

Seeking Redress for HIV-Related Violations of Human Rights in the Philippines



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Acknowledgements

- Mr. Manuel Guzman, a human rights advocate who headed the project and developed this resource manual
- The HIV support groups that participated in the project activities: Pinoy Plus Association, Positive Action Foundation Philippines, Inc. (PAFPI); Babae Plus, Sister Plus, Cebu Plus, and Mindanao Advocates
- Mr. Ranier Naldoza, UNAIDS Special Youth Fellow at the time the resource manual was being developed, and who provided valuable inputs
- Mr. Salvador Vilches of the Philippine Mediation Center
- The Office for Alternative Dispute Resolution (Department of Justice), headed by Atty. Bernadette Ongoco
- Resource Persons at the Consultative Meeting: Atty. Christine Sevilla, Mr. Noel Colina, and Mr. Jeffrey Acaba

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Introduction

A. ABOUT THIS REPORT

This report is the result of a project by the Philippine country office of the JointUnited Nations Programme on HIV/AIDS (UNAIDS) aimed to identify the various redress mechanisms in the Philippines that can be accessed by people living with HIV (PLHIV) in case their rights were violated. The project was initiated in October 2010 with the engagement of this writer as consultant in its implementation.

Towards the completion of this report, the following activities were done:

- *Discussion with the UNAIDS staff.* Several meetings were held to provide this writer relevant information, such as anecdotal reports of some cases of violations and the status of past and related projects.
- *Research.* Among the documents studied are relevant Philippine laws, as well as publications of UNAIDS and of other organizations. Of particular significance was the document *Proceedings of the Roundtable Discussion on HIV and Human Rights* which came out of a workshop sponsored by UNAIDS and the Commission on Human Rights.
- *Consultation with PLHIV who are members of PLHIV support groups.* Serving as a venue for the consultation was the training workshop held in Makati from February 21 to 24, 2011, attended by some 15 members of groups advocating rights and welfare of PLHIV. The participants were asked to share on their experiences of discrimination and violations.
- *Analysis of related researches that had been made.* Also informing this report are the preliminary results of two studies which were likewise presented during the February workshop. The first is *Stigma Index*, a study conducted by Pinoy Plus and presented by Noel Quinto. The second is a study into how Republic Act (R.A.) 8504 is utilized by PLHIV (which would later be published as *Positive Justice*) conducted by Action for Health Initiatives (ACHIEVE) and presented by Jeffrey Acaba.
- *Gathering of inputs from experts.* Several resource persons provided inputs during the February workshop. Their presentations, augmented by further research, form a substantial part of this report. The resource persons were:

- ❖ Atty. Cristina Sevilla (Member, Coalition against Trafficking in Women) on “Seeking redress through the courts, R.A. 8504,” and “Experiences of the women sector in advocacy”;
- ❖ Ms. Bernadette C. Ongoco (Executive Director, Office for Alternative Dispute Resolution), Atty. Salvador Panga (Philippine Dispute Resolution Center), and Mr. Salvador Vilches and Mr. Bing Pabilla (both of the Philippine Mediation Center) –on “Alternative dispute resolution”; and
- ❖ Mr. Noel Colina (Executive Director, Institute for Occupational Health and Safety Development or IOHSAD), on “Seeking redress for labor grievances”.

B. SCOPE OF THE PROJECT

Human rights could be categorized as **freedoms** and **demands** (or entitlements). Freedoms are those rights that are observed when the people are left alone to enjoy them, such as the freedom from arbitrary killing, freedom from torture, freedom to hold one’s beliefs, freedom of assembly and freedom of movement. On the other hand, the demands can only be fully enjoyed if the State intervenes appropriately such as through resource allocation. Among the basic demands are the right to education, right to adequate health care, and right to housing.

There are many valid demands of PLHIV, among them: 1) the provision of adequate medical care; and 2) the provision of job opportunities and/or livelihood training. Correspondingly, the violations of these demands would be: 1) lack of access to adequate medical care; and b) lack of access to job opportunities and livelihood training, both of which could be traced to the failure of the government to institute appropriate programs to meet these demands.

This project did not address the violations accruing to the failure of the government to fulfill demands. The resolution of these problems does not lie in the redress mechanisms identified in this project but rather, in securing inclusion in government priorities. The latter could be the outcome of effective lobbying, campaigning and education.

Another clarification about this project is on the types of perpetrators. Traditionally, human rights violations have been viewed as acts committed by the State or its agents. This assumes that human rights norms, as enunciated by international instruments, have been translated into domestic legal systems - including laws and courts which should adequately address the offenses committed by private individuals against fellow private individuals. Hence, the distinction between human rights violations (referring to acts of the state or its agents) and common crimes often comes out in human rights discourse.

However, for the purpose of compiling the information on available redress mechanisms, a broader view has been adopted. The human rights violations referred to in this document are violations of freedoms, whether by public or private individuals. Even violations supposedly covered by laws on crime are addressed. This is appropriate since one of the goals of this project is to see whether existing mechanisms, criminal procedures included, are adequate to meet the needs for redress by PLHIV whose rights had been violated.

In summary, the aims of this project are:

- To identify the various human rights of PLHIV;
- To identify the types of violations experienced by individuals owing to their HIV-positive status;
- To identify the existing redress mechanisms for human rights violations in the country;
- To determine which among the existing redress mechanisms could be utilized for pursuing redress for HIV-related human rights violations;
- To indicate the potentials and limitations of these mechanisms; and
- To identify areas where these mechanisms could be improved.

The Rights of PLHIV

A. UNIVERSAL RIGHTS

As members of humankind, PLHIV in the Philippines should enjoy **the various fundamental individual rights enjoyed by everybody** else. Among these are:

- right to life (or right not to be deprived of life arbitrarily)
- right to liberty
- right not to be deprived of property arbitrarily
- right to be equal before the law
- right to protection from abuse of authority
- right to freedom from torture
- right to security of person
- right to property (including right not to be deprived of property arbitrarily)
- right to hold own opinions and beliefs
- right to freedom of assembly
- right to freedom of association
- right to freedom of expression
- right to freedom from discrimination
- right to access to public information
- right to access to private information
- right to privacy
- right to freedom of movement and abode
- right to freedom from attack against one's honor or reputation
- right to participate in political affairs
- right to vote
- right to marry and to found a family

Based on which types of instruments contain them, the above rights could be classified as follows:

■ **Rights set forth by international human rights instruments¹**

Foremost among the instruments setting forth the above rights is the *Universal Declaration of Human Rights (UDHR)*. While not legally binding, the UDHR carries an enormous degree of moral force.²

The above-mentioned fundamental rights are also contained in binding instruments³ like the *International Covenant on Civil and Political Rights (ICCPR)* and the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, two of the many major instruments that had been ratified by the Philippines.

■ **Constitutional rights**

Enshrined in the Bill of Rights of the 1987 Philippine Constitution are fundamental freedoms corresponding to those set forth by major instruments on civil and political rights.

■ **Statutory rights**

The fundamental individual rights are also guaranteed by specific laws in the Philippines, in particular by the following:

- ❖ **Revised Penal Code** – a body of laws that protect fundamental freedoms by providing penalties for crimes that violate them. To illustrate, *murder* is defined by Art. 248 as one type of crime against the right to life, for which the penalty of imprisonment for not less than 20 years is applied
- ❖ **Civil Code** - a body of laws governing relationships among individuals. It is of particular relevance with respect to the right

¹ International instruments refer to declarations, conventions, covenants, treaties and other agreements among States. Their various provisions set forth **norms** or standards which define to what extent the rights should be enjoyed.

² Non-binding instruments are declarations, statements of principles and guidelines produced by the United Nations which are expressions of good intentions but which do not pose any obligations on Member-States. Many conventions and covenants arose from declarations in due course.

³ Binding instruments are covenants, conventions and treaties. For an instrument to be binding upon a Member-State, it must be signed and ratified by the Member-State in question. Once this is done, the Member-State is obligated to reflect the international norms in its national laws. It is required by the United Nations to report periodically on the measures it has taken to further the rights contained in the instrument.

to property. Also, a substantial division of the *Civil Code* is the *Family Code* which covers rights related to marriage and family relations.

In summary, the Philippines can boast of a noteworthy record when it comes to the passage of laws that guarantee the enjoyment of basic individual freedoms. It has ratified the major international human rights instruments, among them binding instruments. Thus, it has been obligated to translate the prescribed norms into national laws.

In the main, the international norms have been indeed translated into national laws, the Constitution included. An exception could be made in the case of the right to access to information. While it is enshrined in the Philippine Constitution, many advocates are still working for the passage of a bill on freedom of information to make this right fully enjoyed.

B. RIGHTS OF PROTECTED GROUPS

Individual PLHIV could also be a member of particular vulnerable group like women, children, workers, etc. Members of vulnerable groups, including the PLHIV who are potentially prone to abuses, are accorded additional rights. In essence, these rights include:

- right to freedom from discrimination;
- right to equal access to opportunities; and
- special protection rights (such as provision of protection mechanisms for abused women or children, definition of specific crimes against them, etc.)

Based on which types of instruments contain them, the rights of protected groups can be classified as follows:

- **Rights set forth by international human rights instruments**
 - ❖ **Rights of women** – elaborated by the *Convention to Eliminate All Forms of Discrimination against Women*
 - ❖ **Rights of children** – elaborated by the *Convention on the Rights of the Child* and the *United Nations Rules for the Protection of Juveniles Deprived of their Liberty*

- ❖ **Rights of workers** – elaborated by various conventions passed by the International Labor Organization (ILO)
- ❖ **Rights of migrants** – elaborated by the *International Convention on the Rights of All Migrant Workers and Their Families*
- ❖ **Rights of prisoners** – elaborated by the *Basic Principles for the Treatment of Prisoners*
- ❖ **Rights of ageing person** – elaborated by *United Nations Principles for Older Persons*
- ❖ **Rights of disabled persons** – elaborated by the *Declaration on the Rights of Disabled Persons*
- ❖ **Rights of indigenous peoples** – elaborated by the *Declaration on the Rights of Indigenous Peoples*

■ **Constitutional rights**

Article XIII of the Philippine Constitution consists of provisions to promote social justice and human rights. In particular, it mentions labor and women as sectors that need greater protection.

■ **Statutory rights**

The rights of protected groups are also guaranteed by specific laws in the Philippines, in particular by the following:

- ❖ **Labor Code** – a body of laws governing employment practices and labor relations. As such, the various rights of workers could be found in this code.
- ❖ **Family Code** – It is not for the exclusive protection of one particular vulnerable group. Rather, it contains many provisions that uphold the rights of women, children and ageing persons in the context of family relations.
- ❖ **Specific laws** – There are two specific laws that contribute to the protection of women and children. These are R.A. 9262 (*Anti-Violence Against Women and Their Children Act of 2004*)

and R.A. 9208 (*Anti-Trafficking in Persons Act of 2003*). As for labor rights, an example of a specific law is R.A. 6727 (*Wage Rationalization Act*), which established the mechanism for determining minimum wage from time to time.

Again, in terms of relevance to PLHIV issues, it can be concluded that the Philippines has a noteworthy record when it comes to ratifying major international instruments for the protection of vulnerable groups, and in passing laws that approximate the international norms.

C. SPECIFIC RIGHTS OF PLHIV

Various instruments have defined rights of PLHIV⁴, among them:

- Right to freedom from discrimination
- Right to privacy
- Right to freedom from mandatory or compulsory testing
- Right to confidential medical examination
- Right to access to public information
- Right to access to personal information
- Right to pre- and post- testing counseling
- Right to decent burial
- Right to insurance

1. Rights set forth by international human rights instruments

There are several non-binding instruments that have elaborated some rights specific to PLHIV. Among them are:

- ***International Guidelines on HIV/AIDS and Human Rights***: The Guidelines have suggested a number of actions for States to follow in mounting an effective response to the HIV and AIDS problem. They also reiterated the various basic individual rights that human beings are entitled to, stating that these should be enjoyed regardless of HIV-positive status.

⁴ There are more rights of PLHIV than those listed here. Among the other rights are:

- Right to highest standard of health
- Right to adequate standard of living and social security services
- Right to work, including livelihood training
- Right to adequate medication
- Right to coordinated response by the government

However, as stated at the outset, this report does not elaborate on the rights which are considered demands, inasmuch as the resolution of their violations do not fall under the usual redress mechanisms.

- **ILO Code of Practice on HIV/AIDS and the World of Work:** This instrument has expressed non-discrimination as a key principle and has explicitly provided for the prohibition of mandatory testing.
- **ILO/WHO Guidelines for Conducting Pre-sea and Periodic Medical Fitness Examinations for Seafarers:** These Guidelines have provided for the right to confidentiality of medical information and the prohibition of mandatory testing.

2. Statutory rights

R.A. 8504 (*Philippine AIDS Prevention and Control Act of 1998*) embodies the various rights of PLHIV in the Philippines.

The passage of R.A. 8504 is commendable, especially considering that there exists no instrument binding upon the Philippines and all other States that is specifically for the protection of PLHIV, unlike vulnerable groups such as women, children and workers which are protected by specific conventions.

Situation Regarding PLHIV Whose Rights Were Violated

A. INCIDENCE OF HIV INFECTION

Data from the National Epidemiology Center show that the incidence of HIV infection in the Philippines is increasing and that there is now about one new case every four hours. From January to December 2011, there were 2,349 new cases, 268 of which were reported in December 2011 alone. Some 8,364 Filipinos were found to be HIV-positive from 1984 up to December 2011.⁵ It is very likely that this is an under-reported figure.

B. PLIGHT OF PLHIV

PLHIV live in a daunting environment, as they could be subjected to different levels of offense, namely:

- **Stigma** – defined as a dynamic process of devaluation that significantly discredits an individual in the eyes of others⁶
- **Discrimination** – defined as any form of distinction, exclusion or restriction affecting any person, usually but not only by virtue of an inherent personal characteristic or perceived belonging to a particular group (in the case of HIV and AIDS, a person's confirmed or suspected HIV-positive status)⁷. Discrimination is an overt behavior that translates stigma into action.
- **Other acts of human rights violations** – aside from discrimination which is a human rights violation by itself, PLHIV could be subjected to other forms of violations like physical and verbal attacks.

