprived of or on acting in his behalf;
  - c. Actions coupled with provisional remedies such as preliminary injunction, attachment, delivery of personal property and support during the pendency of the action; and
  - d. Actions which may be barred by the Statute of Limitations.
2. Where the dispute arises from the Comprehensive Agrarian Reform Law (CARL) [Secs. 46 & 47, R. A. 6657];
3. Labor disputes or controversies arising from employer-employee relations [Montoya vs. Escayo, et al., 171 SCRA 442; Art. 226, Labor Code, as amended, which grants original and exclusive jurisdiction over conciliation and mediation of disputes, grievances or problems to certain offices of the Department of Labor and Employment]
4. Actions to annul judgment upon a compromise which may be filed directly in court [See Sanchez vs. Tupaz, 158 SCRA 459].

## VII. Crimes Targeting the LGBTQ+ Community

LGBTQ+ persons are not just targeted with physical and verbal assaults but also through criminal laws that have been used to harass, discriminate, and even extort from members of the community.

### A. Sexuality

1. **Grave Scandal** (Art. 200 RPC) consists of acts that are offensive to decency and good customs. They are committed publicly and thus, give rise to public scandal to persons who have accidentally witnessed the acts.
  - a. Decency means propriety of conduct, i.e. the proper observance of the requirements of modesty, good taste, etc.
  - b. Customs are the established usages and social conventions carried on by tradition and enforced by social disapproval of any violation thereof.

Elements:

- The offender performs an act or acts
- Such act or acts be highly scandalous as offending against decency or good customs
- The conduct is not expressly falling within any other article of the RPC
- The act/s are committed in a public place or within the public knowledge or view

Grave scandal has been weaponized against members of the community. Raids of bathhouses, spas and similar venues have persisted because of these “offenses” against decency and good customs. LGBTQ+ persons would be threatened of grave scandal charges and in some cases extorted by law enforcement for fear of their SOGIE being outed.

2. Immoral Doctrines, Obscene Publications and Exhibitions, and Indecent Shows



The test of obscenity is “whether the average person, applying contemporary standards, would find the speech, taken as a whole, appeals to the prurient interest. A thing is prurient when it arouses lascivious thoughts or desires or tends to arouse sexual desire.” (Soriano v. Laguardia G.R. No. 164785 (2010)).

Mere nudity in pictures or paintings is not an obscenity. The proper test is whether the motive of the picture, as indicated by it, is pure or impure, or whether it is naturally calculated to excite impure imaginations.

Mere possession of obscene materials, without intention to sell, exhibit, or give them away, is not punishable under Art. 201, considering that the purpose of the law is to prohibit the dissemination of obscene materials to the public. (Fernando v. CA G.R. No. 159751 (2006))

According to the Revised Penal Code, Art 201:

Persons liable:

- Those who publicly expound or proclaim doctrines that are contrary to public morals
- Authors of obscene literature, published with their knowledge in any form.
- Editors publishing such obscene literature
- Owners or operators of establishment selling obscene literature
- Those who exhibit indecent or immoral plays, scenes, acts or shows in theaters, fairs, cinemas or any other place
- Those who sell, distribute, or exhibit films, prints, engraving, sculptures or literature which are offensive to morals

Obscene literature or immoral/indecent plays, scenes, or acts:

- Those which glorify criminals or condone crimes;
- Those which serve no other purpose but to satisfy the market for violence, lust, or pornography;
- Those which offend against any race or religion;
- Those which tend to abet the traffic and the use of prohibited drugs; and
- Those which are contrary to law, public order, morals, good customs, established policies, lawful orders, decrees, and edicts.

### 3. Prostitution

Women who, for money or profit, habitually indulge in sexual intercourse or lascivious conduct, are deemed to be prostitutes (Art. 202 RPC). This does not apply to minors (RA 9344).

Elements:

- Women
- Habituality
- Sexual intercourse or lascivious conduct
- For money or profit

### 4. White Slave Trade

Acts penalized according to Art. 341 RPC:

- Engaging in the business of prostitution

- Profiting by prostitution
- Enlisting the services of women for the purpose of prostitution

#### 5. Corruption of Minors

By promoting or facilitating the prostitution or corruption of persons underage (minors) to satisfy the lust of another.

