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19 August 2020

**The Honorable Rep. Ma. Lourdes Acosta-Alba**  
Chairperson, Committee on Women and Gender Equality  
3/F Annex Building  
House of Representatives  
Constitution Hills, Quezon City 1126

**Subject: Various House Bills on Sexual Orientation or Gender Identity or Expression (SOGIE)**

Dear Chairperson Acosta-Alba:

We are attaching our Position Paper in opposition to these bills.

Thank you very much for your consideration of our views.

Very truly yours,

**Atty. MARIA CONCEPCION S. NOCHE**  
*President*

**EILEEN Z. ARANETA**  
*Vice-President*



## Position Paper on SOGIE Bills

1. It is imperative that the State recognize the fundamental right of every person, regardless of sex, age, class, status, ethnicity, color, disability, religious and political beliefs, sexual orientation or gender identity or expression, to be free from any form of discrimination. In particular, it is imperative that the State address all forms of discrimination on the basis of sexual orientation or gender identity or expression to promote human dignity. Hence, several bills on an “Anti-Discrimination Act” are pending in the Congress.
2. **ALFI** shares the concern and intention of the proponents of the bills in their desire to eradicate many discriminatory practices that disrespect the dignity and rights of members of the LGBTQ community.
3. **ALFI**, however, is gravely concerned about specific implications arising from certain aspects of the draft bills. Specifically, it is in the Definition of the Term “Discrimination”. It is necessary and imperative that a line is drawn between what is merely a distinction and what constitutes discrimination. **Distinction is not the same as Discrimination.**
4. All pending bills broadly define **discrimination** as “*any distinction, exclusion, restriction, or preference based on the ground of **sex**,*” and not on the ground of sexual orientation or gender identity or expression. The critical question that arises then is this – is every distinction based on **sex** to be considered discrimination? The question becomes even more alarming when the State considers that “*the **actual sex** ... of the person subjected to discrimination*” is not “*relevant for the purpose of determining whether an act of discrimination has been committed.*”
5. Moreover, when the State fails to define **sex**, and fails to distinguish this basic concept from sexual orientation and gender identity or expression, the essence of the question may be reduced to this – is there no basis in recognizing distinctions based on the biological or scientific definition of **sex**?
6. Unless this line is drawn and biological distinction is respected, are we not paving the way for social reengineering based on a gender theory that throws out all traditional distinctions that society has long accepted?



7. A concrete example is the distinction based on sex used as the basis of classifications of all the teams in almost all sports. Will this distinction now be considered discrimination by the State? There is no doubt, a lesbian should be allowed to play in a women's team, and a gay, in the men's team, for so long as they meet all other qualifications. But, when a person who is biologically male but identifies as a woman, is not allowed to compete in a women's team because of distinction based on sex, not on sexual orientation or gender identity – is this going to be considered discrimination? or expression but on **sex**? Will the recognition of the biological differences between the male and female of the species embedded in the very DNA of a person be considered discrimination? Is it conceivable that the failure to recognize a distinction based on sex, will result in a women's team – for example the women's volleyball team – being dominated by men who identify as women? And where will that leave the heterosexual women who cannot compete against the physical qualities of men who identify as women?
8. There are other instances that may be cited – schools and dormitories for girls and boys, medical treatments and wards for female and male patients, locker and changing rooms for men and women; and the effect on employees of these establishments. Is the State willing to say that these distinctions are forms of discrimination that must be penalized? Is the State willing to go that far, possibly endangering the gains of women in the last decades, who have fought for empowerment and equality while recognizing the fundamental distinction of the sexes?
9. Another grave consequence of this definition, as currently stated, is it upholds a person's "self-identification" as the sole arbiter for determining his "sex". This means that, a transgender male will now become a bona fide male regardless of his actual sex (biological sex or sex at birth). A transgender female will now become a bona fide female regardless of her actual sex (biological sex or sex at birth). Gender identity overwrites sexual distinction. Will this then pave the way for same sex marriages? How will the Family Code's definition of Marriage be interpreted where marriage is defined as "a special contract of permanent union between a man and a woman entered into in accordance with law for the establishment of conjugal and family life (Article 1, 1987 Family Code of the Philippines). Will a transgender man who self identifies as a female be able to marry a biological male?



10. The SOGIE bills should not create bigger problems as they try to solve smaller ones.
11. **ALFI** reiterates the need to draw a line in the definition of Discrimination. Not every distinction is an act of discrimination.
12. Thus, there is basis to review the all-encompassing scope of the SOGIE bills.
13. Specifically, we propose certain sections be amended as follows:

***Definition of Terms:***

***Discrimination*** refers to any ~~distinction~~, exclusion, restriction, or preference based on ~~any grounds such as sex~~, sexual orientation, gender identity or expression, ~~and~~ *that* has the purpose ~~or effect~~ of nullifying or impairing the recognition, access to, enjoyment, or exercise by all persons on an equal footing of all rights and freedoms.

~~For purposes of this provision, the actual sex, sexual orientation or 3 gender identity of the person subjected to discrimination shall not be 4 relevant for the purpose of determining whether an act of 5 discrimination has been committed.~~

*For purposes of this provision, any act that is guided by common and well accepted distinctions based on sex, with no intention of deliberately disrespecting one's gender identity or expression shall not be considered an act of discrimination.*

~~**Sex** refers to male, female, or intersex. Intersex refers to people born with the sex characteristics (including genitals, gonads, and chromosome patterns) that do not fit typical binary notions of male or female bodies, all of which are natural bodily variations along a spectrum.~~

*or Gender refers to the biological distinctions between males and females at birth, most often in connection with reproductive functions, and is typically categorized as male, female, or intersex. There are a number of indicators of biological sex, including sex chromosomes, gonads, internal reproductive organs, and external genitalia. Males have a Y sex chromosome whereas females do not have a Y sex chromosome. This genetic distinction is manifested by the appearance of their external genitalia at birth. Intersex*



*manifests atypical combinations of features that usually distinguish male from female.*

*Ultimately, chromosome complement, and not sex reassignment surgery, outward gender characteristics, nor psychosocial self-identification, determine a person's sex or gender.*

***Discriminatory Practices:***

*Deny an application for or revoke, on the basis of SOGIE, any government license, (excluding marriage license), authority, clearance, permit, certification, or other similar documents necessary to exercise a profession, business, or any other legitimate calling;*

14. We hope that the State will seriously consider and adopt the modifications we have referred to above. As we seek to protect the members of the LGBTQ community, let us not destroy the safe and traditional spaces that reasonable distinctions allow.