⁵ Philippine HIV & AIDS Registry Report, December 2011 issue, National Epidemiology Center

⁶ E. Goffman, "Stigma: notes on the management of a spoiled identity," 1963, quoted in UNAIDS, *HIV-related Stigma, Discrimination and Human Rights Violations* (Geneva: UNAIDS, 2005), 7.

⁷ UNAIDS, *HIV-related Stigma, Discrimination and Human Rights Violations* (Geneva: UNAIDS, 2005), 9.

C. ACTS OF DISCRIMINATION AND HUMAN RIGHTS VIOLATIONS

During the February 2011 workshop held in Makati, a group discussion was held resulting in a listing of the typical acts of discrimination and violations experienced by Filipino PLHIV. These acts of discrimination and human rights violations against PLHIV can be divided into **common** (transcending various settings) and **specific** (committed in a certain setting). The various settings where acts of discrimination and violations can happen are:

- At home or with the family
- Within the neighborhood or community
- In the workplace
- In educational institutions
- In relation to health facilities
- In religious institutions

Common Types of Acts of Discrimination and Violation

1. Undue disclosure of positive status to others

This is the most common type of act found in settings such as the workplace, health facilities, schools, communities or at home, with the PLHIV's own family. In some cases involving hospitals, the disclosure to others is through the circulation of HIV patient's record, or the posting of a warning at a bulletin board.

This type of discriminatory act may also be committed by some media practitioners. For instance, a PLHIV was told while being interviewed that her image would be blurred, but was shocked to see that it was very clear when the broadcast was made.

Further, discrimination may be found in the judiciary, as illustrated in the case of a HIV-positive individual who was dismissed from work and who sued his employer. Due to subsequent appeals, the case had reached up to the Supreme Court. The case details are now included in the on-line publication of Supreme Court decisions, with the identity of the HIV-positive individual not concealed at all.

2. Exclusion from gatherings

This type of act is usually committed by PLHIV's officemates, schoolmates, neighbors, fellow church members, and even by their own family members.

3. Being verbally harassed / sworn at

This is a common type of act committed by family members. There are also instances wherein the perpetrators are officemates, schoolmates, and fellow residents in a community.

In the workplace, harassment usually comes from superiors. In communities, PLHIV may be harangued by religious groups who refer to PLHIV as sinful people.

4. Being gossiped about

This type of act is usually committed by PLHIV's officemates, schoolmates, neighbours and fellow church members.

5. Physical threats

This is a common type of act committed by family members. In communities, stone-throwing and similar methods are some manifestations of this act.

Types of Acts Committed in Specific Settings

1. In the workplace

- Being compelled to undergo testing / forced to submit health certificate
- Being refused admission to a job (usually as a result of the obtained health certificate)
- Having to lose a job opportunity, such as being promoted (usually because of refusal to undergo HIV testing).
- Being pressured to resign from work / boycotted by co-employees
- Being detained, quarantined and/or segregated (usually experienced by overseas Filipino workers or OFWs with seropositive status)
- Being denied of due medical benefits including dental care
- Being prevented to do specific tasks (such as the case of a hospital worker who was relegated to records-keeping)
- Other forms of discrimination (such as being given a desk separated or far from other employees)

2. In health facilities

- Being given medical certification which states "not fit to work"
- Not being given adequate care

- Being refused admission / referral to other hospitals
- Being denied health insurance
- Other forms of discrimination (such as insulting actions by medical aides)

On discrimination related to issuance of a medical certification stating “not fit to work”, in most cases, the responsibility for the violation could be traced ultimately to the employer. Most companies have accredited certain clinics to conduct medical tests on persons applying for jobs in the company. In effect, it is a company policy to include HIV testing in the medical examination to be conducted among applicants.

3. With the family

- Abandonment by spouse
- Abandonment by other family members
- Ejection from house
- Lack of care
- Physical assault
- Sexual rejection
- Loss of property
- Disinheritance
- Not consulted anymore / stripped of decision-making power
- Other forms of discrimination (e.g., clothes not washed together with those of other family members, separate plates)

4. In educational institutions

- Being refused further education (in particular, on-the-job training, upon receipt of the medical certificate confirming HIV status)
- Other forms of discrimination

5. In communities

- Being forced to change residence / pressured to leave
- Being refused to rent (a dwelling unit)
- Having experienced sexual rejection from current partner

D. NON-AVAILMENT OF REDRESS MECHANISMS

The studies made by Pinoy Plus Association and Action for Health Initiatives (ACHIEVE) indicate that many of those who have experienced stigma and discrimination did not seek legal redress. For instance, it has come to the attention of ACHIEVE that, over a period of several years, only three cases

have been brought before the Commission on Human Rights of the Philippines (CHR) for investigation, and even these have not been duly followed up.

Among the reasons why PLHIV whose rights were violated have not sought legal redress include: 1) their (PLHIV's) lack of understanding on what constitutes human rights violations, i.e., whether or not they have been subjected to violations, and the exact forms of these violations; 2) their lack of knowledge on available redress mechanisms; 3) their unwillingness to come out and be identified in public in the course of seeking redress; and 4) the prohibitive cost of legal actions, including payment for the services of lawyers.

Overview of Available Redress Mechanisms

Redress is an act or process meant to correct a situation involving the violation of a right. It could be to address a past injury or violation, or to prevent future harm. Redress is usually obtained through the courts, although there are some out-of-court mechanisms that could also result in redress.

Various options are available in the Philippines for anyone who is a victim of human rights violations⁸, namely:

- Mediation and other forms of alternative dispute resolution
- Criminal suits
- Civil suits
- Mechanisms to address violations in the workplace
- Administrative proceedings

A. FACTORS FOR CHOOSING WHICH MECHANISM TO USE

The choice of which action(s) to take would depend on various factors, namely:

1. Type of offense

There are offenses, such as rape or serious physical injuries, which are appropriate for criminal prosecution, as the perpetrators need to be punished such as by imprisonment. On the other hand, certain types of disputes, such as asking for legal separation or child support, are more appropriate for civil proceedings.

If the offense is labor-related, the case is not to be filed before normal courts but rather before a special court, in particular, the National Labor Relations Court (NLRC).

⁸The use of the term *victim*, consonant with standard human rights terminology, is not in reference to PLHIV's status but in relation to violations, i.e., victims of violations.

2. Purpose of the victim

It is also necessary to determine what the victim wants. Is it to have the offender punished such as by imprisonment? If so, filing a criminal suit is appropriate. If the victim is more in need of financial compensation, a civil suit could be more appropriate.

Or it could be that while seeking justice, what the victim wants, is to maintain good relations, and if damaged, to have them repaired, with the perpetrator. It is possible that an apology from the perpetrator would be enough to assuage the victim's hurt feelings. Mediation appears to be the best option in such case.

3. Status of the offender

In the case of erring government officials or employees, it is possible to file administrative charges, in addition to criminal and civil charges, with their respective agencies, with the Office of the Ombudsman, or with the Civil Service Commission.

In particular, the Office of the Ombudsman entertains complaints against high-ranking government officials, especially if the case involves graft and corruption.

Moreover, if an offender is a professional, sanctions could be imposed by the corresponding professional association and/or by the Professional Regulation Commission.

4. Gravity of the offense

Most cases involving light offenses (those with penalties that do not exceed one-year imprisonment and P5,000.00 fine) must undergo barangay mediation first before they could be brought to court.

The gravity of the offense is also to be considered when determining what actions to take against erring government officials or employees. Serious offenses like gross misconduct can be a ground for the filing of administrative charges that could lead to dismissal from work.

Figure 1 “*Flowchart of various options for redress*” shows some of the redress mechanisms available to persons whose rights were violated, followed by explanations regarding each mechanism. However, this does not include actions on violations in the workplace, which is depicted in Figure 2.

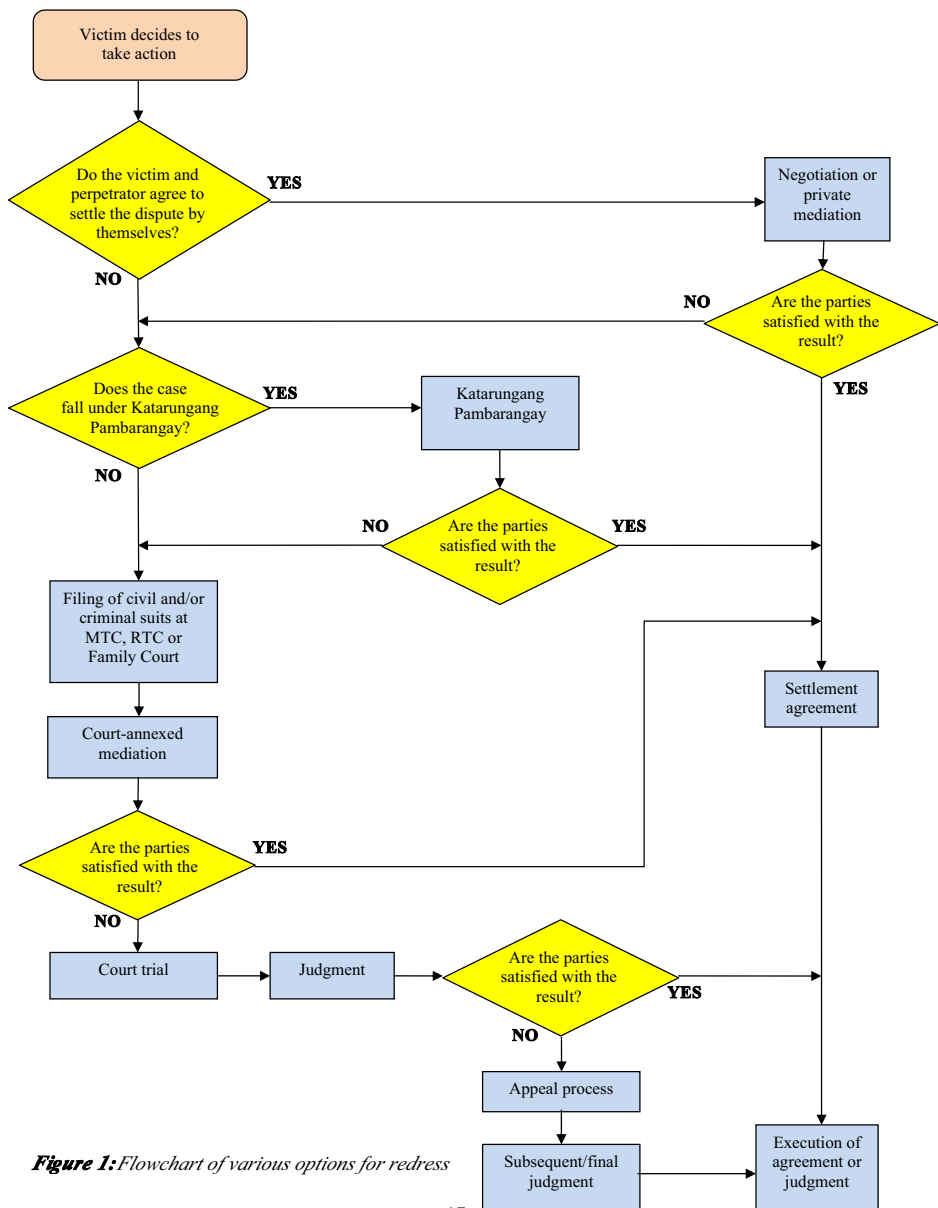


Figure 1: Flowchart of various options for redress

B. NEGOTIATION AND PRIVATE MEDIATION

In Figure 1, the first question that needs to be asked is whether or not the victim is willing to have the dispute settled before undertaking any formal legal action. If the adverse party agrees, the next possible step is either negotiation or private mediation, which both fall under Alternative Dispute Resolution (ADR).

ADR refers to any means of settling disputes other than litigation. In other words, it is a process that takes place outside of the courtroom. ADR typically includes early neutral evaluation, negotiation, conciliation, mediation, and arbitration.

As one step to encourage and actively promote the use of ADR to achieve speedy justice and declog court dockets, Republic Act No. 9285 (*Alternative Dispute Resolution Act of 2004*) was passed. It provides for the creation of the Office for Alternative Dispute Resolution (OADR) as an attached agency of the Department of Justice. One of the main tasks of the OADR is to train mediators.

Negotiation is a dialogue between two or more people or parties, intended to reach an understanding and to resolve points of difference. Negotiation can take place directly between the parties in dispute. When they negotiate, they usually expect a give and take process. When negotiation fails, the parties have to decide whether to give up the dialogue, or whether to take a different route.

Mediation is an informal but confidential way for the parties to resolve disputes with the assistance of a neutral mediator whose role is to facilitate the process that would allow the parties to discuss their differences. Mediation is generally voluntary, and either party is free to withdraw from mediation any time during the process.

Private mediation happens when the parties in dispute, by themselves, without involving government institutions like the barangay or the courts, enlist a neutral mediator. The parties may tap the services of mediators trained by the OADR and accredited by the Supreme Court, in which case a professional fee may have to be paid. Any person, as long as he or she is trusted by the parties in dispute, could also be approached to act as private mediator.

The outcome of any successful ADR process is a settlement which satisfies both parties. If the process went through the barangay or the courts, the settlement agreements are put into writing and are considered enforceable by law. This is not the case though with negotiation and private mediation; enforcement of the agreement will have to depend solely on the good faith of the parties in dispute.

C. KATARUNGANG PAMBARANGAY

In case the parties in a dispute did not go through negotiation or private mediation, or if they did but the process did not result in a settlement, and if the type of case is not among those exempted from the system, the next venue is the Katarungang Pambarangay.

The Katarungang Pambarangay is a system of justice administered at the barangay level for the purpose of amicably settling disputes without resorting to the courts. Annex A contains a list of the cases that are covered by Katarungang Pambarangay. In contrast, following are the types of cases that are exempt from the system:

- Where one party is the government;
- Where one party is a public officer or employee, and the dispute relates to the performance of his/her official functions;
- Offenses punishable by imprisonment exceeding one year or a fine exceeding Php5,000.00;
- Offenses where there is no private offended party;
- Where the dispute involves real properties located in different cities or municipalities;
- Dispute involving parties that actually reside in barangays of different cities or municipalities; and
- Such other classes of dispute which the President may determine in the interest of justice or upon the recommendation of the Secretary of Justice.