#### 6. Adultery (Art. 333 RPC)

Elements:

- The woman is married;
- The woman had sexual intercourse with a man not her husband;
- As regards the man, he is aware that the woman is married.

#### 7. Concubinage (Art. 334 RPC)

Elements:

- That the man must be married.
- That he committed any of the following acts:
  - Keeping a mistress in the conjugal dwelling.
  - Having sexual intercourse under scandalous circumstances with a woman who is not his wife.
  - Cohabiting with her in any other place.
- That as regards the woman she must know him to be married.

#### 8. Death or physical injuries under exceptional circumstances (Art. 247 RPC)

Requisites:

1. A legally married person or parent surprises his spouse or daughter (the latter must be under 18 and living with them) in the act of committing sexual intercourse with another person
2. He/she kills any or both of them or inflicts upon any or both of them any serious physical injury in the act or immediately thereafter
3. He has not promoted or facilitated the prostitution of his wife or daughter, or that he has not consented to the infidelity of the other spouse.

Surprise means to come upon suddenly and unexpectedly.

Exclusions:

- Seeing a man jump out of the window
- Sleeping in the same bed
- After the act of sexual intercourse
- Preparatory acts
- Lack of voluntariness on the part of the other spouse or daughter
- Consent

Inclusions:

- One continuous act of discovery, escape, pursuit, and killing

## 9. Rape

The Anti-Rape Law of 1997 (RA 8353) now classified the crime of rape as Crime Against Persons.

Elements:

### Two Kinds of Rape

1. Rape by sexual intercourse is committed by a man who shall have carnal knowledge of a woman
2. Rape through sexual assault is committed by any person who shall insert:
  - a. his penis into another person's mouth or anal orifice, or
  - b. any instrument or object, into the genital or anal orifice of another person

Presence of any of the following circumstances:

- a. Through force, threat, or intimidation;
- b. When the offended party is deprived of reason or otherwise unconscious;
- c. By means of fraudulent machination or grave abuse of authority; and
- d. When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.

The subsequent valid marriage between the offender and the offended party shall extinguish the criminal action or the penalty imposed.

In case it is the legal husband who is the offender, the subsequent forgiveness by the wife as the offended party shall extinguish the criminal action or the penalty: Provided, That the crime shall not be extinguished or the penalty shall not be abated if the marriage is void ab initio.

**Note:** No such crime as frustrated rape.

## 10. Acts of lasciviousness (Art. 336 RPC)

Elements:

1. That the offender commits any act of lasciviousness or lewdness.
2. That it is done under any of the following circumstances:
  - a. by using force or intimidation, or
  - b. when the offended party is deprived of reason or otherwise unconscious, or
  - c. when the offended party is under 12 years of age.
3. That the offended party is another person of either sex.

Note: The term "lewd" is commonly defined as something indecent or obscene; it is characterized by or intended to excite crude sexual desire. The presence or absence of lewd designs is inferred from the nature of the acts themselves and the environmental circumstances. What is or what is not lewd conduct, by its very nature, cannot be pigeonholed into a precise definition. (People v. Ladra, G.R. No. 221443, July 17, 2017)

#### 11. Qualified seduction (Art. 337 RPC)

Elements:

1. That the offended party is a virgin, which is (presumed if she is unmarried and of good reputation which is based on Babanto v. Zosa G.R. No. L-32895.)
2. That she must be over 12 and under 18 years of age.
3. That the offender has sexual intercourse with her.
4. That there is abuse of authority, confidence or relationship on the part of the offender (person entrusted with education or custody of victim; person in public authority, priest; servant)

Persons liable:

Those who abuse their authority:

1. persons in public authority
2. guardian
3. teacher
4. person who, in any capacity, is entrusted with the education or custody of the woman seduced

Those who abused the confidence reposed in them:

1. priest
2. house servant
3. domestic

Those who abused their relationship:

1. brother who seduced his sister
2. ascendant who seduced his descendant

#### 12. Simple seduction (Art. 338 RPC)

Elements:

- a. The offended party is over 12 and under 18 years of age
- b. She is a woman of good reputation, single or widow
- c. The offender has sexual intercourse with her
- d. By means of deceit

#### 13. Acts of lasciviousness with consent (Art. 339 RPC)

Any other acts of lasciviousness committed by the same persons and the same circumstances as in qualified or simple seduction

#### 14. Forcible abduction (Art. 342, RPC)

The abduction of any woman against her will and with lewd designs shall be punished by reclusion temporal. The same penalty shall be imposed in every case, if the female abducted be under twelve years of age.

