The background of the page is a light gray color with a repeating pattern of small, stylized birds in flight, scattered across the upper half of the page. The birds are depicted in various orientations, suggesting movement.

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Structural-Systemic-Cultural  
Violence against LGBTQs in the  
Philippines

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# Structural-Systemic-Cultural Violence against LGBTQs in the Philippines

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## **Abstract**

While the 1987 Philippine Constitution contains human rights and social justice provisions for everyone certain sections of society still do not equally enjoy all human rights, and social inequality and social injustice prevail in the country. Filipino lesbians, gays, bakla, bayot, bisexuals, tomboy, transpinys, and queers (LGBTQs), in particular, continue to experience prejudice, discrimination and violence. Forty-six years ago, Johan Galtung argued that violence is present when human beings are being influenced so that their actual somatic and mental realizations are below their potential realizations (Galtung, 1969, p. 168). Structural violence, he added, is a type of violence where no actor commits it but is nonetheless built into the structure and shows up as unequal power and consequently

as uneven life chances (Galtung, 1969, p. 171). Lastly, Galtung also introduced cultural violence<sup>4</sup> wherein aspects of culture, the symbolic sphere of our existence exemplified by religion and ideology, language and art, empirical science and formal science are used to justify or legitimize direct or structural violence (Galtung, 1990, p. 291). Using Galtung's framework and human rights reports and submissions particular to Filipino LGBTQs, this paper a) investigates the existence and prevalence of hate, discrimination, and violence against members of the community and b) argues that the prevalence of such, including the violation of human rights, is systemic, structural and cultural. Investigating the prevalence and the root causes of hate, discrimination, and violence against LGBTQs is essential for attaining social justice in the Philippines and for fulfilling all human rights of all Filipinos.

Keywords: LGBTQs, structural violence, discrimination

## Introduction

Three decades after the EDSA People Power Revolution which ended Martial Law and removed the Marcos Dictatorship, social inequality and injustice prevail in the Philippines. Despite the inclusion of human rights and social justice provisions in the 1987 Constitution<sup>2</sup>, a quarter of Filipinos today do not equally enjoy the same human rights as the rest of the population. While the Constitu-

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<sup>2</sup> See Article XIII, 1987 Constitution of the Republic of the Philippines, <http://www.gov.ph/constitutions/the-1987-constitution-of-the-republic-of-the-philippines/the-1987-constitution-of-the-republic-of-the-philippines-article-xiii/>

tion invokes the dignity of every human being and the full respect for human rights, there has been a general failure in the realization of these ideals because Filipino lesbians, gays, bisexuals, transgenders and queers (LGBTQs)<sup>3</sup> today, for example, continue to experience blatant or subtle discrimination due to their sexual orientation and/or gender identity (SOGI). Contrary to claims that the Philippines is one of Asia's most tolerant country (Kohut, et al., 2013)<sup>4</sup>, the bigotry and the deeply-ingrained LGBT-phobia in the country (Cayabyab, 2014; Esmaquel II, 2015; Torres, 2015) have been spurred by events like the 2014 high profile case of murdered transgender Filipina Jennifer Laude (Macatuno, 2015) and the 2015 US Supreme Court ruling on same-sex marriage.

This paper argues that both *structural violence* and *cultural violence* against LGBTQs exist in the Philippines. *Structural violence* is present because many Filipinos today continue to live in poverty and to not have sufficient incomes or access to entitlements in order to live a life of dignity as human beings. In addition to this, Filipino lesbians, gays, *bakla*, *bayot*, bisexuals, tomboy, transpinoy, transpinays, intersex and queers, in particular, experience structural violence

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<sup>3</sup> LGBTQ is an acronym that stands for lesbian, gay, bisexual, transgender, and queer. It is an umbrella term used to refer to the community and its members. Intersex is also added to the list so it reads LGBTI or LGBTIQ. Other organizations use LBT as they focus specifically on lesbians, bisexual women, and transwomen.

<sup>4</sup> The 2013 Pew Research Center report highlighted the strong relationship between a country's religiosity and opinions about homosexuality if religion has high importance in people's lives, then there is less acceptance of homosexuality. However, the Philippines was identified as among the notable exceptions wherein Filipinos are considerably more tolerant of homosexuality than their countries' relatively high levels of religiosity would suggest (Kohut, et al., 2013, pp. 3-4).

because even though same-sex attraction and sexual conduct, and transgenderism are not criminalized, there is also no national and comprehensive law that protects every Filipino from discrimination on the basis of their SOGI.<sup>5</sup> Cultural violence is also present in the country, with patriarchy and heteronormativity serving as key elements of Philippine culture that legitimize both direct-personal and structural violence against LGBTQs.

This paper has four main sections. The first part will discuss the current state of the human rights of Filipinos in general and of Filipino LGBTQs in particular. Sections two and three will then introduce Johan Galtung's framework on violence and his concepts of structural violence and cultural violence, and how these are experienced by LGBTQs in the Philippines. The section will also elaborate on how patriarchy as both structure and system qualifies not only as structural violence and cultural violence but also as a form of systemic violence. Section four will discuss what structural violence and cultural violence mean in relation to violation of the human rights of Filipino LGBTQs, and will try to prove whether there is structural violation of human rights in the country. The final section will summarize the points raised and provide some recommendations for moving forward.