There are three principal actors in the Katarungang Pambarangay system:

1. Punong Barangay (Barangay Chairman)
2. Lupong Tagapamayapa – a body composed of 10 to 20 members, tasked to exercise administrative supervision over the conciliation mechanism in the barangay
3. Pangkat Tagapagkasundo - a body which consists of three members who shall be chosen by the parties to the dispute from among the Lupong Tagapamayapa members

Under Katarungang Pambarangay, up to three forms of ADR may be carried out, namely:

Method	Person/body in charge	Outcome, if successful
Mediation	Punong Barangay	Amicable settlement
Conciliation	Pangkat Tagapagkasundo	Amicable settlement
Arbitration	Punong Barangay, Lupon Chairperson or Pangkat Chariperson	Arbitration award

Table 1: Types of proceedings under the Katarungang Pambarangay

A case will be heard for mediation after a complaint is submitted to the Barangay Secretary and after the filing fee is paid. In this regard, Rule VI, Sec. 4 of the Katarungang Pambarangay Rules issued by the DOJ provides: “Proceedings for settlement shall be commenced ... upon payment of the filing fee in the amount of not less than Five Pesos nor more than Twenty Pesos.”

The first person who will attempt to resolve the dispute between the two parties is the Barangay Chairman. He or she will hear the sides of the parties and involve them in seeking a solution to the dispute.

If mediation by the Chairman fails to result in a settlement, the next one to attempt a conciliation is the Pangkat ng Tagapagkasundo. There will be more people involved in the process, building on what the Barangay Chairman has achieved so far.

Arbitration can take place at any stage of the proceedings as long as both parties agree in writing to abide by the arbitration award. In this process, the arbitrator is given the power to render decisions on the dispute with a prior agreement of the parties to be bound by it. Any of the Lupon chairperson, Punong Barangay or Pangkat Chairperson can act as an arbitrator.

If the mediation, conciliation or arbitration succeeds, the Lupon Tagapamayapa executes the settlement or award within six months from the date of the settlement or decision. If it fails, the Pangkat ng Tagapagkasundo secretary issues a *Certificate to File Action*, to be submitted to the corresponding court or government office for filing of an appropriate case.

D. LITIGATION

If the case is exempt from the Katarungang Pambarangay, or if the various processes under it did not work, the victim has the option to file a criminal or a civil suit against the offender.

Criminal Suits

Crimes are violations of penal laws (provisions of the Revised Penal Code or special laws) that impose penalties for their violation. Examples of such crimes are murder, physical injuries, swindling, slander, rape, etc. In a criminal case, the State is always a party. This is because crimes offend not only the victim, but also the State which has an interest in maintaining peace and order in society. Hence, all criminal cases are titled “People of the Philippines” versus the accused person.

The victim of the crime is called the private offended party, but is properly considered merely as the principal witness to the crime, assuming he or she is alive and/or competent to testify. There are crimes, however, wherein there is no private offended party and are called public crimes, such as illegal possession of firearms or illegal drugs.

A criminal case is instituted with the help of either a police officer or a prosecutor (fiscal). If the offender was caught *en flagrante delicto* (about to commit, in the act of committing or has just committed a crime), the police conducts custodial investigation and afterwards decides whether or not to file an information before the court. Otherwise, the institution of a criminal case is done after the conduct of inquest or preliminary investigation by a prosecutor. The victim can approach a prosecutor directly, or report an abuse first to a police officer who in turn conducts an investigation and then refers the case to a prosecutor if merited.

The case has to be filed before a court with jurisdiction over the area where the crime was committed. Annex B provides an overview of the various courts in the Philippines.

If the imposable penalty is equal to or below 6 years imprisonment, the case is heard by a municipal trial court, metropolitan trial court or municipal trial court in a city (MTC). If the imposable penalty is above 6 years imprisonment, a regional trial court (RTC) hears the case. However, if the charge is violation of R.A. 9262 (Anti-VAWC Act), the case is heard by a Family Court.

In a criminal case, the standard of proof for an accused to be pronounced guilty is “beyond reasonable doubt”. If convicted, the accused will be penalized. The penalty may be a mere censure, fine or imprisonment depending on the gravity of the crime committed. It should be noted that the death penalty has been abolished in the Philippines and has been replaced by life imprisonment as the ultimate penalty.

Civil Suits

Civil cases, on the other hand, are caused not by conduct prohibited by law but by personal dealings, which give rise to certain obligations such as being part of a certain relationship, or entering into a contract. Civil cases are also caused by acts or omissions, which result in damages (injuries or financial loss) to another.

A civil case is heard either by a MTC or RTC, depending on the nature and gravity of the case. To illustrate, if the claimed damages equal or are less than P200,000.00 (outside Metro Manila) or P400,000.00 (within Metro Manila), then a MTC hears the case; if the damages are greater, then a

RTC hears the case. Further, family cases (such as support, annulment and custody proceedings) are heard by family courts.

NATURE OF CASE			COURT WITH JURISDICTION
Family cases (annulment of marriage, legal separation, support, custody, etc.)			Family Court, or RTC in the absence of a Family Court
Ejectment cases (unlawful detainer, forcible entry, etc.)			MTC
Cases involving real property	Properties located within Metro Manila	Value is not more than P50,000	MTC
		Value is more than P50,000	RTC
	Property located outside Metro Manila	Value is not more than P20,000	MTC
		Value is more than P20,000	RTC
Cases involving collection of debt or damages	Case is within Metro Manila	Value is not more than P400,000	MTC
		Value is more than P400,000	RTC
	Case is outside Metro Manila	Value is not more than P200,000	MTC
		Value is more than P200,000	RTC

Table 2: Jurisdiction over civil cases

A civil case is filed in the docket section of the appropriate court and involves the payment of a filing fee by the complainant or petitioner. If the civil case involves real property, the case has to be filed in a court with jurisdiction on the property location. If not, the plaintiff (complainant or petitioner) has a choice where to file the case, either where the plaintiff resides, or where the respondent resides or may be found.

The standard of proof required to win a civil case is “preponderance of evidence” which is lower than what is required in a criminal case.

Unlike criminal cases, civil cases do not result in the imposition of a penalty. The usual result is the payment of damages. Damages may be:

- Actual or compensatory** – what is adequate compensation for the pecuniary loss of the victim

- **Moral** – damages for physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation, and similar injury
- **Nominal** – damages awarded so that the victim may be vindicated or recognized, and not for the purpose of indemnifying the victim for any loss suffered
- **Temperate or moderate** – damages which are more than nominal but less than compensatory, awarded when the court finds that some pecuniary loss has been suffered but its amount cannot be ascertained exactly
- **Liquidated** - damages that are agreed upon by the parties to a contract, to be paid in case of breach thereof
- **Exemplary or corrective** - damages imposed by way of example or correction for the public good

There are other types of relief aside from damages. Relief can be in the form of an injunction, which is a court order for a party to do something or to refrain from doing a certain act or acts. For instance, an injunction might be obtained to prevent a publisher from printing libelous materials, or to prevent someone to come near another person he or she has threatened.

Other possible reliefs are:

- payment of support
- declaration relating to civil status (such as nullity of marriage)
- declaration relating to property (such as delivery of property, vacating of premises, etc.)
- declaration relating to custody of children

A special kind of civil suit is the class suit. It can be filed when the case affects a large number of persons, so numerous that it is impracticable to enjoin all as parties to the case. In a class suit, a number of the affected persons may sue or defend for the benefit of all, as long as the court finds them to be sufficiently numerous and representative as to fully protect the interests of all concerned.

Table 3 “Summary of differences between a criminal suit and a civil suit” contains the main differences between the two kinds of lawsuits.

	Criminal Suit	Civil Suit
Cause for action	Felony or crime as defined by the penal code and other relevant laws	Emotional or physical injuries (such as those arising from contract disputes, personal injury claims, product liability, custody issues, relationship issues, discrimination, and property disputes)
Litigants	The plaintiff is the <i>People of the Philippines</i> while the defendant (called accused) is a private person	Plaintiff and defendant are usually both private persons (except if one of the parties is a government agency). The plaintiff may be called complainant or petitioner, while the defendant may be called respondent
Substantive laws	- Revised Penal Code - Special laws	- New Civil Code - Family Code
Cost of litigation	Shouldered by the state	Shouldered by the petitioner
Standard of proof	Beyond reasonable doubt	Preponderance of evidence
Verdict sought	Determination whether defendant committed the crime (guilty or not guilty)	Determination whether the defendant is responsible for the injuries
Outcome	If pronounced guilty, the defendant is punished such as through imprisonment	Award of damages to the plaintiff (if respondent is found responsible for the injuries) and other types of relief

Table 3: Summary of differences between a criminal suit and a civil suit

Joint or Separate Suits

An offended party (the victim) may file a civil suit only, a criminal suit only, or both. In this regard, he or she has the following four options:

1. Criminal suit with joint civil suit

At present, Philippine laws provide that when a criminal suit is filed, a civil action for damages is instituted at the same time. The civil action covers actual damages only. As such, there is no filing fee required from the offended party.

However, if the offended party claims other reliefs and/or additional damages such as moral and exemplary, then he or she is required to pay the corresponding filing fee.

A verdict of “guilty” in the criminal case means a triumph likewise in the civil action, meaning that the stipulated damages will be awarded.

If the perpetrator is acquitted, the fate of the civil action depends upon the nature of acquittal. If the accused is acquitted because the supposed act which constituted the crime was discovered to be non-existent, then the civil action must also be dismissed. But if the acquittal was because of insufficiency of evidence to convict the accused beyond reasonable doubt, then the civil suit may continue and be decided according to the standard of “preponderance of evidence”.

2 Criminal suit with separate civil suit

This can happen if the offended party first files a civil suit before a criminal proceeding is instituted. Or it could be that the offended party, at the time that the criminal suit is being filed, reserves the right to file a civil suit separately. The reservation has to be made before the prosecution starts to present evidence. Hearing on the civil suit is suspended during the pendency of the criminal suit.

If the trial has already commenced, a separate civil suit can only be instituted after the final judgment on the case.

3 Civil suit only

This happens if the offended party proceeds to have a civil case docketed, without submitting a complaint to a police officer or prosecutor.

4 Criminal suit only

This happens if the offended party waives the civil action normally instituted jointly with the criminal suit. However, waiver is not usually

done, inasmuch as a civil action covering actual damages only does not impose any filing fee, upon the offended party.

Appeals

Decisions by lower courts are appealable. The next higher court can review a certain court's decision (e.g., the decision of a MTC may be filed for review by RTC, while the Court of Appeals in turn can review a RTC decision). The Supreme Court can review decisions by the Court of Appeals, and is the final arbiter on all judicial issues.

Role of Other Investigatory and Prosecutory Agencies

While the police and the state prosecutors under the Department of Justice mainly undertake investigation and prosecution, other agencies in government also perform these functions. Among them are:

- ***Commission on Human Rights (CHR)***

This agency was created to address human rights violations, especially those committed by state agents. It focuses on violations of civil and political rights like extra-judicial executions, torture, illegal arrests, disappearances, etc. In the matter of seeking justice, the role of the CHR is limited mainly to investigation, after which it may make recommendations as to the filing of appropriate charges (criminal, civil or administrative).

- ***Office of the Ombudsman***

The Office of the Ombudsman entertains complaints against government officials or employees, with priority against high-ranking officials, grave crimes and offenses involving large amounts of money. It can investigate on its own or direct other agencies to do the investigation. It also carries out prosecution of cases filed in the Sandiganbayan, the court that tries graft and corruption cases.

E. COURT-ANNEXED MEDIATION

Court-Annexed Mediation is a pre-trial procedure that aims to settle cases filed in court. This process involves the assistance of a mediator who has been accredited by the Supreme Court. The mediator assists the contending parties to identify issues and develop proposals to resolve the dispute. Upon appearance of the parties during pre-trial in cases covered by mediation, the judge immediately directs the parties to appear before

the mediation center unit located in the courthouse. This referral is mandatory.

If mediation succeeds, a compromise agreement signed by the parties and counsel is furnished the court. The agreement then becomes legally enforceable, much like a judge's decision. If mediation fails, the case is returned to the court, which shall then set the case for resumption of pre-trial and thereafter, to try and decide the case on its merits.

Following are the cases that are considered mediatable:

- **All civil cases, settlement of estates and cases covered by the Rule on Summary Procedure.** Typical cases would be collection of debts, ejectment of tenants in apartment dwellings, and inheritance disputes among family members.
- **Cases cognizable by the Lupong Tagapamayapa under the Katarungang Pambarangay Law** such as disputes between neighbors of the same barangay over property.
- **The civil aspect of Batas Pambansa 22**, which covers the debts paid through bouncing checks.
- **The civil aspect of quasi-offenses (listed under Title 14 of the Revised Penal Code)**, which are infractions committed under imprudence or negligence (e.g., damaged vehicles and/or injured passengers or pedestrians as a result of motor/vehicular accidents)

On the other hand, expressly stated as excluded from mediation are cases which cannot be compromised such as legal separation or annulment of marriage.

What the above qualifications mean is that mediation is basically meant for civil cases. However, a number of criminal offenses defined in the Revised Penal Code are listed among the cases cognizable by Katarungang Pambarangay (Refer to Annex A). So it is possible that there will also be criminal cases to be referred by the judge to the mediation unit, ostensibly to help in declogging court dockets.

A mediation fee of P500.00 is collected by the Clerk of Court upon the filing of the case. The fee will accrue to the Mediation Fund for the training of mediators, payment of mediator's fees and other operating expenses of the Philippine Mediation Center (PMC).

F. MECHANISMS FOR VIOLATIONS IN THE WORKPLACE

An employee, whose rights were violated such as by termination, suspension, or by any act of discrimination, has several options when seeking redress. The available mechanisms could in fact fall under the various processes discussed earlier, namely:

- Private mediation, negotiation and similar processes (referring to procedures within the workplace setting)
- Arbitration (referring to a procedure done outside the workplace setting wherein a third party, the arbitrator, is called to help in settling the issue)
- Litigation (referring to a procedure done outside the workplace setting that particularly involves the National Labor Relations Commission, a quasi-judicial body)

The usual mechanism is through the existing grievance procedure within the workplace setting. If this fails, the ultimate recourse is compulsory or voluntary arbitration. Which mechanism to take would depend on whether or not the employee is a member of a union in the company, and whether or not said union has an existing Collective Bargaining Agreement (CBA). Figure 2 “*Flowchart of various options for aggrieved employees*” shows the steps that an aggrieved employee can take when seeking redress.