Elements:

- a. That the person abducted is a woman, regardless of her age, civil status, or reputation;
- b. That the abduction is against her will, or the woman is under 12 years of age; and
- c. That the abduction is with lewd designs.

Distinguished from kidnapping: In forcible abduction, the taking away of the woman is motivated by lewd designs

#### 15. Consented abduction (Art. 343, RPC)

Elements:

- a. The offended party is a virgin
- b. She is over 12 but under 18 years of age
- c. The taking away of the offended party is with her consent, after solicitation or cajolery from the offender
- d. The taking away is with lewd designs

## B. Security

### 1. Murder (Art. 248 RPC)

Elements:

- a. That a person was killed.
- b. That the accused killed him.
- c. That the killing was attended by any of the following qualifying circumstances:
  - i. with treachery, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense or of means or persons to insure or afford impunity
  - ii. in consideration of price, reward or promise
  - iii. by means of inundation, fire, poison, explosion, shipwreck, stranding of a vessel, derailment or assault upon a streetcar or locomotive, fall of airship, by means of motor vehicles or with the use of any other means involving great waste or ruin
  - iv. on occasion of any of the calamities enumerated in the preceding paragraph, or of an earthquake, eruption of a volcano, destructive cyclone, epidemic or any other public calamity
  - v. with evident premeditation
  - vi. with cruelty, by deliberately and inhumanely augmenting the suffering of the victim or outraging or scoffing at his person or corpse
- d. The killing is not parricide or infanticide.

Notes:

- The victim must be killed in order to consummate the offense. Otherwise, it would be attempted or frustrated murder

- Murder will exist with only one of the circumstances. The other circumstances are absorbed or included in one qualifying circumstance. They cannot be considered as generic aggravating circumstances
- Treachery and premeditation are inherent in murder with the use of poison.

## 2. Homicide (Art. 249 RPC)

The following elements are also stated in *Wacoy v. People* G.R. No. 213792 (2015).

Elements:

- a. That a person was killed.
- b. That the accused killed him without any justifying circumstances.
- c. That the accused had the intention to kill, which is presumed.
- d. That the killing was not attended by any of the qualifying circumstances of murder, or by that of parricide or infanticide.

## 3. Giving assistance to suicide (Art. 253 RPC)

Acts punishable:

- a. Assisting another to commit suicide, whether the suicide is consummated or not
- b. Lending his assistance to another to commit suicide to the extent of doing the killing himself.

## 4. Mutilation (Art. 262 RPC)

Kinds of Mutilation

- a. Intentionally mutilating another by depriving him, totally or partially, of some essential organ for reproduction
- b. Intentionally making another mutilation, i.e. lopping, clipping off any part of the body of the offended party, other than the essential organ for reproduction, to deprive him of that part of the body

Elements:

- There be a castration i.e. mutilation of organs necessary for generation
- Mutilation is caused purposely and deliberately

## 5. Physical injuries

Serious physical injuries (Art. 263 RPC)

- Insanity, imbecility, impotence, or blindness
- Blindness, loss of speech, loss of the power to hear or smell or shall have lost an eye, a hand, a foot, an arm, or a leg or shall have lost the use of any such member
- Become deformed, or shall have lost any other part of his body, or shall have lost the use thereof, or shall have been ill or incapacitated for the performance of the work in which he as habitually engaged for a period of more than ninety days
- Incapacity for labor for > 30 days

#### Less serious physical injuries

- Incapacity or requirement of medical attendance for 10-30 days
- Physical injuries not described in Art. 263 and Art. 264
- Slight physical injuries (Art. 266 RPC)
- Incapacity or requirement of medical attendance for <10 days
- Injuries which do not prevent the offended party from engaging in his habitual work nor require medical assistance

#### 6. Kidnapping and serious illegal detention (Art. 267 RPC as amended by RA 7659)

The following elements can also be referenced in *People v. Ali G.R. No. 222965 (2017)*.

