



**Convention on the Elimination
of All Forms of Discrimination
against Women**

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**Committee on the Elimination of Discrimination
against Women**

**Summary of the inquiry concerning the Philippines under
article 8 of the Optional Protocol to the Convention on the
Elimination of All Forms of Discrimination against Women**

I. Introduction

1. On 2 June 2008, the Committee received a joint submission from three non-governmental organizations¹ requesting the Committee to conduct an inquiry under article 8 of the Optional Protocol on alleged systematic and grave violations of rights guaranteed in the Convention resulting from the implementation of Executive Order No. 003² (“EO 003”) issued by the former Mayor of the City of Manila, Jose L. Atienza Jr., on 29 February 2000, which governed the provision of sexual and reproductive health rights, services and commodities in the City of Manila.

2. Under the Local Government Code of 1991, the State Party decentralized and delegated responsibility for “people’s health and safety” to the local level. Section 17 provides that the local government units shall be responsible for the provision of basic services and facilities, including health services, family planning services and population development services. Local government units (LGUs) exercise power through their respective legislative bodies, such as the Manila City Council which enacts legislation by ordinances, while the Mayor has the power to issue executive orders. EO 003 recalled the sanctity of life and the protection of the life of the mother and the unborn, as enshrined in the Constitution of the Philippines, and declared that the City of Manila would take an “affirmative stand on pro-life issues and responsible parenthood”. It also provided that the City of Manila shall “promote responsible parenthood and uphold natural family planning not just as a method but as a way of self-awareness in promoting the culture of life while discouraging the use of artificial methods of contraception like condoms, pills, intrauterine devices, surgical sterilization, and other.”

3. According to the information received by the NGOs, while EO 003 did not expressly prohibit the use of modern contraceptives, its continued implementation in practice severely limited women’s access to sexual and reproductive health services and effectively resulted in a ban of modern contraceptives in the City of Manila. The NGOs submitted further that EO 003 continued to be implemented under Mayor Lim, elected in 2007, who further issued a new Executive Order No. 030 (“EO 030”), which allegedly imposed a funding ban on modern contraception. On 23 April 2009, 13 July 2010 and 30 April 2012, the NGOs submitted updated information.

4. At its forty-second session, the Committee examined the information before it and considered it to be reliable and indicative of grave or systematic violations. By note verbale dated 10 December 2008, the Committee transmitted all the information received to the State party and invited it to cooperate in the examination of that information and, to that end, to submit its observations by 15 March 2009, in accordance with article 8, paragraph 1, of the Optional Protocol and rule 83 of its Rules of Procedure. On 5 November 2009, the

¹ The Philippines-based Task Force CEDAW Inquiry, the Center for Reproductive Rights (CRR), and the International Women’s Rights Action Network Asia-Pacific (IWRAP). The Philippines-based Task Force CEDAW Inquiry (Task Force) consists of 17 member NGOs (EnGendeRights (co-convenor), WomenLEAD (co-convenor); Alternative Law Groups (ALG); Democratic Socialist Women of the Philippines (DSWP); Family Planning Organization of the Philippines (FPOP); Health Action Information Network (HAIN); Health & Development Initiatives Institute, Inc. (HDII); Institute for Social Studies and Action, Philippines (ISSA); Kapisanan ng mga Kamag-anak ng Migrang Manggagawang Pilipino, Inc (KAKAMMPI); Philippine Legislators’ Committee on Population and Development (PLCPD); Population Services; Pilipinas, Inc. (PSPI); Sentro ng Alternatibong Lingap Panlegal/Alternative Legal Assistance Center (SALIGAN-ALAC); The Forum for Family Planning and Development, Inc.; WomanHealth Philippines; Women’s Crisis Center; Women’s Legal Bureau (WLB); Women’s Media Circle Foundation, Inc.), as well as national and community based organizations in the Philippines.

² EO 003 “Declaring Total Commitment and Support to the Responsible Parenthood Movement in the City of Manila and Enunciating Policy Declarations in Pursuit Thereof”.