A grievance is defined as any question arising from the interpretation or implementation of an existing CBA, and those arising from the interpretation or enforcement of company personnel policies. Grievances arising from CBA can be about non-economic issues (no-strike-no-lockout, union security, management security, check-off clauses, grievance procedures, etc.) or economic issues (wage rates, paid vacations, pensions, health and welfare plans, penalty premiums and other fringe benefits, etc.). As for grievances involving company policies, these are most often in connection to disciplinary actions imposed by management for certain reasons, such as absenteeism, dishonesty, theft, etc.

A grievance procedure, at the least, must spell out the following:

1. **Who to approach when bringing a grievance.** For union members, this could be the union steward. For non-union members, it could be the company’s human resources officer.

2. ***Who makes the decision on the grievance.*** This varies among companies. In companies with trade unions, the decision could come from a body composed of management and labor representatives. For others, it could be the employee's supervisor or a higher officer.
3. ***How to appeal the decision.*** Again, this varies among companies. In companies with trade unions, the appeal could be directed to another labor-management body. For companies where there are no unions, it could be a specific officer in top management.

A satisfactory resolution of a grievance should result in a remedy, such as the rescinding of a disciplinary action.

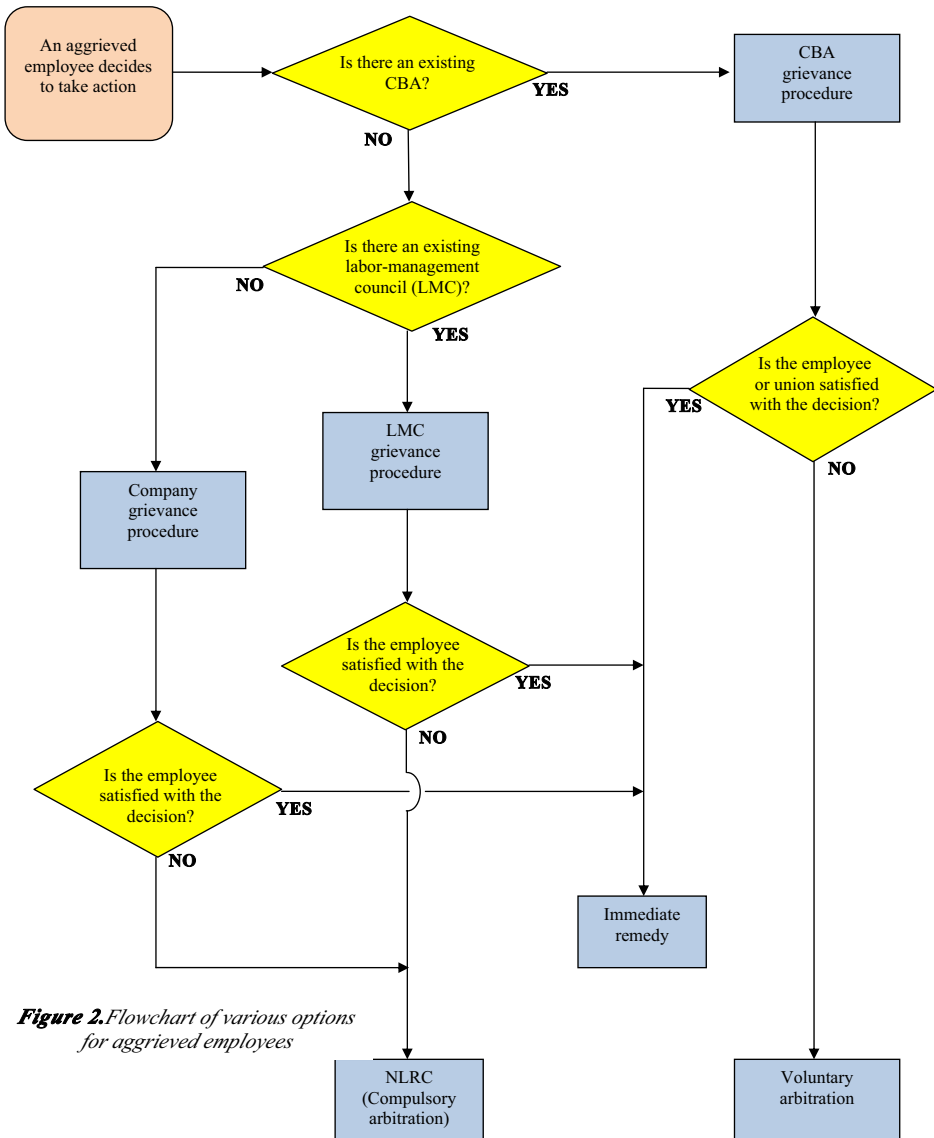


Figure 2. Flowchart of various options for aggrieved employees

Company Grievance Machinery

As shown in Figure 2, the first question to ask is whether or not the aggrieved employee is a member of a trade union that has an existing CBA. If this is not the case, there are two possible modes for seeking redress:

1. Through the grievance procedure prescribed by the labor-management committee (LMC)
2. Through the human resources (HR) department, in case there is no LMC

The Department of Labor and Employment has been encouraging the establishment of LMCs, especially in companies where there is no organized labor. In particular, the LMCs are encouraged to help in the formulation of policies and procedures to govern labor-management relations. One such procedure is in terms of receiving and resolving grievances.

Compulsory Arbitration

If the grievance is not resolved through the LMC or HR department, the aggrieved employee has the option of bringing the case to the National Labor Relations Commission (NLRC) for compulsory arbitration. The NLRC has under it a number of Labor Arbiters who are authorized to hear and decide on the cases brought to it.

In order to be heard, a case has to be filed in the Regional Arbitration Branch having jurisdiction over the workplace of the complainant or petitioner. It is then raffled and assigned to a Labor Arbiter.

The Labor Arbiter first attempts to mediate to aid the parties in reaching a voluntary settlement of the dispute, before proceeding with arbitration. In the absence of any voluntary settlement, the Labor Arbiter shall proceed with the hearing of the case on its merits.

There are instances when an aggrieved employee can bring directly a case to the NLRC without going through the grievance procedure available in the company internally. This is especially true in the case of termination disputes, i.e., illegal dismissals.

Appeals

Decisions by Labor Arbiters can be reviewed by the NLRC presiding as a commission. NLRC decisions meantime can be appealed before the Court of Appeals, while the Supreme Court in turn can review decisions by the Court of Appeals.

Grievance Procedure in a CBA

A Collective Bargaining Agreement (CBA) is a written, legally enforceable contract for a specified period (usually one year), between the management of a company and its employees represented by an independent trade union. It sets down and defines conditions of employment (wages, working hours and conditions, overtime payments, holidays, vacations, benefits, etc.) and procedures for dispute resolution.

Grievances ordinarily are brought up by the aggrieved employee, usually with the union representative called the shop steward or grievance officer, to the foreman either orally or in writing. Usually a grievance form is provided for the purpose. If no settlement is reached at first level, the aggrieved employee or the grievance officer may bring the grievance through the successive steps in the grievance procedure provided for in the CBA.

Termination disputes in particular are among the cases in which the trade union involves itself actively. This is to prevent the management from employing unfair labor practices, inasmuch as the dismissal of union members is one of the tested methods of union-busting.

Voluntary Arbitration

When a grievance is not resolved within the procedure outlined in the CBA, the aggrieved employee could bring the case to voluntary arbitration.

Voluntary arbitration refers to the mode of settling labor-management disputes by which the parties select a competent, trained and impartial person who shall decide on the merits of the case and whose decision is final, executory and binding. A CBA should expressly name who is/are the voluntary arbitrator/s or panel of voluntary arbitrators to be called upon to settle disputes. If the CBA does not name a specific person or a panel, it should at least contain the procedures by which the voluntary arbitrator(s) will be selected.

The voluntary arbitrator or panel of voluntary arbitrators normally attempts first to mediate to aid the parties in reaching a voluntary settlement, before proceeding with arbitration. If no voluntary settlement is reached, the voluntary arbitrator shall proceed with the hearing of the case on its merits.

Voluntary Arbitrators can be selected from a pool of accredited arbitrators maintained by the National Conciliation and Mediation Board.

Differences between Compulsory Arbitration and Voluntary Arbitration

Compulsory arbitration and voluntary arbitration differ in terms of the following:

1. **Nature** – Compulsory arbitration is a quasi-judicial process that proceeds like a court hearing, involving such procedures as presentation of evidence. Voluntary arbitration on the other hand is said to be a form of alternative dispute resolution.
2. **Existence of CBA** – Voluntary arbitration is possible only if there is an existing CBA.
3. **Complaints that are heard** – Compulsory arbitration is usually employed to address termination disputes (where the employer-employee relationship is deemed to have ceased). Voluntary arbitration deals mainly with interpretation of the CBA and with labor-management relations, including issues of wage distortion and matters of strikes and lockouts. As such, cases involving individual grievances, such as termination cases, do not normally go through voluntary arbitration, except when termination is of such scale so as to involve the substance of the CBA.
4. **Hearing body** – the National Labor Relations Court, through its employed Labor Arbiters, is mandated to conduct compulsory arbitration while the National Mediation and Conciliation Board, through its accredited Voluntary Arbitrators, is mandated to conduct voluntary arbitration.
5. **Choice of arbiter/arbitrator** – in compulsory arbitration, a Labor Arbiter is assigned by NLRC to hear a case through raffle. In voluntary arbitration, the contending parties are given the means, through the CBA, to choose the Voluntary Arbitrator(s) who will arbitrate in their dispute.
6. **Appealability** – the decision of a Labor Arbiter can be appealed before the NLRC itself. NLRC decisions in turn can be submitted for review by the Court of Appeals, and by the Supreme Court beyond it. On the other hand, awards made by Voluntary Arbitrators are deemed unappealable, final and executory⁹. The Supreme Court however has ruled that it may review such awards on exceptional grounds, namely: want of jurisdiction, grave abuse of discretion, violation of due process, denial of substantive justice, and erroneous interpretation of the law.

⁹ Article 262-A of the Labor Code, as amended by R.A. 6715

G ADMINISTRATIVE PROCEEDINGS

1. Proceedings against government officers and employees

A victim could also consider pursuing administrative proceedings, when the following three elements are present in the case:

- That the offender is a government officer or employee
- That an act was committed which violates a right
- That the offender used his/her position in furthering the offense

The standard of proof usually followed in administrative proceedings is “substantial evidence”, much lower than those employed in criminal and civil litigations.

Following are some of the possibilities in this regard:

a. *Civil Service Commission (CSC)*

There have been many instances when the CSC had meted out disciplinary actions against government employees. A usual case is grave misconduct, meriting dismissal from the post held, such as those committed by public school teachers who had made sexual advances on their students.

Annex C contains a listing of the various grounds for disciplinary action against government officials and employees (as contained in Article IX of Presidential Decree 807). In addition, Republic Act 6713, which establishes a code of conduct for public officials, contains a section on prohibited acts and transactions (Section 7), among which is the prohibition of the solicitation and acceptance of gifts.

Administrative proceedings may be filed against a subordinate officer or employee by the head of department or office of equivalent rank, or head of local government, or chiefs or agencies, regional directors, or upon sworn and written complaint of any other persons. In the case of a complaint filed by any other persons, the complainant must submit sworn statements covering his/her testimony and those of witnesses together with documentary evidence.

b. *Office of the Ombudsman*

The Office of the Ombudsman gives priority to complaints filed against high ranking government officials and/or those occupying

supervisory positions, complaints involving grave offenses as well as complaints involving large sums of money and/or properties.

The Office of the Ombudsman is empowered to direct other government agencies to take the appropriate action against a public officer or employee at fault, and recommend his or her removal, suspension, demotion, fine, censure or prosecution.

c. *Department of Health (DOH)*

The DOH has issued Administrative Order 2009-0019 which details the procedure for handling complaints against DOH personnel. There is no accompanying order as to what the offenses are, which can be brought forward as complaints. It can be assumed that these offenses are similar or equivalent to those listed in Annex C.

d. *Internal Affairs Service (IAS) of the Philippine National Police (PNP)*

If the perpetrator in an offense is a police officer, the victim could bring a complaint to the IAS. Among the powers of the IAS are:

- to investigate complaints and gather evidence in support of an open investigation;
- to conduct summary hearings on PNP members facing administrative charges;
- to file appropriate criminal cases against PNP members before the court as evidence warrants and assist in the prosecution of the case; and
- to provide assistance to the Office of the Ombudsman in cases involving the personnel of the PNP.

The IAS is also mandated to conduct, *motu proprio*, automatic investigation of the following types of cases:

- incidents where a police personnel discharges a firearm;
- incidents where death, serious physical injury, or any violation of human rights occurred in the conduct of a police operation;
- incidents where evidence was compromised, tampered with, obliterated, or lost while in the custody of police personnel;
- incidents where a suspect in the custody of the police was seriously injured; and
- incidents where the established rules of engagement have been violated.

e. *Office of the President / Sangguniang Panlalawigan / Sangguniang Panlungsod / Sangguniang Bayan*

This option is for the filing of administrative complaints against elective local officials, on such grounds as dishonesty, oppression, misconduct in office and abuse of authority.

Annex E contains Sections 60 to 68 of the Local Government Code of the Philippines, which all pertain to the subject of disciplinary actions on erring elective local officials. Section 60 lists the various grounds for disciplinary actions, while Section 61 provides the procedures for filing of complaints, as follows:

- A complaint against any elective official of a province, a highly urbanized city, an independent component city or component city shall be filed before the Office of the President;
- A complaint against any elective official of a municipality shall be filed before the sangguniang panlalawigan whose decision may be appealed to the Office of the President; and
- A complaint against any elective barangay official shall be filed before the sangguniang panlungsod or sangguniang bayan concerned whose decision shall be final and executory.