##### Elements:

- a. The offender is a private individual
- b. He kidnaps or detains another, or in any other manner deprives the latter of his liberty
- c. The act of detention or kidnapping must be illegal
- d. That in the commission of the offense, any of the following circumstances are present (becomes serious)
  - i. that the kidnapping/detention lasts for more than 3 days
  - ii. that it is committed simulating public authority
  - iii. that any serious physical injuries are inflicted upon the person kidnapped or detained or threats to kill him are made, or
  - iv. that the person kidnapped or detained is a minor (except if a parent is the offender), female or a public officer

#### 7. Slight illegal detention (Art. 268 RPC)

##### Elements:

- Offender is a private person
- He kidnaps or detains another or in any other manner deprives him of his liberty / furnished place for the perpetuation of the crime
- That the act of detention or kidnapping must be illegal
- That the crime is committed without the attendant of any of the circumstances enumerated in Art 267

#### 8. Unlawful arrest (Art. 269 RPC)

##### Elements:

- That the offender arrests or detains another person
- That the purpose of the offender is to deliver him to the proper authorities
- That the arrest or detention is not authorized by law or there is no reasonable ground therefor

#### 9. Arbitrary detention (Art. 124 RPC)

##### Elements:

- a. Offender is a public officer or employee with authority to arrest or
- b. detain a person (e.g. police officer)

- c. He detains a person
- d. Without legal grounds

#### 10. Delay in the delivery of detained persons (Art. 125 RPC)

##### Elements:

- a. Offender is a public officer or employee
- b. Detained a person for some legal ground
- c. Fails to deliver such person to the proper judicial authorities within:
  - i. 12 hours for crimes punishable by light penalties
  - ii. 18 hours for crimes punishable by less grave penalties
  - iii. 36 hours for crimes punishable by afflictive or capital penalties

Note: A private individual who makes a lawful arrest who don't comply with these periods shall be guilty of illegal detention

#### 11. Grave threats (Art 282 RPC)

##### Forms:

- a. With condition, attaining the purpose
- b. With condition, not attaining the purpose
- c. Without condition

##### Common elements:

- a. Threat of any wrong upon the offended party's person, honor, or property, or that of his/her family
- b. The wrong amounts to a crime

#### 12. Light threats (Art. 283 RPC)

##### Elements

- a. That the offender makes a threat to commit a wrong.
- b. That the wrong does not constitute a crime.
- c. That there is a demand for money or that other condition is imposed, even though not unlawful
- d. That the offender has attained his purpose or, that he has not attained his purpose

#### 13. Other light threats (Art. 285 RPC)

##### Elements:

- a. Person shall threaten another, without being included in the provisions of Art. 283, with a weapon, or draw weapon in a quarrel unless in self-defense.
- b. In the heat of anger, a person orally threatens another with some harm not constituting a crime, and who by subsequent acts show that he did not persist in the idea involved in his threat, provided that the circumstances of the offense shall not bring it within the provisions of Article 282.
- c. Person orally threatens another with harm not constituting a felony



#### 14. Grave coercion (Art. 286 RPC)

The following are also found in *Sy v. Secretary of Justice* G.R. No. 166315 (2006).

Elements:

- a. That a person prevented another from doing something OR not to do something against his will, be it right or wrong;
- b. That the prevention or compulsion be affected by violence, of force as would produce intimidation and control the will.
- c. That the person that restrained the will and liberty by another had not the authority of law or the right to do so, or, in other words, that the restraint shall not be made under authority of law or in the exercise of any lawful right.

#### 15. Light coercion and unjust vexation (Art. 287 RPC)

Light coercion

- a. Offender is a creditor
- b. Seizes anything belonging to his/her debtor
- c. By means of violence or display of material force-producing intimidation
- d. For the purpose of applying the same to the payment of the debt

Unjust vexation includes any human conduct which, although not productive of some physical or material harm, would however unjustly annoy or vex an innocent person (*Maderazo v. People* G.R. No. 165065 (2006)).