## **I. The State of the Human Rights of Filipino LGBTQs**

The 1987 Philippine Constitution contains several human rights and social justice provisions. Article II, Section 9 affirms the

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<sup>5</sup> It should be noted that while some Philippine laws and policies use the phrase and concept of sexual orientation', there is no law that defines it and its implication on LGBTQs.

state's goal of promoting a just and dynamic social order that will ensure prosperity and independence of the nation and free the people from poverty through policies that provide adequate social services, promote full employment, a rising standard of living, and an improved quality of life for all. Section 10 declares the State shall promote social justice in all phases of national development<sup>6</sup> whereas in Section 11, the State values the dignity of every human person and guarantees full respect for human rights. Under Article XIII, on Social Justice and Human Rights, Section 1 states that Congress shall give highest priority to the enactment of measures that protect and enhance the right of all people to human dignity, reduce social, economic, and political inequalities, and remove cultural inequities by equitable diffusing wealth and political power for the common good.

The aforementioned provisions, however, are not self-executing and separate laws need to be enacted to make the Constitutional provisions concrete and justiciable. All of this has contributed to the prevalence of poverty, violence, and ultimately, the weak state of human rights in the country. The latest report of the Philippine Statistics Authority (PSA) shows that 26.3% of the total population, or 1 in 4 Filipinos, are still living in poverty<sup>6</sup>, and 12.1%, or 1 in 8 Filipinos, are living in extreme or subsistence poverty (PSA, 2016). The UN Food and Agriculture Organization, in its 2010 assessment of the Philippines, estimated there are at least 12 million Filipinos, or 1 in 8, who are unable to fully enjoy their fundamental right to

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<sup>6</sup> The Philippine Statistics Authority defines poverty incidence as the proportion of Filipinos (living) below the poverty line (relative) to the total population, and subsistence incidence as the proportion of Filipinos (living) in extreme or subsistence poverty.

freedom from hunger and right to adequate food (Abad Santos, et al., 2010, p.5).

Furthermore, Filipino LGBTQs continue to experience prejudice, discrimination, and varied forms of violence due to their SOGI. There is discrimination and violence at home, at school, the workplace, in the community, and in other public and private spaces. Since 1996, 164 cases of crimes motivated by hate against LGBTQs have been documented by the Philippine LGBT Hate Crime Watch (PLHCW, 2012; Bernal, 2015). Aside from this, submissions from civil society organizations for the 64<sup>th</sup> session of the Committee on the Elimination of Discrimination Against Women (CEDAW) (EnGendeRights, 2016), for the 106<sup>th</sup> session of the UN Human Rights Committee (IGLHRC, 2012), and for the 13<sup>th</sup> session of the UN Universal Periodic Review for the Philippines (2012), as well as the 2014 UNDP Being LGBT in Asia: The Philippines Country Report, all contain cases upon cases of discrimination and violence against Filipino LGBTQs. The 2016 CEDAW submission, for example, highlighted the discrimination and violence against LBTs by state actors claiming that despite the absence of anti-sodomy laws in the country, enforcement of some laws by the police have the effect of criminalizing homosexuality and lesbianism (EnGende Rights, 2016, p.7). Laws like the prohibition on public scandal and vagrancy, the Anti-Trafficking Law, and some provisions in the Revised Penal Code create an environment where LBT persons are vulnerable to police abuses (EnGendeRights, 2016, p.7).

## II. Structural Violence against Filipino LGBTQs

How can the existence and prevalence of violence against Filipino LGBTQs be explained, and is there structural violence against LGBTQs in the country? In answering these questions, this paper has adopted Johan Galtung's theory on violence as well as his concepts on structural violence and cultural violence, and applied all three in analyzing the human rights situation of Filipino LGBTQs.

First and foremost, Galtung gave an expanded definition of violence: a situation when human beings are being influenced so that their actual somatic and mental realizations are below their potential realizations (1969, p.168). For Galtung, violence is not only about the presence or absence of actual physical harm but it also involves the full realization of human potentials. Applying this formulation to the situation of LGBTQ people, it can be argued that when their actual lives and existence are inferior compared to that of non-LGBTQ people, then violence is said to exist. Similarly, when LGBTQs do not equally enjoy the same human rights and freedoms as non-LGBTQ fellow citizens enjoy, or when LGBTQs do not enjoy the full promise of human rights, then violence in both scenarios is also present. In Galtung's framework, there is violence against LGBTQs if their human agency and life chances are constrained or limited.

With such an expanded definition of violence, Galtung then asked whether it is possible for violence to not have a subject or a person committing the violence. While stressing that violence always has an object or a receiver, he qualified the kind of violence that has a subject or person committing the violence as a separate phenomenon from the kind that has no specific actor or person actually commit-



ting the violence. Galtung identified the former as *personal-direct violence*, and the latter as *structural-indirect violence*.