Section 63 provides the grounds when preventive suspension may be imposed, such as when the evidence of guilt is strong.

2. Proceedings against professionals

There are also administrative or disciplinary proceedings that involve the suspension or expulsion from a profession of a licensed individual, whether public or private, as the result of a crime for which he or she was convicted, or of a disciplinary infraction such as a breach of a code of ethics.

In this regard, following are some possibilities:

a. *Professional Regulation Commission (PRC)*

Under the Commission are the 44 Professional Regulatory Boards that exercise administrative, quasi-legislative, and quasi-judicial powers over their respective professions. Among the relevant functions of these boards are:

- Investigate violations of set professional standards and adjudicate administrative and other cases against erring registrants

- Suspend, revoke, or reissue Certificate of Registration for causes provided by law

Resolution No. 06-342 of the PRC provides the procedure for bringing complaints against registered professionals. It lists the offenses, namely:

- Immoral or dishonorable conduct
- Unprofessional or unethical conduct
- Insanity
- Conviction of a criminal offense involving turpitude
- Gross negligence or incompetence in the practice of profession
- Use or perpetuation of fraud in the acquisition of license, permit, etc.
- Violation of the provisions of RA 8981 which regulate various professions, their implementing rules and regulations and their codes of ethics
- Neglect of duty
- Commission of irregularities in the licensure examinations, or violations of any rule or regulation governing such examinations; and
- Such other cause or causes as may be provided by law

If found guilty, the erring professional is meted the penalty of reprimand, suspension or revocation of his/her certificate of registration/professional licence or permit.

Formal complaints have to be submitted in person at the PRC office, where the first step is the docketing of the case. Depending on the profession, the Commission itself or the appropriate board under it will investigate and hear the complaint on its merits.

b. *Supreme Court / Integrated Bar of the Philippines (IBP)*

A member of the bar may be disbarred, suspended or reprimanded, on the following grounds: (a) deceit; (b) malpractice or other gross misconduct in office; (c) grossly immoral conduct; (d) conviction of a crime involving moral turpitude; (e) violation of the lawyer's oath; (f) willful disobedience of any lawful order of a superior court; and (g) willfully appearing as an attorney for a party without authority.

Disbarment cases are filed with the Supreme Court, which are meticulously studied by the Justices to make sure that the grounds are meritorious. The Supreme Court either dismisses the disbarment case or if found meritorious, directs the IBP to investigate and make its recommendation/decision within 90 days from receipt of record.

c. *Philippine Medical Association (PMA)*

The PMA has its Commission on Ethics that governs the conduct of members in their relationships with each other, with the Association, and with the public. The Commission has come up with the Association's Code of Ethics. It is supposed to establish procedures for dealing with complaints raised and/or referred to it, and make recommendations for the resolution of such cases. So far, the latest information on this indicates that the PMA follows the decisions of PRC. Its procedures state that termination of membership will be carried out if and when the license of a certain member had been revoked by the PRC.

H. SOME IMPORTANT CONSIDERATIONS

1. Avoiding Forum Shopping

Revised Circular No. 28-91 of the Supreme Court prohibits forum shopping, or the filing of a single case in different courts. To clarify, the filing of two or more different kinds of suits (e.g., an administrative suit in combination with a criminal suit) is not considered forum shopping, while filing of two criminal suits for the same case is clearly an example of forum shopping.

A possible forum shopping can happen in the case of an employee dismissed from work owing to his/her HIV-positive status, presenting two distinct possibilities: that of filing a case of illegal termination in line with Article 217 of the Labor Code, or filing a case of violation of Article VII of R.A. 8504. To file the case before both venues is considered forum shopping and could lead to dismissal in both instances.

2. Who to Approach First

A victim or offended party has a number of options of who or what office to approach first, when considering taking a legal action. Among these are:

■ *Police officer*

Normally, crimes are reported to the police. They may even be the first to respond in cases of violent crimes, thefts, etc. The police take care of filing a complaint with a fiscal after its investigation.

■ ***Fiscal or prosecutor***

The victim may go directly to a fiscal who will conduct an inquest or preliminary investigation. If probable cause is found, then the case may be filed in court by the fiscal.

■ ***Barangay secretary / other barangay officers***

It may be necessary to report a complaint to the barangay officials and undergo Katarungang Pambarangay first. This is mandatory for a large number of cases (those that do not require stiff penalties).

■ ***Lawyer***

As there are several options to take (e.g., whether or not to file criminal, civil or administrative proceedings), it would be wise to see a lawyer first who can provide advice on which action to pursue. In this regard, there are several options for accessing a lawyer, among them:

- ❖ Private lawyer
- ❖ Alternative law groups
- ❖ Public Attorney's Office (PAO). This is an agency attached to the Department of Justice that provides free services, including legal counseling and representation, for indigent litigants
- ❖ Legal Aid Program of the Integrated Bar of the Philippines (IBP). This program also provides free legal counseling and representation.

Hiring the services of lawyers in the Philippines is very costly. However, it is possible to tap into free legal services such as those offered by alternative law groups, PAO and IBP. In particular, the mission of alternative law groups is not only to help in terms of counseling and representation, but also in empowering the disadvantaged and vulnerable groups in society.

■ ***Commission on Human Rights***

There are several services offered by the Commission on Human Rights, particularly its Legal and Investigation Office, which makes it advisable to seek help from it first. Among the most important services are:

- ❖ Provision of legal and counseling services
- ❖ Conduct of human rights investigative intervention
- ❖ Conduct of alternative dispute resolution through mediation

Relevance of the Various Mechanisms to the Plight of PLHIV in the Philippines

A. A CLOSER LOOK INTO THE ACTS OF DISCRIMINATION AND VIOLATIONS

It is evident that available mechanisms are in place for the redress of human rights violations against PLHIV in the Philippines. However, not all the instances of stigma and discrimination they are subjected to can be addressed by these mechanisms.

This inadequacy is illustrated during the experience-sharing in the workshop held on February 21, 2011. Some of the injustices felt by PLHIV that were mentioned fall under stigmatization and its effects, such as:

- avoidance of gatherings because of fear of rejection
- hurt feeling by a PLHIV (whose status was undisclosed) when a relative expressed insulting things about PLHIV

Clearly, any attempt to seek redress with the above incidents may not likely prosper. Stigmatization is basically a matter of perception. It has to be translated into an act, whether of commission or omission, to be considered an offense. In other words, a person may think ill of another, but legally, there is nothing that can be done about it, unless the person carries out an action that violates the rights of the other person.

It would help to revisit the four basic elements that must be present so as to conclude that there is a human rights violation, namely: act, victim, perpetrator and reason (or motive). The last element is especially necessary in proving cases of discrimination.

Avoiding attendance in gatherings hence is not a violation, as the necessary elements are not present. Neither is hearing someone hurls insults at PLHIV. In the latter case, while there may be an act, the person who heard the insults was not its subject and thus could not be considered as the victim.

Furthermore, for legal redress to be attained, it is not enough that stigma and discrimination are translated into acts that are violative, but these acts

must be considered as offenses by law. To illustrate, the disclosure of someone's positive status (such as by neighbors or officemates) to others is not a crime defined by law. Disclosure is a crime only if done in breach of medical confidentiality, a violation of Republic Act 8504. The next section provides a listing of the relevant criminal offenses in this regard.

B. POTENTIALS AND LIMITATIONS OF LITIGATION

Because they are not defined as offenses by law (including R.A. 8504), the following types of incidents are not conducive to seeking redress:

- discriminatory acts within the family (such as use of separate eating utensils, separate washing of clothes), including disinheritance (if done properly, e.g., through a lawful will)
- sexual rejection
- exclusion from social gatherings

There are also types of acts of discrimination and violations that may or may not prosper in court, depending on whether there are other elements involved, such as:

- ***Undue disclosure of HIV status to others.*** In most cases, this is not a crime, unless what is done is a breach of medical confidentiality, in which case, an offense is committed as per R.A. 8504.
- ***Being gossiped about.*** Gossiping per se is not a crime. It could be if the information being passed around is malicious, in which case the crime of *Slander* or *Intriguing against honor* can be imputed.
- ***Lack of care by family members.*** It is difficult to construe this as a crime, as there is no law that can compel anybody to take care of another. It is different matter though if a child below 7 years old is left helpless, in which case a criminal offense, *Abandonment of minor*, is committed.
- ***Refusal to rent (a dwelling unit).*** There is no law that obliges a landlord to rent to any person. However, litigation is possible if a PLHIV previously rents and is being ejected from the unit due to his/her positive status and for no other reason.

Looking through the list of acts of discrimination and violations against PLHIV (as presented in Section I, pages 2 to 4), and excluding those discussed above, it can be seen that for the remainders (excluding labor-related acts), there are possible equivalent criminal offenses. A careful

study of the Revised Penal Code (RPC) and of other laws including R.A. 8504 and R.A. 9262 will reveal what the possible charges could be. Among these are:

Act of discrimination or violation	Possible criminal charge
Refusal of admission in a hospital	Violation of RA 8504
Insulting acts by medical personnel	
Undue disclosure of medical information	
Being given medical certification which states “not fit to work”	
Lack of adequate care in hospital	
Denial of health insurance	
Being detained, quarantined or segregated	
Lack of care by family members (if victim is a child)	Abandonment of minor (as defined by RPC)
Physical assaults	Serious physical injuries / less serious physical injuries / slight physical injuries and maltreatment (all of which are defined by RPC)
Physical assaults in case where victim is a woman or a child	Violation of R.A. 9262 (Anti-VAWC Act)
Being verbally harassed; sworn at; being gossiped about	Slander / Slander by deed / Intriguing against honor (all of which are defined by RPC)
Being verbally harassed, sworn at or being gossiped about in case where victim is a woman or a child	Violation of R.A. 9262 (Anti-VAWC Act)
Physical threats; being pressured to leave the community	Light threats / Grave threats (both defined by RPC)
Physical threats or being pressured to leave the community in case where victim is a woman or a child	Violation of R.A. 9262 (Anti-VAWC Act)

Table 3: Acts of discrimination and violations and corresponding criminal charges

And if the cases could be brought to court for criminal prosecution, then they could also be brought forward as civil suits, even if only to claim actual damages. In addition, the Civil Code and the Family Code could be consulted to find grounds for instituting civil proceedings for certain acts of discrimination. Among the possible reliefs which can be petitioned are:

- **Support**, in case of abandonment by a spouse, child or parent (citing Articles 194-208 of the Family Code)
- **Injunction against disinheritance**, in case of disinheritance which was not lawful (citing provisions of Section 6 of the Civil Code)

- **Legal separation**, in case of physical assault by the spouse which is tantamount to attempt on his/her life (citing Art. 53 of the Family Code)

Article 32 of the Civil Code lists various freedoms (practically all the civil freedoms guaranteed by the Constitution in its Bill of Rights) which, if breached, can be cause for civil action. In this regard, being ejected from one's house is a violation of the right to abode and could be cause for filing a civil suit, citing Article 32.

In fact, a wide range of instances wherein people are aggrieved can be remedied through taking civil actions based on Article 32. However, this is not usually done, the high cost of litigation being one of the deterrents.

Below is a summary of the drawbacks of litigation:

1. High costs

Litigation involves many costs, including filing fees, lawyers' fees, transportation, reproduction expenses, etc. Civil cases involve very high filing fees. To illustrate, if a petitioner files a claim for damages worth one million pesos, he or she has to pay a filing fee of about P100,000.00. Meanwhile, the cost of engaging private lawyers usually runs in the tens of thousands of pesos.

2. Lengthy duration of process

It is very common in the Philippines that court cases could drag on for years.

3. No measures for confidentiality

The criminal and civil procedures, from the investigation phase to the execution of judgment, do not at any point involve confidential measures (except at the pre-trial stage of mediation, to a certain extent). Even R.A. 8504 is deficient in this regard, with confidentiality as provided therein restricted to medical confidentiality.

4. Adversarial nature

Another major deterrent against litigation is the unwillingness to push relationships to the limits of irreparability, given the fact that often, the parties in dispute are not far removed from each other (being members of the same family, community, workplace, etc.). For instance, it would be uncommon to find somebody filing a civil action against his/her own family, even if he/she was driven away from the house.

5. *Very low penalties*

A PLHIV whose rights were violated, such as by slight physical injuries, does not suffer only from the actual offense but also from emotional anguish, among others. Often, the penalty imposed on the offender is not commensurate to the totality of the hurt the offense has caused the aggrieved party/person.

To illustrate, at its maximum, the penalty for the crime of slight physical injuries is imprisonment for 30 days. Meanwhile, the crime of slander carries with it a penalty of six months imprisonment if it is of a serious and insulting nature; otherwise the penalty is a fine not exceeding 200 pesos.

6. *No guarantee of success*

The standard of proof required for a favorable judgment (“guilty beyond reasonable doubt” for criminal cases) is a very high standard to meet. This makes it difficult for the offended party, especially since the perpetrators can cite a number of justifications in their defense. For instance, refusal of admission into a hospital can be justified by claiming that the hospital lacks the necessary equipment or personnel and not because of discriminating against PLHIV. Similarly, dismissal from work may be attributed to other reasons such as absenteeism or incompetence.

Republic Act 8504

R.A.8504 represents progress in terms of seeking redress. For one, it has classified as crimes different types of discriminatory acts. Still, a glaring void concerns discriminatory acts within the family setting. Hence, such acts as disinheritance (if done lawfully), separate eating utensils, etc. are not considered as criminal offenses.

The penalties that are imposed remain low, as provided for by Section 42, to wit: “All discriminatory acts and policies shall be punishable with a penalty of imprisonment for six months to four years and a fine not exceeding Ten thousand pesos.”

The coverage of confidentiality is limited mainly to medical confidentiality. There is a clause in R.A. 8504 which states that, when delivering medical information to the court, “the judicial proceedings shall be held in executive session.” Does this mean that hearings can be held in executive sessions all throughout? There is no definitive answer to this question.

A main criticism against R.A. 8504 is the insufficiency or vagueness of many of its provisions. This is supposed to be remedied by the implementing rules and regulations drawn up by the Philippine National AIDS Council. However, many gaps still remain.