#### 16. Malicious mischief (Art. 327 RPC)

The following are also found in *Taguinod v. People* G.R. No. 185833 (2011)

- a. That the offender deliberately caused damage to the property of another;
- b. That such act does not constitute arson or other crimes involving destruction;
- c. That the act of damaging another's property be committed merely for the sake of damaging it

#### 17. Imprudence and negligence (Art. 365 RPC)

Elements of reckless imprudence:

- a. Act or omission
- b. Voluntariness
- c. No malice
- d. Material damage results
- e. Inexcusable lack of precaution, considering the offender's employment, occupation, degree of intelligence, and physical condition, and other circumstances regarding persons, time, and place

Elements of simple imprudence:

- Lack of precaution
- Impending damage is not immediate or the danger is not clearly manifest

## C. Reputation

### 1. Libel (Art. 353 RPC)

Elements:

- a. Imputation of a crime, vice or defect (real or imaginary), or any act, omission, condition, status, or circumstance
- b. Publicity
- c. Malice
- d. Directed to a natural or juridical person, or one who is dead
- e. The tendency to cause dishonor, discredit, or contempt of the offended person
- f. By means of writing, printing, lithography, engraving, radio, phonograph, painting, theatrical exhibition, cinematographic exhibition, or any similar means (Art. 355 RPC)

Based on Art. 354 of the RPC, malice is presumed, even if it be true, if no good intention and justifiable motive for making it is shown, except in:

- a. A private communication made by any person to another in the performance of any legal, moral or social duty;
- b. A fair and true report, made in good faith, without any comments or remarks, of any judicial, legislative or other official proceedings which are not of confidential nature, or of any statement, report or speech delivered in said proceedings, or of any other act performed by public officers in the exercise of their functions;

Public Figure Doctrine (Guinguing v. CA G.R. No. 128959 (2005))

- A public figure has been defined as a person who, by his/her accomplishments, fame, or mode of living, or by adopting a profession or calling which gives the public a legitimate interest in his/her doings, affairs, and character, has become a “public personage.” He/she is, in other words, a celebrity. It includes, in short, anyone who has arrived at a position where public attention is focused upon him/her as a person.
- In order to justify a conviction for criminal libel against a public figure, it must be established beyond reasonable doubt that the libelous statements were made or published with actual malice, meaning knowledge that the statement was false or with reckless disregard as to whether or not it was true.

### 2. Threatening to publish or offer to prevent publication (Art. 356 RPC)

Threatening another to publish a libel concerning him/her or the parents, spouse, child, or other members of the family of the latter

Offering to prevent the publication of such libel for a compensation or money consideration.

### 3. Prohibited Publication (Art. 357 RPC)

Elements:

- Offender is a reporter, editor, or manager of a newspaper daily or magazine
- Publishes facts connected with the private life of another
- Offensive to the honor, virtue, and reputation of the offended person

#### 4. Slander (Art. 358 RPC)

The following is as referenced from Ramos v. People G.R. No. 226454 (2017):

Elements:

- a. There must be an imputation of a crime, or a vice or defect, real or imaginary, or any act, omission, status or circumstances;
- b. Made orally;
- c. Publicly;
- d. Maliciously;
- e. Directed to a natural or juridical person, or one who is dead;
- f. Which tends to cause dishonor, discredit or contempt of the person defamed
  - i. action of a serious and insulting nature (Grave slander)
  - ii. light insult or defamation – not serious in nature (simple slander)

#### 5. Slander by deed (Art. 359 RPC)

The following can also be referenced in Villanueva vs. People, G.R. No. 160351 (2006):

Elements:

- a. That the offender performs any act not included in any other crime against honor.
- b. That such act is performed in the presence of another person or persons.
- c. That such act casts dishonor, discredit or contempt upon the offended party.

#### 6. Incriminating an innocent person (Art. 363 RPC)

Elements:

- a. That the offender performs an act.
- b. That by such an act he directly incriminates or imputes to an innocent person the commission of a crime.
- c. That such act does not constitute perjury.

#### 7. Intriguing against honor (Art. 364 RPC)

Any intrigue which has for its principal purpose to blemish the honor or reputation of a person.