Structural violence is a situation wherein no actor is identified as committing harm towards another yet violence is still present. The violence is actually built into the structure and shows up as unequal power and consequently as uneven life chances (Galtung, 1969, p. 171). Structural violence is invisible yet it kills and harms people. Galtung stressed that in structural violence both resources and the power to decide over the distribution of resources are unevenly distributed (Galtung, 1969, p.171). To concretize this idea, Galtung pointed to the situation when [starvation] is objectively avoidable, violence is committed regardless whether there is a clear subject-action-object relation (Galtung, 1969, p. 171). This is the case when people go hungry and are unable to feed themselves in dignity. Whilst there is actually no particular person or set of persons implementing the violence, the people remain unable to command food for themselves and their families. Following this logic, poverty and hunger are objectively avoidable in the Philippines, but structural-indirect violence exists in the country. This can be explained from a historical point of view, as resources and the power to decide over the distribution of resources remain skewed towards the economic and political elites of the land. The same social class has owned and continues to have control over (the distribution of) resources in the country.

Applying the same logic to the case of Filipino LGBTQs, it can be argued that discrimination on the basis of SOGI is objectively avoidable yet it still takes place. Therefore, in Galtung's formulation, violence against Filipino LGBTQs exists. Conducting a heteronorma-

tive audit of social policies, GALANG Philippines, Inc. (GALANG) pointed to how democracy consistently favours what it deems as the majority, and in the process continues to undermine the minority (Lim, et al., 2013, p. 27). The respondents in their study claim that since the majority of Filipinos are heterosexual and Roman Catholics, lawmakers have the power to enact policies that discriminate against LGBTQs, justifying that such policies serve the majority's interests. The same study pointed to how the Family Code, for example, has put lesbianism and homosexuality in a negative light, equating both with sexual perversion.<sup>7</sup> GALANG argues that this legal pathologization, in addition to the existing Catholic Church dogma on homosexuality, accounts for the high rate of suicide and low self-esteem among sexual minorities (Lim, et al., 2013, p. 28).

Beyond the 164 documented cases of personal and direct violence committed against Filipino LGBTQs, there also exists structural-indirect violence against said group partly because of the absence of laws that explicitly define sexual orientation and gender identity and expression, or of laws that explicitly state recognition and protection of the dignity of every Filipino regardless of their sexual orientation and gender identity and expression. Currently, 17 local government units have enacted anti-discrimination ordinances<sup>8</sup> but 16 years have passed and the Anti-Discrimination bill, a legisla-

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<sup>7</sup> Article 46, Section 4 of the Family Code identifies homosexuality and lesbianism, together with drug addiction and habitual alcoholism, as grounds for annulment of marriage. See Executive Order No. 29, The Family Code of the Philippines, <http://www.gov.ph/downloads/1987/07jul/19870706-EO-0209-CCA.pdf>

tive measure seeking to protect all Filipinos against discrimination on the basis of SOGI remains pending in Congress (Rodriguez, 2016; Cepeda, 2016).<sup>9</sup>

Without laws that uphold and protect the equal dignity and rights of everyone regardless of their SOGI, or without laws that prevent or penalize discrimination on the basis of SOGI, Filipino LGBTQs are exposed to vulnerabilities and potential abuse and violence. The United Nations Children’s Fund (UNICEF) has taken this position in their report regarding the effects of discrimination on the basis of SOGI on children (2014). The position paper asserted that discrimination against children on the basis of SOGI harms their chances of having their rights fulfilled and increases their risk of abuse, exploitation, violence and marginalization (UNICEF, 2014, p.3). Furthermore, the effects of discrimination, exclusion and violence can extend throughout childhood and into adulthood, with lifelong consequences (UNICEF, 2014, p.3). UNICEF also stressed that LGBT children and youth exposed to discrimination are more likely to consider or attempt suicide than their peers (UNICEF, 2014, p.3). Using Galtung’s framework on structural violence, discrimination on the basis of SOGI results not only in constraints in human agency and life chance, but also physical harm and death.

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<sup>8</sup> See —Anti-Discrimination Ordinances: Protection Against Discrimination in <http://pages.upd.edu.ph/ejmanalastas/policies-ordinances>

<sup>9</sup> The Anti-Discrimination Bill (ADB) defines sexual orientation and gender identity (SOGI) and penalizes discrimination on the basis of SOGI in key life aspects such as education, employment, health, public service, political life, and justice. The ADB has been pending in Philippine Congress since year 2000 due to strong opposition from the Catholic Church and other like-minded faith-based groups.

### III. Cultural Violence against Filipino LGBTQs

As a follow up to structural violence, Galtung introduced the concept of *cultural violence* in 1990. For him, cultural violence is any aspect of a culture that can be used to legitimize violence in its direct or structural form<sup>11</sup> (Galtung, 1990, p.291). He added that unlike direct violence and structural violence, cultural violence does not maim or kill yet it makes direct and structural violence look, even feel, right– or at least not wrong (Galtung, 1990, p.291). Six aspects of culture can be used to legitimize direct or structural violence, according to Galtung. The six aspects are religion and ideology, language and art, empirical science and formal science (logic, mathematics).

In explaining how cultural violence against Filipino LGBTQs is present in the country, this research has gone deeper by identifying two distinct but related elements within religion and ideology, namely patriarchy/patriarchal ideology, and heteronormativity. As aspects of Filipino culture, and indeed encompassing both religion and ideology, both patriarchy or patriarchal ideology and heteronormativity legitimize violence in either personal-direct or structural-indirect forms.