For one, while R.A. 8504 provides that compulsory HIV testing is deemed unlawful, there is no provision that imposes penalties should this clause be breached.

Contributing to the persistence of insufficient and vague provisions is the fact that no PLHIV has yet gone to court and made use of R.A. 8504. It is possible that, if put to the test of actual litigation, the vague provisions can be made more explicit and interpreted to the advantage of PLHIV.

C. POTENTIALS AND LIMITATIONS OF MEDIATION AND OTHER FORMS OF ALTERNATIVE DISPUTE RESOLUTION (ADR)

Mediation and other forms of ADR seem to be appropriate redress mechanisms for HIV-related violations because of the following reasons:

- confidential procedures
- faster than court litigation
- less costly in the long run
- higher compliance rates (since the parties forge the settlement together)
- flexible processes and rules, which may be modified to suit parties' concerns
- could address multi-party and/or multi-dimensional problems
- legal framework supporting ADR fully in place
- could result in the restoration and/or maintenance of civil or harmonious relations

On the other hand, ADR poses a number of limitations, among them:

- ADR is fundamentally consensual, needing the prior agreement of the parties in dispute
- does not result in penalization
- cannot serve as binding precedent

Moreover, court-annexed mediation does not guarantee absolute confidentiality. The fact that a case has to be filed in court first, before a Judge can order a pre-trial process that includes mediation, makes it open to public scrutiny.

D. POTENTIALS AND LIMITATIONS OF THE KATARUNGANG PAMBARANGAY

The Katarungang Pambarangay system is appropriate, especially since it is required by law, to address many of the acts of discrimination and violations against PLHIV. In particular, cases involving relatively light offenses (such as *less serious physical injuries*, *slight physical injuries*, *light threats*, *threatening to publish a libel*, *slander* and *intriguing against honor*) need to go through the Katarungang Pambarangay first, before they can be relayed to regular courts, if need be.

Violations of R.A. 8504, however, are not among the offenses subject to Katarungang Pambarangay. The penalties it prescribes exceed one-year imprisonment and/or Php5,000.00 fine.

Just like other ADR processes, the Katarungang Pambarangay proceedings do not result in penalization. This is a drawback if the victim is intent on seeing the offender punished. On the other hand, it could be a positive result in that civil or harmonious relations could be restored or maintained.

A main drawback at the moment is the level of skills of the barangay officials. The staff members of the Office for Alternative Dispute Resolution (ADR) admitted that the barangay officers, at the moment, are generally not yet sufficiently trained on mediation and other ADR processes. Added to this is the fact that barangay officials, like most Filipinos, are not yet fully sensitized to the nature of HIV infection and the requirements for handling cases related to it.

While mediation, conciliation and arbitration are supposed to be confidential procedures, there are various factors that do not guarantee confidentiality, among them the skill level of barangay officials and the prevalent social dynamics in communities.

E. POTENTIALS AND LIMITATIONS OF MECHANISMS FOR VIOLATIONS IN THE WORKPLACE

Among the various types of acts of discrimination and violations against PLHIV are those that happen in the workplace, namely:

- Being compelled to undergo testing / forced to submit health certificate
- Being refused admission to a job (usually as a result of the obtained health certificate)

- Being pressured to resign from work
- Being detained, quarantined and/or segregated (usually experienced by OFWs with positive status)
- Being denied due medical benefits including dental care
- Being prevented to do specific tasks (such as the case of a hospital worker who was relegated to records-keeping)
- Other forms of discrimination (such as being given a desk far from other employees)

Most of them could be brought forward as grievances by the aggrieved employees, following procedures within the confines of the company, or beyond it if need be (i.e., before a Labor Arbiter or a Voluntary Arbitrator). In addition, they can be prosecuted as criminal offenses under R.A. 8504.

Being detained, quarantined and/or segregated, if done in the Philippines, is definitely a criminal offense as per R.A. 8504. If done in another country, its laws should be examined to see if an illegal act was committed.

As for refusal of admission to a job, it is a type of complaint that could be filed by any interested party, for the sake of public interest, before the NLRC.

Among the main limitations of labor arbitration is the lengthy duration of the process. Cases filed with the NLRC normally take years before final adjudication.

Bringing cases to NLRC also exposes the employee to many dangers, foremost of which is termination. Experienced unionists in fact caution against this, except to dispute termination decisions. They say that when a case is filed with NLRC, the aggrieved employee will likely be tagged a “trouble-maker” and could be the target of undue pressures and machinations from management.

Even without such advice, employees have refrained from taking this ultimate step. Given the current labor situation (high unemployment rate, low rate of unionization, much lower rate of CBAs in place, etc.), it is not surprising that a great number of employees have preferred to accept their plights instead of risking losing their jobs.

Also, the various labor-related mechanisms do not include guarantees for confidentiality.

F. POTENTIALS AND LIMITATIONS OF ADMINISTRATIVE PROCEEDINGS

The availability of administrative proceedings is a good development for PLHIV whose rights were violated. This is in light of the various settings where acts of discrimination and violations take place, with medical practitioners and employees of educational institutions among the possible perpetrators. Lawyers and other legal practitioners are not yet seen as such, but they could be potentially, if and when litigation of HIV-related cases goes into full swing. Experiences of other sectors (women groups for instance), show how lawyers and judges have exhibited discriminatory tendencies against disadvantaged sectors during trials, whether intentional or out of ignorance. In the same breath, law enforcers are not yet seen as likely perpetrators, but it is not inconceivable that they could be, e.g., through extortion. (It can be noted that in one documented case of arrest of men who have sex with men, extortion had been attempted by some policemen.)

Similar to most mechanisms, administrative proceedings also do not carry measures to protect confidentiality.

The adversarial nature of administrative proceedings can also discourage would-be complainants. It is not unusual to hear complainants being threatened, especially if the erring government officials occupy powerful positions.

And just like litigation, there is no guarantee for success. As earlier mentioned, a number of justifications can be cited by perpetrators in their defense (e.g., refusal of admission into a hospital can be justified by claiming that the hospital lacks the necessary equipment or personnel).

Conclusion

A. TOWARDS GREATER USE OF THE REDRESS MECHANISMS

There are various reasons why PLHIV in the Philippines whose rights were violated have not sought redress. Among the reasons, the high cost of litigation, may be addressed by enlisting the help of PAO, IBP and alternative law groups or by approaching the CHR.

It also has been stated earlier (on page 14) that there are various factors in play when choosing which mechanisms to use, namely: type of offense, purpose of the victim, status of the offender, and the gravity of the offense. Among all them, the most crucial factor is the purpose of the victim.

For some offended parties, the punishment of the perpetrators could only be the outcome that would bring vindication and alleviation of the hurt that was experienced. In addition, punishment of offenders brings out a warning to other would-be offenders. And yet, for some, the more important objective could be the maintenance and/or repair of damaged relationships, at the same time avoiding the difficulties and acrimony of long-drawn legal battles.

Whether to seek redress or not is a decision for the PLHIV to make. In this regard, it is clear that a central question when it comes to availing redress mechanisms is the willingness to disclose HIV status. At the moment, even so-called confidential procedures involve some degree of disclosure.

Often, PLHIV have opted not to seek redress. However, with inaction, the current situation of non-availing of redress will likely remain the same for years to come. It could be time now for PLHIV to consider litigation, not just to seek relief for those whose rights were violated, but also to help at the same time in improving the whole system of justice delivery. In other words, conditions point to the need to come up with long-term strategies that include developmental law.

Developmental or alternative lawyering aims to use the courts to:

- advance and protect the rights of the specific litigants;
- discover and expose the limitations of the system;

- work for the improvement of weak parts of the law and the system;
- help in empowering the victims by involving them actively in the case; and
- help in advocacy and education.

R.A. 8504 is far from perfect. But it could still be used as it stands now, and in the process be improved. Its insufficient and vague provisions can be supplemented and/or made explicit, to the advantage of PLHIV, if they are put to the test of actual litigation.

If litigation and other redress mechanisms are to be considered, there are some immediate and long-term steps which the PLHIV community needs to look into, among them:

- Development of organizational protocols for addressing HIV-related violations
- Lobbying for the improvement of redress mechanisms, perhaps through the Philippine National AIDS Council (PNAC). Among the particular targets for lobbying and advocacy are:
 - ❖ Legislators at the House of Representatives and the Senate – for the amendment of R.A. 8504 (such as strengthening its confidentiality measures)
 - ❖ PNAC itself – for improvement of the implementing rules and regulations of R.A. 8504
 - ❖ Supreme Court – for the issuance of special rules to govern cases involving PLHIV
 - ❖ Department of Justice – for the issuance of improved guidelines to govern the barangay justice system
- Strengthening, and possibly reorientation, of support groups for PLHIV so as to consider new areas like documentation, litigation, wider utilization of media, etc. in addition to current work of counselling and other services. In particular, paralegal skills would need to be enhanced.
- Development or revival of networks with various partners, especially alternative law groups
- Mapping, sharing, and development of resources to further capability-building

B. PUSHING FOR NEW STANDARDS

Beyond the use of the current redress mechanisms, PLHIV support groups can play a role in standard-setting. Judging from their sharing of what they consider as violations, it must be recognized that they feel some needs, such as need for caring and need for humane treatment and respect by others, are not yet fully addressed as rights in international and/or national law. In other words, the range of rights accorded to PLHIV – from those contained in international instruments to constitutional to statutory rights – could still be incomplete, pointing to the need to look beyond the current legal bases of rights. After all, history shows that much of today's declared human rights evolved from natural rights.¹⁰

The international instruments in fact have their roots in natural law. Natural law was advanced by prominent European philosophers in the 16th to the 19th centuries, notably by John Locke. The *Universal Declaration of Human Rights*, and other international human rights declarations after it, drew heavily from natural law when it was crafted.

Among the undeclared “rights” or needs are those pertaining to intra-family relations, guarantees of confidentiality and governmental commitment to meet the challenge of HIV and AIDS. To cover these, various PLHIV support groups all over the world have been pushing for an instrument on PLHIV rights. An example is the National Association of People Living with HIV/AIDS, a non-governmental advocacy organization in Australia, which has come up with the document *Declaration of Rights for Peoples Living with HIV/AIDS*. It is not an instrument passed by inter-governmental bodies. However, through lobbying, governments could be pushed to adopt its provisions and those from similar initiatives, to be elevated to the level of inter-governmental discussions that could someday result in new standards.

The fight for the rights of PLHIV, after all, is still a new arena. And PLHIV may yet look forward with greater hope and less despair.

¹⁰ Natural rights refer to the rights of a person by nature as a human being and not by virtue of citizenship in a particular country or membership in a particular group. Natural rights may be unwritten but are popularly acknowledged as morally good.

Annex A

CASES THAT ARE SUBJECT TO KATARUNGANG PAMBARANGAY

1. Unlawful use of means of publication and unlawful utterances (Art. 154)
2. Alarms and scandals (Art. 155)
3. Using false certificates (Art. 175)
4. Using fictitious names and concealing true names (Art. 178)
5. Illegal use of uniforms and insignias (Art. 179)
6. Physical injuries inflicted in a tumultuous affray (Art. 252)
7. Giving assistance to consummated suicide (Art. 253)
8. Responsibility of participants in a duel if only physical injuries are inflicted or no physical injuries have been inflicted (Art. 260)
9. Less serious physical injuries (Art. 265)
10. Slight physical injuries and maltreatment (Art. 266)
11. Unlawful arrest (Art. 269)
12. Inducing a minor to abandon his/her home (Art. 271)
13. Abandonment of a person in danger and abandonment of one's own victim (Art. 275)
14. Abandoning a minor (a child under seven [7] years old) (Art. 276)
15. Abandonment of a minor by persons entrusted with his/her custody indifference of parents (Art. 277)
16. Qualified trespass to dwelling (without the use of violence and intimidation) (Art. 280)
17. Other forms of trespass (Art. 281)
18. Light threats (Art. 283)
19. Other light threats (Art. 285)
20. Grave coercion (Art. 286)
21. Light coercion (Art. 287)
22. Other similar coercions (compulsory purchase of merchandise and payment of wages by means of tokens). (Art. 288)
23. Formation, maintenance and prohibition of combination of capital or labor through violence or threats (Art. 289)
24. Discovering secrets through seizure and correspondence (Art. 290)
25. Revealing secrets with abuse of authority (Art. 291)
26. Theft (if the value of the property stolen does not exceed P50.00). (Art. 309)
27. Qualified theft (if the amount does not exceed P500). (Art. 310)

28. Occupation of real property or usurpation of real rights in property (art 312)
29. Altering boundaries or landmarks (Art. 313)
30. Swindling or estafa (if the amount does not exceed P200.00). (Art. 315)
31. Other forms of swindling (Art. 316)
32. Swindling a minor (Art. 317)
33. Other deceits (Art. 318)
34. Removal, sale or pledge of mortgaged property (Art. 319)
35. Special cases of malicious mischief (if the value of the damaged property does not exceed P1,000.00). (Art 328)
36. Other mischiefs (if the value of the damaged property does not exceed P1,000.00). (Art. 329)
37. Simple seduction (Art. 338)
38. Acts of lasciviousness with the consent of the offended party (art 339)
39. Threatening to publish and offer to prevent such publication for compensation (Art. 356)
40. Prohibiting publication of acts referred to in the course of official proceedings (Art. 357)
41. Incriminating innocent persons (Art. 363)
42. Intriguing against honor (Art. 364)
43. Issuing checks without sufficient funds (BP 22)
44. Fencing of stolen properties if the property involved is not more than P50.00 (PD 1612)

Annex B

BACKGROUND ON THE PHILIPPINE JUDICIAL SYTEM¹

The Constitution

The Constitution of the Philippines ordains that judicial power shall be vested in one Supreme Court and such lower courts as may be established by law. *[Section 1, Art. VIII, 1987 Constitution]*

The Law

Under Philippine laws [Judiciary Reorganization Act of 1980 (Batas Pambansa Bilang 129) which took effect on January 18, 1983 and other laws such as R.A. 8369 which provided for the establishment of Family Court], the Philippine judicial system consists of the following courts:

Lower Courts

I. Municipal Trial Courts and Municipal Circuit Trial Courts

Every municipality in the Philippines has its own Municipal Trial Court. It is referred to as such if it covers only one municipality; otherwise, it is called Municipal Circuit Trial Court if it covers two or more municipalities.