### D. Identity

#### 1. Falsification by a public officer, employee, or notary, or ecclesiastical minister (Art. 171 RPC)

Elements of falsification by a public officer, employee, or notary:

- a. Offender is a public officer or employee or a notary public
- b. Takes advantage of official position
- c. Falsifies a document

Elements of falsification by an ecclesiastical minister:

- a. Offender is an ecclesiastical minister
- b. Falsifies a document
- c. Falsification may affect the civil status of persons

- Counterfeiting or imitating any handwriting, signature or rubric;
- Causing it to appear that persons have participated in any act or proceeding when they did not in fact so participate;
- Attributing to persons who have participated in an act or proceeding statements other than those in fact made by them;
- Making untruthful statements in a narration of facts;
- Altering true dates;
- Making any alteration or intercalation in a genuine document which changes its meaning;
- Issuing in an authenticated form a document purporting to be a copy of an original document when no such original exists, or including in such a copy a statement contrary to, or different from, that of the genuine original; or
- Intercalating any instrument or note relative to the issuance thereof in a protocol, registry, or official book.

## 2. Falsification by private individuals and use of falsified documents (Art. 172 RPC)

Any private individual who shall commit any of the falsifications in Art. 171RPC in any public or official document or letter of exchange or any other kind of commercial document

Any person who, to the damage of a third party, or with the intent to cause such damage, shall in any private document commit any of the acts of falsification in Art. 171RPC

Any person who shall knowingly introduce in evidence in any judicial proceeding or to the damage of another or who, with the intent to cause such damage, shall use any falsified document

## 3. Using fictitious names and concealing true names (Art. 178 RPC)

Elements of using a fictitious name:

- Offender uses a name other than his/her real name
- Used the fictitious name publicly
- Purpose is any of the following:
  - To conceal a crime
  - To evade the execution of a judgment
  - To cause damage to public interest

Elements of concealing true name:

- Offender conceals his/her:
  - True name; AND
  - All other personal circumstances
- For the purpose of concealing his/her identity

NOTE: Anti-Alias Law (CA 142) as amended by R.A. No. 6085 prohibits the use of unregistered aliases

- The user must have held himself out as a person who shall publicly be known under the alias
- The intent to publicly use the alias must be manifest

- Exceptions: pseudonyms solely for literary, cinema, television, radio, or other entertainment purposes and in athletic events

## VIII. Special Topics in Persons and Family Law and Civil Law

### Marriage

According to the American Psychological Association (APA) there has been enough scientific evidence that psychological and social aspects of committed relationships between same-sex partners generally resemble those of heterosexual partnerships<sup>11</sup>. The APA went even as far as saying that the majority of lesbian, and gay, adults want to get married<sup>12</sup>. So why is there a prohibition of marriage equality across the world including the Philippines?

According to the 1987 Family Code of the Philippines, the definition of marriage is:

*... a special contract of permanent union **between a man and a woman** entered into in accordance with law for the establishment of conjugal and family life. It is the foundation of the family and an inviolable social institution whose nature, consequences, and incidents are governed by law and not subject to stipulation, except that marriage settlements may fix the property relations during the marriage within the limits provided by this Code.*

Also, twice mentioned in the Family Code (Article 46 and 55) that homosexuality and lesbianism and its concealment can be grounds for legal separation and to void marriage contracts. It was also the Supreme Court in Santos versus Court of Appeals, 240 SCRA 20 [1995] which said that homosexuality or lesbianism is an indicator of psychological incapacity along with drug addiction, habitual alcoholism, renders the marriage contract voidable.

Not only is it unscientific, but it has also disenfranchised LGBT persons from the rights accessed by married people.

1. Next-of-Kin and Spouse Status
  - a. Support
  - b. Access to partner's medical information and third-party consent
2. Funeral arrangement decisions
3. Inheritance rights / compulsory heir
4. Social Security and Insurance benefits
5. Joint Property Relations
6. Privilege of Confidential Information

Protections such as prohibition on sales and donations against spouses do not apply to LGBT persons. They are also unprotected when it comes to adultery and concubinage as these are only reserved for "married" couples.

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<sup>11</sup> What Do We Know About Gay and Lesbian Couples? Current Directions in Psychological Science by Kurdek, L. A. (2005), 14(5), 251–254. <https://doi.org/10.1111/j.0963-7214.2005.00375>.