While patriarchal ideology is an element of culture, and therefore part of cultural violence, patriarchy can also be considered as a form of structural violence. Patriarchy has been defined as systems and practices that shape the social structure where men oppress and exploit women (Walby, 1990, p.92, as quoted in Kemitraan Indonesia, 2014). A feminist stressed that female sexuality is a socio-cultural construct that has been shaped to become subservi-

ent to male sexual needs anchored within the context of patriarchal institutions (Santos, 1997). Another activist pointed to the causes of violence against women as lying within patriarchy, in men's assumptions of dominance over women and ownership of their bodies as sanctioned by social institutions and the denial of women's equality with men in all areas of life (Enriquez, 2006). Within the framework of structural violence, patriarchy as a social structure and system, limits the human agency and life chances of women.

How does patriarchy or patriarchal ideology in Philippine culture then legitimize violence against LGBTQs? A feminist gives a clue here by suggesting that female sexuality ought to be understood within the context of colonial history, religious ideology, patriarchal institutions, and even globalization. The archipelago now called the Philippines was (re)discovered in 1521 and then colonized by Spain for the next 330 years. Following Spanish rule, the Philippines became an official colony of the United States of America for the next 50 years. Scholars pointed that prior to Spanish colonization some communities in the archipelago already had an egalitarian gender stratification system which meant that women played roles in both public and private domains (Mananzan, 1987, as cited in Garcia). However, this all changed during Spanish colonial rule when patriarchy, with its own brand of machismo and misogyny, was introduced in the archipelago. Community and family life, as well as gender relations, changed; the family structure, gender relations, and state relations were all rearranged by Catholic Church missionaries (Eviota, 1992, p.34, as cited in Kemitroan Indonesia, 2014, p.9). In order to instill new values and morality consistent with Christianity, the extended (matrilineal) family was reorganized into a nuclear set up (*ibid*) simi-

lar to the holy patriarchal family or the Holy Family (*ibid*). Such reorganization had a huge impact on gender relations within the family as women's morals were upheld and their boundaries and ideology regulated. As a chaste woman and then as a submissive wife and nurturing mother, the Virgin Mary was purposively used as a symbol for native females to emulate. Mary is seen as her family's compassionate pillar yet she does not have power. Over time, the roles expected of Filipino women revolved mainly around the household and care giving, being a mother or wife who devotes her whole time to the home, raising her children, and supporting her husband. Filipino men, on the other hand, were socially expected to take on the role of husbands and as primary bread winner for the family, similar to Joseph in the Holy Family.

Patriarchy as a structure and system in the Philippines privileges males over females, and it harms not just women and girls but also men and boys. Children and adults continue to be socialized to conform with and fulfill gendered roles and expectations that have been shaped by patriarchy or patriarchal ideology. Boys, for example, are expected to be strong and they are taught not to show emotion or to cry for doing so is a sign of weakness. Girls, on the other hand, are expected to be caring and nurturing, but this is all in preparation for their expected future roles as wives and mothers. Circumcision, as practiced in the country for example, has been institutionalized as a patriarchal rite of passage wherein boys are expected to undergo the unnecessary operation in order to demonstrate manliness and manhood otherwise they are subjected to ridicule both from peers and their own family members (Cupin, 2011; Del Mundo, 2015). Children and adults are expected to respect the hierarchy of sexes/

genders whereby being male/masculine is superior to being female/feminine. And this sexual/gender hierarchy has brought about ridicule, vilification, as well as physical harm and violence for boys, girls, men, and women, especially for those who do not conform to gender roles and expectations sanctioned by patriarchy.

The 2016 CEDAW submission has pointed to the way in which patriarchal attitudes compound the homophobia and transphobia and motivates violent crimes against (LBT persons) (CEDAW, 2016). The report demonstrated this with how several lesbians were murdered by men who had intense resentment against them, men who thought that lesbians posed a threat as they are seen as stealing women away from men or that lesbians are leading women into immorality and sinful lives. The same patriarchal attitude is also responsible for the humiliation and violence experienced by LGBTQs in the home and private sphere. While Filipino LGBTQs have become more and more visible and are increasingly tolerated, still there are households wherein effeminate boys and transgender girls are either reprimanded or physically punished by their kin for not acting manly enough or for transgressing roles and expectations expected of their sex assigned at birth. In addition to this, prevalent still in the country is the view and practice of corrective/curative rape which is based on the wrong notion that lesbians need only to experience having sex with or being penetrated by a man in order to correct their sexuality (Umbac, 2006). The rape of daughters or nieces sometimes comes with the consent of their own family members (IGLHRC, 2010, p.8; Mendoza, 2013). As a structure, a system, and an element of culture, patriarchy qualifies not only as part of cultural violence, but also as a form of structural- and systemic violence.