II. Metropolitan Trial Courts and Municipal Trial Courts in Cities

Municipal Trial Courts in the towns and cities in the Metropolitan Manila area, as distinguished from the other political subdivisions in the Philippines, are referred to as Metropolitan Trial Courts.

In cities outside Metropolitan Manila, the equivalent of the Municipal Trial Courts are referred to as Municipal Trial Courts in Cities.

¹ Adapted from "Background on the Philippine Judicial System", Chan Robles Virtual Law Library, <http://www.chanrobles.com/courtsinthephilippines.htm>

III. Regional Trial Courts

Regional Trial Courts were established among the thirteen regions in the Philippines consisting of Regions I to XII and the National Capital Region (NCR). There are as many Regional Trial Courts in each region as the law mandates.

IV. Family Courts

R.A. 8369 provided for the establishment of a Family Court (which is deemed equivalent in rank to a Regional Trial Court) in each province or city.

V. Shari'a Courts

Equivalent to the Regional Trial Courts in rank are the Shari'a District Courts which were established in certain specified provinces in Mindanao where the Muslim Code on Personal Laws is being enforced.

There are five Shari'a District Courts and fifty one Shari'a Circuit Courts in existence.

V. Court of Tax Appeals

A special court, the Court of Tax Appeals, composed of a Presiding Judge and two Associate Judges, is vested with the exclusive appellate jurisdiction over appeals from the decisions of the Commissioner of Internal Revenue and the Commissioner of Customs on certain specific issues.

VI. Sandiganbayan

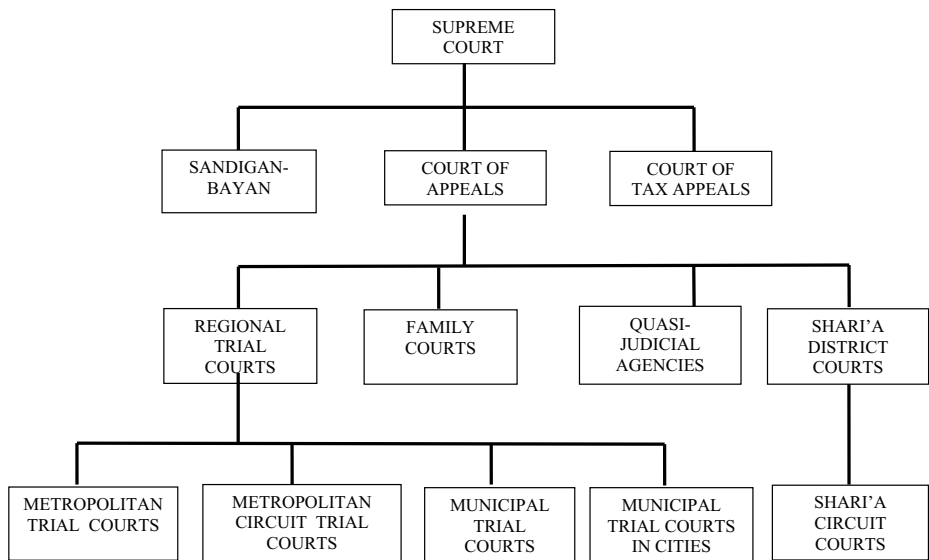
A special court, the Sandiganbayan, composed of a Presiding Justice and eight Associate Justices, has exclusive jurisdiction over violations of the Anti-Graft and Corrupt Practices Act [Republic Act No. 3019], the Unexplained Wealth Act [Republic Act No. 1379] and other crimes or felonies committed by public officials and employees in relation to their office, including those employees in government-owned or controlled corporations.

VII. Court of Appeals

The Court of Appeals, composed of one Presiding Justice and sixty eight Associate Justices is vested with jurisdiction over appeals from the decisions of the Regional Trial Courts and certain quasi-judicial agencies, boards or commissions.

The Highest Court - Supreme Court

The Supreme Court is the highest Court in the Philippines. There is only one Supreme Court composed of one Chief Justice and fourteen Associate Justices. It is the final arbiter of any and all judicial issues. When so deciding, it may sit *en banc* or in divisions of three, five or seven members.



Annex C

DOH ADMINISTRATIVE ORDER 2009-0019



Republic of the Philippines
Department of Health
OFFICE OF THE SECRETARY

OCT 30 2009

ADMINISTRATIVE ORDER

No. 2009-0019

SUBJECT: Procedures on Handling Complaints in the Department of Health

I. RATIONALE

Guided by the principle that public office is a public trust and that all public officials and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty and efficiency as well as serve the Filipino constituents with sincerity and patriotism, lead a modest life and committed to uphold the rule of law and the highest standards of honesty, integrity and transparency in the performance of their official duties and responsibilities in the Department of Health.

It is on this premise that there is a need to establish a procedure of handling complaints in the Department of Health to cover rank and file employees to senior level positions of the organization.

II. OBJECTIVE

This procedure aims to establish a uniform process of handling complaints filed against officials and employees of the Department of Health including where to file the same.

III. SCOPE

This shall be applicable to all complaints filed by any official or employee of the Department of Health which includes all government retained hospitals, Centers for Health Development, Bureaus, Sanitaria, Rehabilitation Centers and attached agencies, as well as complaints filed by any private individual or entity.

IV. DEFINITION OF TERMS

1. Definition and Acronym as herein used as follows:

- 1.1. IDC – refers to the Integrity Development Committee of the Central Office or of the Center for Health Development.
- 1.2. DOH-CO – refers to the Department of Health Central Office
- 1.3. IAB – refers to the Internal Affairs Board, a sub-committee of the Department of Health Integrity Development Committee of the Central Office.
- 1.4. Director – refers to the head of office of a Center for Health Development (CHD), retained or re-nationalized hospital, office bureau, rehabilitation center or head of office of a DOH attached agency.
- 1.5. Chief of Hospital/Medical Center Chief (COH/MCC) - refers to the Chief of a retained or re-nationalized Department of Health Hospital or Medical Center.
- 1.6. Chief of Medical Professional Staff/Chief of Clinics – refers to the senior head medical officer of the hospital.
- 1.7. AHFFC – refers to the Ad Hoc Fact Finding Committee created to conduct fact finding investigation created by the Head of Agency for complaints which are not under oath and with verifiable information.
- 1.8. Formal Charge (FC) – refers to the formal complaint leveled against a public official or employee after conducting the Preliminary Investigation.
- 1.9. Motion for Reconsideration (MR) – refers to a type of pleading submitted by a plaintiff or respondent adversely affected by an order, resolution or decision.

V. PROCESS AND PROCEDURE

1. Process of handling complaints filed against those with positions lower than Chief of Medical Professional Staff/Chief of Clinics, Chief Administrative Officers, and Chief Nurse in all retained/re-nationalized hospitals/medical centers, sanitarium, and rehabilitation centers under supervision by a Center for Health Development concerned.
 - 1.1 Complaint received (COH/MCC).
 - 1.2 Initial evaluation of complaint (COH/MCC) – within 24 hours from receipt by the COH/MCC.
 - 1.2.1 With no verifiable information – forward to IAB for reporting to IDC and filing.
 - 1.2.2 With verifiable information but not under oath – create Fact Finding Committee (FFC) with one (1) hospital IDC member as member of the FFC. FFC should be composed of at least 3 members with one member serving as the Chair.

- 1.2.3 If complaint is under oath – proceed to preliminary investigation.
 - 1.3 Preliminary Investigation (CHD Legal Officer).
 - 1.3.1 If no prima facie case – recommend dismissal of complaint within 7 days from receipt by the Legal Officer.
 - 1.3.2 With prima facie case – recommend filing of a formal charge within 30 days from receipt by the Legal Officer of the last responsive pleading.
 - 1.4 Approval of Appropriate Action (COH/MCC) – within 7 days from receipt of the recommendation.
 - 1.5 Hearing of the Case (CHD Hearing Committee).
 - 1.6 Approval of the Decision (COH/MCC) – within 7 calendar days from submission of recommendation by the Hearing Committee.
 - 1.6.1 Motion for reconsideration may be filed within 15 days from receipt by the respondent of the decision.
 - 1.7 Appeal (Secretary of Health).
 - 1.7.1 Appeal may be filed within 15 days from receipt of the denial of the motion for reconsideration.
 - 1.7.2 The penalty of dismissal from the service, shall only take effect upon approval of the decision by the Secretary of Health.
2. Process of handling complaints filed against Chief of Medical Professional Staff/Chief of Clinics, Chief Administrative Officers, and Chief Nurse in all retained/re-nationalized hospitals/medical centers, sanatoria, and rehabilitation centers under supervision by a Center for Health Development concerned.
- 2.1 Complaint received (COH/MCC).
 - 2.2 Initial evaluation of complaint (COH/MCC) – within 24 hours from receipt by the COH/MCC.
 - 2.2.1 With no verifiable information – forward to IAB for reporting to IDC and filing.
 - 2.2.2 With verifiable information but not under oath – refer to the CHD Fact Finding Committee (FFC) with one (1) CHD IDC member as member of the FFC. FFC should be

- composed of at least 3 members with one member serving as the Chair.
 - 2.2.3 If complaint is under oath – proceed to preliminary investigation.
 - 2.3 Preliminary Investigation (CHD Legal Officer)
 - 2.3.1 If no prima facie case - recommend dismissal of complaint within 7 days from receipt by the Legal Officer.
 - 2.3.2 With prima facie case - recommend filing of a formal charge within 30 days from receipt by the Legal Officer of the last responsive pleading.
 - 2.4 Approval of Appropriate Action (COH/MCC) – within 7 days from receipt of the recommendation.
 - 2.5 Hearing of the Case (CHD Hearing Committee).
 - 2.6 Approval of the Decision (COH/MCC) – within 7 days from receipt of recommendation.
 - 2.6.1 Motion for reconsideration may be filed with the COH/MCC within 15 days from receipt by the respondent of the decision.
 - 2.7 Appeal (Secretary of Health).
 - 2.7.1 Appeal may be filed within 15 days from receipt of the denial of the motion for reconsideration.
 - 2.7.2 The penalty of dismissal from the service, shall only take effect upon approval of the decision by the Secretary of Health.
- 3. Process of handling complaints filed against Chief of Medical Centers/Hospitals/Sanitaria/Rehab Centers under supervision by a Center for Health Development concerned.
 - 3.1 Complaint received (CHD Director).
 - 3.2 Initial evaluation of complaint (CHD Director) – within 24 hours from receipt by the CHD Director.
 - 3.2.1 With no verifiable information – Forward to IAB for reporting to IDC and filing.

- 3.2.2 With verifiable information but not under oath - Refer to the CHD Fact Finding Committee (FFC) with one (1) CHD IDC member as member of the FFC. FFC should be composed of at least 3 members with one member serving as the Chair.
 - 3.2.3 If complaint is under oath – proceed to preliminary investigation.
 - 3.3 Preliminary Investigation (CHD Legal Officer).
 - 3.3.1 If no prima facie case – recommend dismissal of complaint within 7 days from receipt by the Legal Officer.
 - 3.3.2 With prima facie case – recommend filing of a formal charge within 30 days from receipt by the Legal Officer of the last responsive pleading.
 - 3.4 Approval of Appropriate Action (CHD Director) – within 7 days from receipt of the recommendation.
 - 3.5 Hearing of the Case (CHD Hearing Committee).
 - 3.6 Approval of the Decision (Secretary of Health) – within 7 calendar days from submission of recommendation by the Hearing Committee.
 - 3.6.1 Motion for reconsideration may be filed with the Office of the Secretary of Health within 15 days from receipt by the respondent of the decision.
 - 3.7 Appeal (CSC)
 - 3.7.1 Appeal may be filed within 15 days from receipt of the denial of the motion for reconsideration.
4. Process of handling complaints filed against officers and employees of Centers for Health Development lower than CHD Assistant Director.
- 4.1 Complaint received (CHD Director).
 - 4.2 Initial evaluation of complaint (CHD Director) – within 24 hours from receipt by the CHD Director.
 - 4.2.1 With no verifiable information – forward to IAB for reporting to IDC and filing

- 4.2.2 With verifiable information but not under oath - refer to the CHD Fact Finding Committee (FFC) with one (1) CHD IDC member as member of the FFC. FFC should be composed of at least 3 members with one member serving as the Chair.
 - 4.2.3 If complaint is under oath – proceed to preliminary investigation.
- 4.3 Preliminary Investigation (CHD Legal Officer).
 - 4.3.1 If no prima facie case – recommend dismissal of complaint within 7 days from receipt by the Legal Officer.
 - 4.3.2 With prima facie case – recommend filing of a formal charge within 30 days from receipt by the Legal Officer of the last responsive pleading.
- 4.4 Approval of Appropriate Action (CHD Director) – within 7 days from receipt of the recommendation.
- 4.5 Hearing of the Case (CHD Hearing Committee).
- 4.6 Approval of the Decision (CHD Director) – within 7 calendar days from submission of recommendation by the Hearing Committee.
 - 4.6.1 Motion for reconsideration may be filed with the Office of the CHD Director within 15 days from receipt by the respondent of the decision.
- 4.7 Appeal (Secretary of Health).
 - 4.7.1 Appeal may be filed within 15 days from receipt of the denial of the motion for reconsideration.
 - 4.7.2 The penalty of dismissal from the service, shall only take effect upon approval of the decision by the Secretary of Health.
- 5. Process of handling complaints filed against positions lower than Chief of Medical Professional Staff/Chief of Clinics, Chief Administrative Officers, and Chief Nurse in all retained/re-nationalized hospitals/medical centers, sanatoria, rehabilitation centers, and Special Hospitals under supervision by the DOH-CO.
 - 5.1 Complaint received (COH/MCC).
 - 5.2 Initial evaluation of complaint (COH/MCC) – within 24 hours from receipt by the COH/MCC.