<sup>12</sup> 74% of lesbian women, gay men and bisexual men and women want to get married. Inside-OUT: A Report on the Experiences of Lesbians, Gays and Bisexuals in America and the Public's Views on Issues and Policies Related to Sexual Orientation (Pub #3193)

However, homosexuality alone was not enough to deny child custody from an LGBT person as ruled by the Supreme Court in 2005. A petitioner claimed that his wife being a lesbian was immoral and therefore unfit for child custody. The highest court ruled that “sexual preference and moral laxity alone do not prove parental neglect or incompetence.” The ruling also cited the Family Code wherein no child under seven years of age shall be separated from the mother, unless the court finds compelling reasons to order otherwise.

## Living Will

A living will is also known as a health care directive. This healthcare directive contains advance instructions as to what medical care will be given to a person upon the same person’s inability to express such desire. A living will, thus, includes medical instructions such as end-of-life instructions, designation of representative (a special power of authority within the living will), appointment of guardians for children (not legally binding but an expression of desire), and funeral arrangements.

## Adoption

LGBT+ persons can adopt a child under Philippine law but only as single or as solo parents. The Domestic Adoption Act of 1998 or the Republic Act No. 8552 does not discriminate against the adopter’s sexual orientation or gender preference.

Although there is no prohibition from LGBT+ persons from adopting children, the law may still be considered discriminatory, in that Section 7 of RA 8552 provides “husband and wife shall jointly adopt, except in the following cases” The use of heteronormative marital terms continues in Section 7 with: “In case husband and wife jointly adopt, or one spouse adopts the illegitimate son/daughter of the other, joint parental authority shall be exercised by the spouses.”

As stated in one of the latter paragraphs, since joint parental authority over the adoptee may only be exercised by spouses, LGBT+ partners are excluded from such joint exercise.

According to Section 7 of RA No. 8552, the following are requirements in order for one to be eligible for domestic adoption:

1. Any Filipino citizen of legal age,
2. has good moral character,
3. has not been convicted of any crime involving moral turpitude<sup>13</sup>;
4. who is emotionally and psychologically capable of caring for children,
5. at least sixteen (16) years older than the adoptee<sup>14</sup>, and
6. who is in a position to support and care for his children in keeping with the means of the family.

When it comes to LGBT+ couples, the law will only recognize one of them as an adopter or eventual parent. This means that the other partner does not have parental rights over the child or children.

Issues also arise when same-sex couples legally married under foreign law are prohibited from adopting as couples. It is the Philippine Inter-Country Adoption Act of 1995 or Republic Act No. 8043 which details

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<sup>13</sup> Moral turpitude has been defined as everything which is done contrary to justice, modesty, or good morals; an act of baseness, vileness or depravity in the private and social duties which a man owes his fellowmen, or to society in general and examples are rape, fraud, murder, arson, etc.

<sup>14</sup> The requirement of a 16-year difference between the age of the adopter and adoptee may be waived when the adopter is the biological parent of the adoptee or is the spouse of the adoptee’s parent

the adoption requirements of both Filipino citizens and non-Filipinos residing outside the country. There is no stipulation under RA No. 8042 banning couples who are legally married abroad from pursuing inter-country adoption. More so, it is stated in the 1987 Family Code of the Philippines that marriages, as long as valid from where contracted, shall also be valid in this country.

### Change of name and gender marker

The infamous cases of *Silverio vs. Republic* and *Republic v. Cagandahan* set the legal stage for change of gender marker for transgender and intersex persons. For transgender persons, the *Silverio* case is an obstacle in changing gender markers. For intersex persons, the case of *Cagandahan* allowed the change of gender-marker to the liking and self-identification of the intersex person.

### Insurance

Insurance policies have been used as estate devices by individuals who wish to leave property to other persons who are not exactly their legal heirs . For the longest time, insurance companies have been misreading the law in not allowing LGBTQIA+ persons to designate their partners as beneficiaries of insurance in their own life claiming that since there is no insurable interest between unmarried persons. This interpretation of Section 10 of R.A. 10607 which states that every individual has an insurable interest in their own life. To remind insurance businesses to curb such illegal practice, the Insurance Commission has issued Legal Opinion 2020-02 dated March 4, 2020. The legal opinion affirms that there is no legal impediment “to the designation as beneficiary of the domestic partner of an insured who has secured a life insurance policy on his or her own life” as long as the beneficiary is not in violation of Art. 739 of the Civil Code.<sup>15</sup>

## IX. Documentation Work

### Documentation of Human Rights Violations

Information regarding human rights abuses are collected by groups or organizations to determine the truth of the cases as accurately and completely as possible. It also aims to verify the facts and make a credible report on alleged violations.