Related to the patriarchy-patriarchal ideology is the second cultural element that, this paper argues, legitimizes direct or structural violence against Filipino LGBTQs heteronormativity. Heteronormativity is a concept developed and popularized by proponents of queer theory.<sup>15</sup> There has yet to be an exact definition for heteronormativity but here are some clues as to what the concept entails. One defines it as—a system that works to normalize behaviors and societal expectations that are tied to the presumption of heterosexuality and an adherence to a strict gender binary (Nelson, 2015). Another definition is that it is the act of interpreting heterosexual desire as the normal, natural way of human being and society (Bauerlein, 2014). It has also been argued that heteronormativity is linked to heterosexism and homophobia (Yep, 2002; JMU, undated). This paper unpacks the term heteronormativity this way: biologically male persons are expected to be or to act masculine, to perform roles socially defined exclusively for males, and to be attracted to, and marry the opposite (female) sex, whereas biologically female persons are expected to be or to act feminine, to perform roles socially defined exclusively for females, and likewise be attracted to, and marry the opposite (male) sex.

Heteronormativity, this paper argues, has been institutionalized in Philippine society with the help of teachings from the dominant religion of Christianity/Roman Catholicism and, and to a similar

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<sup>15</sup> Queer theorist Michael Warner popularized the term in one of his works, *Introduction: Fear of a Queer Planet* (1991). Other theorists who helped to develop the concept include Gayle Rubin, Adrienne Rich, Samuel A. Chambers, Cathy J. Cohen, and Lauren Berlant.



extent, by the other Abrahamic religion of Islam. This heteronormativity is clear in the statement of the Catholic Bishops' Conference of the Philippines (CBCP) regarding the dignity and vocation of homosexual persons wherein it stressed the creation narrative (CBCP, 2015). The narrative declares that God made human beings in His image and likeness and that He created them male and female, equal in dignity but not identical nor interchangeable (CBCP, 2015). The statement also emphasized the complementarity between man and woman especially in the biological, emotional, psychological and spiritual levels. While same-sex sexual attraction is not a sin, the CBCP clarifies that for them it is still objectively disordered because it is not ordered towards the union of male and female in a relationship of natural complementarity (CBCP, 2015). Homosexual acts or practices are, in the CBCP's logic, not ordered to the union of two persons and to the procreation of children (CBCP, 2015). The CBCP statement clearly follows a heteronormative ideology whereby it calls for a strict adherence to a gender binarism that is uniform for the body, emotion, psyche, and the spirit. Ultimately, such uniformity is geared towards heterosexual conduct to the exclusion of others.

The Philippines is considered a secular country<sup>16</sup> yet religion, religious teachings, and the Roman Catholic Church hierarchy

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<sup>16</sup> Article II, Section 6 of the 1987 Constitution invokes the separation of Church and State shall be inviolable, whereas Article III, Section 5 states that no law shall be made respecting an establishment of religion, or prohibiting the free exercise thereof.

continue to exert strong influence<sup>17</sup> on almost every aspect of Filipino life. One clear case demonstrating this was the Commission on Elections 2009 ruling which denied accreditation for the LGBTQ political party Ang Ladlad. The ruling stated that petitioner tolerates immorality which offends religious beliefs (COMELEC, 2009), and to support this claim, it even cited verses from the Bible and the Qu'ran. The COMELEC concluded that the party should rightly be discredited because otherwise there is danger of the youth being exposed to an environment that does not conform to the teachings of our faith (COMELEC, 2009). The ruling was supported by a prominent media personality who said there is nothing honorable or normal about same-sex marriage<sup>18</sup>, and that gays and lesbians should be happy society tolerates them (*ibid*). Such statements not only validate the relationship between heteronormativity and homophobia, but that such a relationship also strengthens the argument that, as a form of cultural violence, heteronormativity justifies or legitimizes both direct-personal violence and structural violence against Filipino LGBTQs.

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<sup>17</sup> About 90% of the population identify as Christian with about 80.6% belonging to the Roman Catholic Church and the rest to other Christian denominations and independent churches. Christianity being the dominant faith in the Philippines, Christian religious teachings and imagery such as that of the Holy Family, together with the strict gender roles and expectations embedded therein have had profound impacts on the lives of all Filipinos not just LGBTIs. See National Statistics Office (2014) Philippines in Figures: 2014, p. 27.

<sup>18</sup> Tulfo, R. 2009, 19 November. Gays should not abuse society's tolerance, Philippine Daily Inquirer, as cited in UNDP and USAID. 2014. Being LGBT in Asia: The Philippines Country Report. Bangkok.

#### **IV. Is there Structural-Systemic Violation of Human Rights of Filipino LGBTQs?**

This paper has so far presented a case that the prevalence of hate, discrimination and violence against Filipino LGBTQs is structural, systemic, and cultural, but does this mean there is structural and systemic violation of human rights of LGBTQs in the country? In this section, the paper shall try to build the argument of structural-systemic violation of the human rights of Filipino LGBTQs using two tracks discrimination and poverty. The first track is anchored on the state obligation of non-discrimination on a variety of bases including SOGI. The second track follows the work of the UN on the relationship between poverty and human rights, and how both reinforce each other. Finally, this section argues the need for investigating the prevalence of and the root causes of hate, discrimination, and violence against LGBTQs as they are essential for attaining social justice in the country and for fulfilling all human rights of all Filipinos.