- 5.2.1 With no verifiable information – forward to IAB for reporting to IDC and filing.
- 5.2.2 With verifiable information but not under oath – create Fact Finding Committee (FFC) with one (1) hospital IDC member as member of the FFC. FFC should be composed of at least 3 members with one member serving as the Chair.
- 5.2.3 If complaint is under oath – proceed to preliminary investigation.
- 5.3 Preliminary Investigation (Legal Officer).
 - 5.3.1 If no prima facie case – recommend dismissal of complaint within 7 days from receipt by the legal officer
 - 5.3.2 With prima facie case – recommend filing of a formal charge within 30 days from receipt by the Legal Officer of the last responsive pleading.
- 5.4 Approval of Appropriate Action (COH/MCC) – within 7 days from receipt of the recommendation.
- 5.5 Hearing of the Case (Hospital Hearing Committee).
- 5.6 Approval of the Decision (COH/MCC) – within 7 calendar days from submission of recommendation by the Hearing Committee.
 - 5.6.1 Motion for reconsideration may be filed with the COH/MCC within 15 days from receipt by the respondent of the decision.
- 5.7 Appeal (Secretary of Health)
 - 5.7.1 Appeal may be filed within 15 days from receipt of the denial of the motion for reconsideration.
 - 5.7.2 The penalty of dismissal from the service, shall only take effect upon approval of the decision by the Secretary of Health.
- 6. Process of handling complaints filed against Chief of Medical Professional Staff/Chief of Clinics, Chief Administrative Officers, and Chief Nurse in all retained/re-nationalized hospitals/medical centers, sanatoria, rehabilitation centers, and Special Hospitals under supervision by the DOH-CO.
 - 6.1 Complaint received (IAB).

- 6.2 Initial evaluation of complaint (IAB) – within 24 hours from receipt by the IAB.
 - 6.2.1 With no verifiable information – forward to IAB for reporting to IDC and filing.
 - 6.2.2 With verifiable information but not under oath – refer to IAS for fact finding investigation.
 - 6.2.3 If complaint is under oath – proceed to preliminary investigation.
- 6.3 Preliminary Investigation (Legal Service)
 - 6.3.1 If no prima facie case - recommend dismissal of complaint within 7 days from receipt by the Legal Officer.
 - 6.3.2 With prima facie case - recommend filing of a formal charge within 30 days from receipt by the Legal Officer of the last responsive pleading.
- 6.4 Approval of Appropriate Action (COH/MCC) – within 7 days from receipt of the recommendation.
- 6.5 Hearing of the Case by the DOH Hearing Committee to be created by the IAB Chairperson Chaired by a lawyer from the Legal Service with two (2) members selected by the OSC, USEC/ASEC.
- 6.6 Approval of the Decision (COH/MCC) – within 7 days from receipt of recommendation.
 - 6.6.1 Motion for reconsideration may be filed with the COH/MCC within 15 days from receipt by the respondent of the decision.
- 6.7 Appeal (Secretary of Health).
 - 6.7.1 Appeal may be filed within 15 days from receipt of the denial of the motion for reconsideration.
 - 6.7.2 The penalty of dismissal from the service, shall only take effect upon approval of the decision by the Secretary of Health.
- 7. Process of handling complaints filed against Chief of Medical Centers/Hospitals/Sanitaria/Rehab Centers and Special Hospitals under supervision by the DOH-CO.

- 7.1 Complaint received (IAB).
- 7.2 Initial evaluation of complaint (IAB) – within 24 hours from receipt by the IAB.
 - 7.2.1 With no verifiable information – forward to IAB for reporting to IDC and filing.
 - 7.2.2 With verifiable information but not under oath – refer to IAS for fact finding investigation.
 - 7.2.3 If complaint is under oath – proceed to preliminary investigation.
- 7.3 Preliminary Investigation (Legal Service).
 - 7.3.1 If no prima facie case - recommend dismissal of complaint within 7 days from receipt by the Legal Officer.
 - 7.3.2 With prima facie case - recommend filing of a formal charge within 30 days from receipt by the Legal Officer of the last responsive pleading.
- 7.4 Approval of Appropriate Action (USEC/ASEC, Office of Special Concern (OSC)) – within 7 days from receipt of the recommendation.
- 7.5 Hearing of the case by the DOH Hearing Committee to be created by the IAB Chairperson Chaired by a lawyer from the Legal Service with two (2) members selected by the USEC/ASEC of OSC.
- 7.6 Approval of the Decision (Secretary of Health) – within 7 days from receipt of recommendation.
 - 7.6.1 Motion for reconsideration may be filed with the Office of the Secretary within 15 days from receipt by the respondent of the decision.
- 7.7 Appeal (CSC).
 - 7.7.1 Appeal may be filed within 15 days from receipt of the denial of the motion for reconsideration.
8. Process of handling complaints for DOH Central Office Units including BOQ & BFAD Division Chiefs and below.
 - 8.1 Complaint received (IDC).

- 8.2 Initial evaluation of complaint (IAB of the IDC).
 - 8.2.1 With no verifiable information – archive with IAB Records for reporting to IDC.
 - 8.2.2 With verifiable information but not under oath – Internal Audit Service (IAS) to conduct Fact Finding or Secretary of Health (SOH) may create AHFFC w/ IAS as member.
 - 8.2.3 If complaint is under oath – proceed to preliminary investigation.
- 8.3 Preliminary Investigation (Legal Service).
 - 8.3.1 If no prima facie case - recommend dismissal of complaint within 7 days from receipt by the Legal Officer.
 - 8.3.2 With prima facie case - recommend filing of a formal charge within 30 days from receipt by the legal office of the last responsive pleading.
- 8.4 Approval of Appropriate Action (Bureau/Service/Office Director concerned) – within 7 days from receipt of the recommendation.
- 8.5 Hearing of the case (Hearing Committee, to be created by the Internal Affairs Board (IAB) Chairperson, to be chaired by a lawyer from Legal Service with two members to be selected by the Cluster Head of the respondent.)
- 8.6 Approval of the Decision (Appointing Authority) – within 7 days from receipt of recommendation.
 - 8.6.1 Motion for Reconsideration may be filed within 15 days from receipt by the respondent of the decision.
- 8.7 Appeal (Secretary of Health).
 - 8.7.1 Appeal may be filed within 15 days from the receipt of the denial of the Motion for Reconsideration
- 9. Process of handling complaints for all Presidential Appointees in the DOH Central Office/CHDs, except Undersecretary (USEC) and Assistant Secretary (ASEC).
 - 9.1 Complaint received (IDC).

9.2 Initial evaluation of complaint (IAB of the IDC).

- 9.2.1 With no verifiable information – archive with IAB Records for reporting to IDC.
- 9.2.2 With verifiable information but not under oath – IAS to conduct Fact Finding or Secretary of Health may create an AHFFC with IAS as member.
- 9.2.3 If complaint is under oath – proceed to preliminary investigation.

9.3 Preliminary Investigation (Legal Service).

- 9.3.1 If no prima facie case – recommend dismissal of complaint within 7 days from receipt by the Legal Officer.
- 9.3.2 With prima facie case – recommend endorsement to PAGC/OMB for the filing of formal charge within 30 days from receipt by the Legal Officer of the last responsive pleading.

9.4 Approval of Appropriate Action (Secretary of Health) - within 7 days from receipt of the recommendation.

10. Process of handling complaints for Assistant Secretary (ASEC) and Undersecretary of Health (USEC).

10.1 Complaint received (SOH).

10.2 Initial evaluation (SOH/IDC).

- 10.2.1 With no verifiable information- forward to IAB for filing.
- 10.2.2 With verifiable information but not under oath- Secretary of Health to create AHFFC with IAS member.
- 10.2.3 If complaint is under oath- proceed to Preliminary Investigation by Legal Service.

10.3 Preliminary Investigation by the Legal Service.

- 10.3.1 If no prima facie case – recommend dismissal of complaint within 7 days from receipt by the Legal Officer.
- 10.3.2 With prima facie case – recommend endorsement to PAGC/OMB for the filing of formal charge within 30 days from receipt by the Legal Officer of the last responsive pleading.

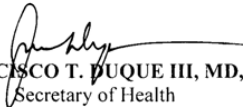
10.4 Approval of the Preliminary Investigation report by Secretary of Health.

VI. SEPARABILITY AND REPEALING CLAUSE

All other issuances of this Department not in conformity with this Administrative Order and the Uniform Rules on Administrative Cases in the Civil Service (URACCS) as per Omnibus Rules Implementing Book V of Executive Order No. 292 are hereby repealed.

VII. EFFECTIVITY

This Administrative Order shall take effect after fifteen (15) days following the completion of its publication in the Official Gazette or in two (2) newspapers of general circulation.


FRANCISCO T. DUQUE III, MD, MSc.
Secretary of Health

Annex D

GROUND FOR DISCIPLINARY ACTION

As contained in Article IX of Presidential Decree 807
(Civil Service Decree)

The following shall be grounds for disciplinary action:

1. Dishonesty;
2. Oppression;
3. Neglect of duty;
4. Misconduct;
5. Disgraceful and immoral conduct;
6. Being notoriously undesirable;
7. Discourtesy in the course of official duties;
8. Inefficiency and incompetence in the performance of official duties;
9. Receiving for personal use of a fee, gift or other valuable thing in the course of official duties or in connection therewith when such fee, gift, or other valuable thing is given by any person in the hope or expectation of receiving a favor or better treatment than that accorded other persons, or committing acts punishable under the anti-graft laws;
10. Conviction of a crime involving moral turpitude;
11. Improper or unauthorized solicitation of contributions from subordinate employees and by teachers or school officials from school children;
12. Violation of existing Civil Service Law and rules or reasonable office regulations;
13. Falsification of official document;
14. Frequent unauthorized absences or tardiness in reporting for duty, loafing or frequent unauthorized absences from duty during regular office hours;
15. Habitual drunkenness;
16. Gambling prohibited by law;
17. Refusal to perform official duty or render overtime service;
18. Disgraceful, immoral or dishonest conduct prior to entering the service;
19. Physical or mental incapacity or disability due to immoral or vicious habits;

20. Borrowing money by superior officers from subordinates or lending by subordinates to superior officers;
21. Lending money at usurious rates of interest;
22. Willful failure to pay just debts or willful failure to pay taxes due to the government;
23. Contracting loans of money or other property from persons with whom the office of the employee concerned has business relations;
24. Pursuit of private business, vocation or profession without the permission required by Civil Service rules and regulations;
25. Insubordination;
26. Engaging directly or indirectly in partisan political activities by one holding non-political office;
27. Conduct prejudicial to the best interest of the service;
28. Lobbying for personal interest or gain in legislative halls and offices without authority;
29. Promoting the sale of tickets in behalf of private enterprises that are not intended for charitable or public welfare purposes and even in the latter cases if there is no prior authority;
30. Nepotism

Annex E

SECTIONS 60 TO 63 OF THE LOCAL GOVERNMENT CODE OF THE PHILIPPINES

DISCIPLINARY ACTIONS

SEC. 60. *Grounds for Disciplinary Actions.* - An elective local official may be disciplined, suspended, or removed from office on any of the following grounds:

- (a) Disloyalty to the Republic of the Philippines;
- (b) Culpable violation of the Constitution;
- (c) Dishonesty, oppression, misconduct in office, gross negligence, or dereliction of duty;
- (d) Commission of any offense involving moral turpitude or an offense punishable by at least prison mayor;
- (e) Abuse of authority;
- (f) Unauthorized absence for fifteen (15) consecutive working days, except in the case of members of the sangguniang panlalawigan, sangguniang panlungsod, sangguniang bayan, and sangguniang barangay;
- (g) Application for, or acquisition of, foreign citizenship or residence or the status of an immigrant of another country; and
- (h) Such other grounds as may be provided in this Code and other laws. An elective local official may be removed from office on the grounds enumerated above by order of the proper court.

SEC. 61. *Form and Filing of Administrative Complaints.* - A verified complaint against any erring local elective official shall be prepared as follows:

- (a) A complaint against any elective official of a province, a highly urbanized city, an independent component city or component city shall be filed before the Office of the President;
- (b) A complaint against any elective official of a municipality shall be filed before the sangguniang panlalawigan whose decision may be appealed to the Office of the President; and
- (c) A complaint against any elective barangay official shall be filed before the sangguniang panlungsod or sangguniang bayan concerned whose decision shall be final and executory.

SEC. 62. *Notice of Hearing.*

- (a) Within seven (7) days after the administrative complaint is filed, the Office of the President or the sanggunian concerned, as the case may be, shall require the respondent to submit his verified answer within fifteen (15) days from receipt thereof, and commence the investigation of the case within ten (10) days after receipt of such answer of the respondent.
- (b) When the respondent is an elective official of a province or highly urbanized city, such hearing and investigation shall be conducted in the place where he renders or holds office. For all other local elective officials, the venue shall be the place where the sanggunian concerned is located.
- (c) However, no investigation shall be held within ninety (90) days immediately prior to any local election, and no preventive suspension shall be imposed within the said period. If preventive suspension has been imposed prior to the 90-day period immediately preceding local election, it shall be deemed automatically lifted upon the start of aforesaid period.

SEC. 63. *Preventive Suspension.*

- (a) Preventive suspension may be imposed:
 - (1) By the President, if the respondent is an elective official of a province, a highly urbanized or an independent component city;
 - (2) By the governor, if the respondent is an elective official of a component city or municipality; or
 - (3) By the mayor, if the respondent is an elective official of the barangay.
- (b) Preventive suspension may be imposed at any time after the issues are joined, when the evidence of guilt is strong, and given the gravity of the offense, there is great probability that the continuance in office of the respondent could influence the witnesses or pose a threat to the safety and integrity of the records and other evidence: Provided, That, any single preventive suspension of local elective officials shall not extend beyond sixty (60) days: Provided, further,

That in the event that several administrative cases are filed against an elective official, he cannot be preventively suspended for more than ninety (90) days within a single year on the same ground or grounds existing and known at the time of the first suspension.

- (c) Upon expiration of the preventive suspension, the suspended elective official shall be deemed reinstated in office without prejudice to the continuation of the proceedings against him, which shall be terminated within one hundred twenty (120) days from the time he was formally notified of the case against him. However, if the delay in the proceedings of the case is due to his fault, neglect, or request, other than the appeal duly filed, the duration of such delay shall not be counted in computing the time of termination of the case.
- (d) Any abuse of the exercise of the power of preventive suspension shall be penalized as abuse of authority.

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