It is imperative that the documentation, investigation, and evidence gathering be gender and culturally sensitive.

### CHR Ombud Guidelines on Handling of Cases Involving Persons with Diverse SOGIE

The Commission on Human Rights in their Gender Ombud Guidelines has outlined standards to follow in doing their documentation and investigation work in consideration of the vulnerabilities of the

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<sup>15</sup> Art. 739. The following donations shall be void:

- (1) Those made between persons who were guilty of adultery or concubinage at the time of the donation;
- (2) Those made between persons found guilty of the same criminal offense, in consideration thereof;
- (3) Those made to a public officer or his wife, descendants and ascendants, by reason of his office.

communities of Persons of diverse SOGIE. These standards are condensed in this manual as a quick reference.

1. SOGIE sensitivity must be observed and gender fair language must be used at all times. Continuous training on these must be given to the one doing documentation and investigation.
2. Investigators shall adhere to the Yogyakarta Principles when it provides that “human beings of all sexual orientations and gender identities are entitled to the full enjoyment of all human rights.”
3. Those handling cases of persons with diverse SOGIE are encouraged/urged “to understand the effects of stigma ( e.g such as prejudice, discrimination, violence, hate crimes) against persons with diverse SOGIE” and the exercise of the full gamut of their rights.
4. Bias, prejudice, religious beliefs, their competencies/limitations in dealing with the human rights of persons with diverse SOGIE of the one handling the case must be examined, and how these will eventually affect how the investigation of cases involving persons with diverse SOGIE will be handled.

Some practical considerations in conducting the interview and investigation is also outlined in the CHR Ombud Guidelines and these are also condensed here for quick reference:

1. Anticipate that the interviewee has had previous experiences with discrimination and/or apathy at the personal and institutional levels and may be especially sensitive to signs of bias
2. Ensure that the venue where the interview will be held is in a neutral, non-threatening or “affirmative” setting that will allow the interviewee to feel comfortable and free in expressing themselves
3. Once a person identifies to a particular gender identity, respect should be accorded to such choice. Those handling the cases shall learn how the subject interviewee prefers to be referred and shall use this preference throughout the interview and any subsequent meetings with that person
4. Confidentiality of proceedings shall be respected at all times. There must also be an agreement between the case handler and the interviewee on how the information given and obtained must be used and shared.

## Evidence

Evidence can be any of the statements of witnesses or testimonies. They can be physical objects or things or exhibits such documents, photographs, maps, sketches, plans, fingerprints, media file, DNA tests, etc. from which the falsity, possibility or impossibility, probability or improbability of an allegation from which the truth or falsity of a conclusion may be inferred.

Three types of evidence are:

1. Object evidence (tangible physical objects) - addressed to the senses of the court.
2. Documentary evidence - consists of papers and documents the content of which is offered as evidence
3. Testimonial evidence – accounts of witnesses/



There are experts and non-experts and both of their accounts can be presented as evidence. An expert may express their own opinion on matters of art or science in which he is competent thus the term expert opinion. A non-expert on the other hand may give accounts on matters that are of common experience like the identity of a person, date, plate number, etc.

A testimony may be an oral or written statement of a witness regarding a case/complaint. A written testimony must bear the signature of the witness. It should be accompanied by personal information about the witness like name, address, civil status, work and other important information. Oral testimonies are often given in court by a witness.

In selecting witnesses, the following are the main criteria:

1. Witnesses must be able to give primary data or first-hand accounts about the complaint, event or incident. Their testimonies must be based on direct experience and not hearsay.
2. They must be willing to give information regarding the complaint or incident otherwise they are unreliable.
3. They must be willing to come into the open, speak in front of the court and narrate their testimonies. Also, they must be willing to reveal personal data necessary for their identification as witnesses.

## XI. Appendix

### Sample Forms

#### SPA

#### Intake form