Unlike its Southeast Asian neighbors who also experienced colonial rule, the Philippines does not criminalize consensual same-sex sexual acts. There is no law either that criminalizes transgenderism or transsexualism. Officially there is no state-sponsored LGBTQ-phobia, however, and as noted by the Psychological Association of the Philippines (PAP), stigma, prejudice and discrimination prevail in society. The PAP contends that the stigma has been manifested in various ways including: bullying, teasing and harassment of LGBT children and adolescent in families, schools and communities; media portrayal of LGBTs as frivolous, untrustworthy and even dangerous or predatory; denying transgender Filipinos entry into commercial establishments; pigeonholing LGBT Filipinos into particularly

limited roles and occupations; or curtailing their rights to participate in the political sphere (PAP, 2011).

Given the above, how can we build an argument that there is structural-systemic violation of human rights, following the track on discrimination? First and foremost, it should be emphasized that the Universal Declaration of Human Rights, in Article 2, lays down the basic principle of equality and non-discrimination with regards to the enjoyment of human rights and forbids distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status (UNGA, 1948). The same is spelled out and clarified in both the International Covenant on Economic, Social and Cultural Rights (ESCR Covenant) and the International Covenant on Civil and Political Rights (CPR Covenant), as well as with succeeding international treaties.<sup>20</sup> General Comment No. 18 of the Human Rights Committee and General Comment No. 20 of the Committee on Economic, Social and Cultural Rights both emphasized that non-discrimination and equality constitute a basic and general principle relating to the protection of human rights (HRC, 1989) and are fundamental components of international human rights law and essential to the exercise and enjoyment of rights (CESCR, 2009). General Comment No. 18 also stressed that Article 26 of the CPR Covenant also prohibits any discrimination under the law

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<sup>20</sup> International Convention on the Elimination of All Forms of Racial Discrimination (1969), Convention on the Elimination of All Forms of Discrimination Against Women (1979), United Nations Convention on the Rights of the Child (1990), International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (2003), Convention on the Rights of Persons with Disabilities (2008).

and guarantees to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status (HRC, 1989). Similarly, General Comment No. 20 stressed that Article of 2, paragraph 2 of the (ESCR) Covenant obliges each State party to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status (CESCR, 2009).

Sex and other status, in the last 22 years, have been expanded to cover sexual orientation paving the way for the recognition and protection of the human rights of LGBTQs. In the 1994 landmark case of *Toonen vs Australia*, the UN Human Rights Committee ruled that sex under articles 2, paragraph 1 of the Civil and Political Rights Covenant should be taken as including sexual orientation. Since then, the issue of discrimination on the basis of SOGI and the (equal) human rights of LGBTQs have been given ample discussion at the United Nations.<sup>21</sup> The world body has stressed that it is never legal to discriminate against LGBTQs (UN OHCHR, undated). The UN has also highlighted some of the most common forms of human rights violations affecting LGBTQ people. The identified violations applicable to Filipino LGBTQs include violent

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<sup>21</sup> See *Combatting discrimination based on sexual orientation and gender identity* in <http://www.ohchr.org/EN/Issues/Discrimination/Pages/LGBT.aspx>

attacks ranging from aggressive verbal abuse and psychological bullying to physical assault, beatings, torture, kidnapping and targeted killings; discriminatory criminal laws, often used to harass and punish LGBT people; and discriminatory treatment at the workplaces, schools, family homes and hospitals, as well as the absence of national laws prohibiting discrimination on the basis of SOGI. The UN also identified five core legal obligations of states with respect to protecting the human rights of LGBT persons. Of these that clearly apply to the Philippines include the protection of individuals from homophobic and transphobic violence (UN OHCHR, 2012a, p.14); the prevention of torture and cruel, inhuman and degrading treatment of LGBT persons (UN OHCHR, 2012a, p.22); and the prohibition of discrimination based on SOGI (UN OHCHR, 2012a, p.36).

In a similar manner, the UN has also done extensive work regarding poverty and human rights, asserting that the former is not only a violation of human dignity, but also an assault<sup>22</sup> on the latter. Given the high poverty rate and the lingering subsistence poverty rate in the Philippines, poverty is an issue that is extremely relevant for Filipino LGBTQs. The UN has pointed out that discrimination and exclusion are among the major causes and consequences of poverty (UN OHCHR, 2012b, p.3) and that persons living in poverty additionally experience disadvantage and discrimination based on other statuses and grounds such as age, ethnicity, language, race or others. This means that a 70-year old,

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<sup>22</sup> See Human rights dimension of poverty, <http://www.ohchr.org/EN/Issues/Poverty/DimensionOfPoverty/Pages/Index.aspx>

indigenous Filipino LGBTQ living in poverty, for example, would be experiencing multiple and mutually-reinforcing layers of stigmatization, discrimination, exclusion, and disadvantage in the country.

Clearly there is structural-systemic violence against Filipino LGBTQs, and there is also clear evidence regarding the violation of the human rights of LGBTQs particularly because of the prevalence of poverty and of discrimination on the basis of SOGI. However, does this situation warrant the existence of structural-systemic violation of human rights (of LGBTQs) in the Philippines? First of all, it should be emphasized that the discourse on structural violation of human rights‘ has yet to be established at the UN. There are scholars who argue that structural violence is indeed a form of human rights violation (Ho, 2007), but such framework remains conceptual. In arguing for poverty as a structural violation of human rights, Ho asserted that when economic and social structures conspire to limit one’s agency to the extent that fundamental human needs cannot be met then structural violence becomes a structural violation of human rights (2007, p. 15).

On the other hand, it is worth noting that the Human Rights Committee’s General Comment No. 20 has surfaced facets of discrimination that are quite relevant to the idea of a structural violation of human rights. Distinguishing between direct discrimination and indirect discrimination, the Committee argued that differential treatment can amount to discrimination (UNHRC, 2009, p.4). For the Committee, *direct discrimination* takes place when a person is treated

less favorably compared to another, whereas *indirect discrimination* means the existence of policies, laws and practices that disproportionately impact on the enjoyment of human rights. Lastly, *systemic discrimination* is the kind of discrimination against some groups that is pervasive and persistent and deeply entrenched in social behavior and organization (UNHRC, 2009, p.5). The Committee added that systemic discrimination can be understood as legal rules, policies, practices or predominant cultural attitudes in either the public or private sector which create relative disadvantages for some groups, and privileges for other groups (UNHRC, 2009, p.5). Finally the Committee pointed that state parties should take concrete, deliberate and targeted measures (UNHRC, 2009, p.11) to eliminate systemic discrimination and segregation in practice through a comprehensive approach that includes laws, policies and programmes; incentives or penalties to change attitudes and behaviors; as well as allocation of greater resources to traditionally neglected groups. (UNHRC, 2009, p.12).

The Human Rights Committee's discussion of direct discrimination, indirect discrimination, and systemic discrimination parallels that of Galtung's work on violence, structural violence and cultural violence. With this parallelism, conceptually it is not difficult then to establish the existence of structural violation of human rights' of Filipino LGBTQs. There are two ways on how this can be done. Firstly, there is structural, systemic, and cultural violence against Filipino LGBTQs as proven by the documented cases of violence and discrimination on the bases of sexual orientation, gender identity, gender expression, poverty, and economic status. Related to this, and following the Human Rights Committee's framework, *direct discrimi-*



*nation, indirect discrimination, and systemic discrimination* against Filipino LGBTQs also exist. Finally, under international human rights law states are obligated to prohibit and eliminate discrimination on a range of grounds, including SOGI and economic status, and failure to do so amounts to clear violation of Covenant obligations and ultimately to violation of human rights.

Given the existing poverty and discrimination on the basis of SOGI and of economic status, there is an urgent need to attain social justice and fulfill all human rights of all Filipinos, including LGBTQs. Galtung raised the point that social injustice is the condition of structural violence (Galtung, 1969, p.171). The connection between social justice and human rights norms on equality is that beyond the need for an equal share of resources, the most basic question or need is equity or equal participation in the decisions and process of resource distribution. According to Galtung, achieving social justice means doing away with the approach to human rights that is compatible to paternalism, whereby those who wield power distribute anything except the ultimate power over how resources are distributed. Structural and cultural violence justify and legitimize personal-direct violence against persons. Ending hate, discrimination and violence against Filipino LGBTQs, therefore, is only possible when there is recognition of the power of the dominant heterosexual population and of the dominant religion and ideology. From there, it is important to start working towards sharing power and eliminating a kind of sexual-gender hegemony by ensuring Filipino LGBTQs are able to meaningfully participate in the decision making process, especially over how resources in society are distributed.

## Conclusion

Since 1996, there have been 164 documented cases of actual physical violence against the Filipino LGBTQ community. Arguably there are more undocumented cases especially in areas of the country where there is poor law enforcement and monitoring of human rights abuses. Using Galtung's expanded theory on violence, and his concepts of structural violence and cultural violence, this paper has presented a case of how violence against Filipino LGBTQs is a mix of direct-personal and systemic, structural and cultural harm.

There is structural violence against LGBTQs for two important reasons poverty and discrimination on the basis of SOGI. 1 in 4 Filipinos currently live under the poverty line and 1 in 8 do not have sufficient incomes to feed themselves and their families in dignity. In addition to this, discrimination on the basis of SOGI, together with the absence of laws that uphold and protect the dignity and rights of everyone, means that Filipino LGBTQ's human agency and life chances are constrained. This second reason for the existence of structural violence against Filipino LGBTQs is related to the cultural violence against said group.

Cultural violence against LGBTQs in the Philippines is present given that patriarchy, patriarchal ideology and heteronormativity continue to produce gender roles and expectations which, if not met by LGBTQs, lead to an array of verbal, emotional and physical abuse and violence. Patriarchy or patriarchal ideology – deriving from Christian values imported by the Spanish colonizers - directly and indirectly harms boys, girls, men, women in the Philippines. As a structure and system, and as an element of Philippine culture, patriarchy and patriarchal ideology sanction a hierarchy of sexes/

genders that privileges the male and the masculine, and makes the female and the feminine subordinate to the other sex and gender. Related to patriarchy and patriarchal ideology is heteronormativity, the other element of Philippine culture that legitimizes violence against Filipino LGBTQs. The heteronormativity embedded in the patriarchal teachings of the Catholic Church involves the narrative of a biological, emotional, psychological and spiritual complementarity between the male and female sexes and genders to the exclusion of others.

As there is direct-personal-, structural-, and cultural violence against LGBTQs in the Philippines, this paper then sought to answer if there is structural violation of human rights of Filipino LGBTQs. While the discourse on structural violation of human rights remains academic at best, a similar framework currently exists within the Human Rights Committee's use of direct discrimination, indirect discrimination and systemic discrimination. International Human Rights Law asserts that equality and non-discrimination is not only a fundamental principle but it is also essential to the enjoyment of human rights. Therefore, discrimination on the basis of whatever ground or status is prohibited and the presence of discrimination in society, whether in law, policy or cultural attitudes and practices, means violation or non-fulfillment of covenant obligations. The Filipino LGBTQ's experience of not only direct-personal violence, but also structural-, systemic- and cultural violence spring from discrimination on the basis of SOGI which is sanctioned by the prevailing ideology, structure and system that is patriarchal, and by the heteronormativity reinforced by the dominant religion. Furthermore, poverty and discrimination on the basis of economic status compound the Filipino LGBTQ's experience of violence.

As party to the ESC and CPR covenants, the Philippine state is obligated to eliminate and prohibit discrimination on whatever ground or basis. The state is also bound to respect, protect, and fulfill all rights for all Filipinos. One concrete way to accomplish this is to enact the Anti-Discrimination Bill a measure seeking to prohibit and penalize discrimination on the basis of SOGI, and to provide budget for its comprehensive and sustained implementation.

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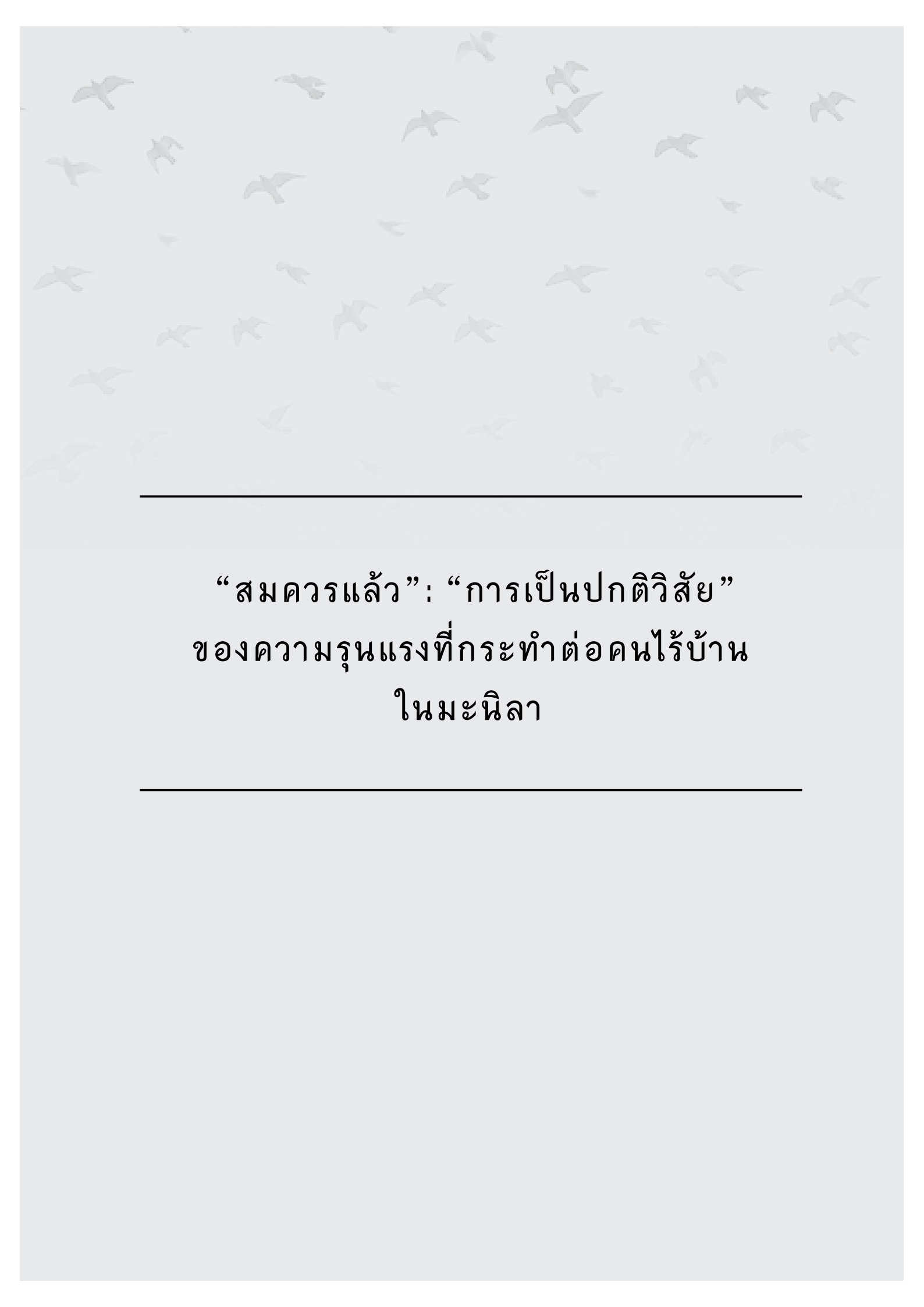
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