State party submitted its observations, based on brief responses of the Manila City Health Office refuting the allegations. At its forty-fifth session,³ the Committee, on the basis of the information at its disposal, including relevant conclusions of other treaty bodies and special procedures mandate holders, decided to establish a confidential inquiry concerning the accessibility of contraceptives in the City of Manila. At its forty-sixth session in July 2010, the Committee, pursuant to article 8, paragraph 2, of the Optional Protocol and rule 84 of its Rules of Procedure, designated two members, Pramila Patten and Violeta Neubauer, to conduct a confidential inquiry into the alleged violations. The designated members conducted a visit to the territory of the State party from 19 to 23 November 2012, after it gave its consent on 2 August 2012.

5. During the visit, the designated members met with representatives of the following authorities: the Presidential Human Rights Committee, the Chairperson and the Director of the Philippines Commission for Women (which is the national mechanism for gender equality), the Department of Health (representatives of the National Center for Disease Prevention and Control, including the Director of the Family Health Office and representatives of the Family Health Cluster within the Center for Health Development for the National Capital Region), the Department of Foreign Affairs, the Department of Justice, the Department of the Interior and Local Government, the Department of Social Welfare and Development, the Philippines Health Insurance Corporation (PhilHealth), the Office of the Court Administrator, as well as a former Secretary of Health and Social Welfare and Development. They also met with the Commission on Human Rights of the Philippines (NHRI), including its Chair, and with representatives of the Philippines Legislators Committee on Population and Development. At the level of the local government of Manila, the designated members conducted interviews with Mayor Alfredo Lim, the City Legal Officer, representatives of the City Health Office (including the Acting City Health Officer and the Chief of Family Planning), and with officials of the City Department of Social Welfare.

6. The designated members visited three health centers, as well as Abad Santos Hospital, a local government-run hospital and conducted interviews with health personnel at various levels, including at managing level. They interviewed representatives of local, national and international civil society organisations, petitioners and counsels in the *Osil* case, as well as with lawyers, health policy experts and private health care providers, and with 60 women aged 19 to 49 years, mainly from poor urban areas. They also conducted field visits to communities in Vitas and Tondo, where they were able to witness extreme poverty among urban households, many of which are headed by women. The designated members also met with United Nations bodies.

II. Findings of facts

7. The Committee notes that, while the 1987 Philippine Constitution provides for the separation of the Church and the State, by proclaiming in Section 6 of the Directive Principles that “[t]he separation of Church and State shall be inviolable,” the Church has considerable influence on public policy making in the State party. Religion has been relied on as a basis for sexual and reproductive health policies, including at the level of LGUs, as, under Article 2 Section 12 of the Constitution, the State party is required to “equally protect the life of the mother and the life of the unborn from [the time of] conception.”

Implementation of Executive Order 003

8. The Committee is of the view that, while the wording of EO 003 itself does not explicitly prohibit or ban modern contraceptives, the implementation of the policy that it

³ 18 January - 5 February 2010.

embodied resulted in the withdrawal of all supplies of modern contraceptives from all local government-funded health facilities, as well as in the refusal to provide women with family planning information and counseling other than “natural family planning” and brought misinformation about modern methods of contraception, including those methods listed on the WHO Model List of Essential Medicines. Information showed that the provision of supplies as well as information and training on modern contraception methods, which used to be available, were suddenly discontinued. Further, all relevant medical personnel were trained and providing information only on natural family planning methods (for example abstinence, cervical mucus, body temperature, calendar and lactional amenorrhea methods). Authorities and medical staff interviewed all confirmed that instructions issued by Mayor Atienza to that effect continued to be implemented after February 2004.

9. The Committee considers that the information before it regarding the implementation of EO 003, as of February 2004, demonstrated the existence of a ban on modern methods of contraception in all public health facilities run by the Manila local government, namely hospitals, health centers and “lying-in clinics”. The concept of “responsible parenthood” was promoted and actively advocated by the Manila local government by excluding women’s access to the full range of sexual and reproductive health services, commodities and information, with a damaging impact on women’s health and lives. The Committee finds that the “pro-life” position of Mayor Atienza, as reflected in EO 003, was a policy that became well-known to the citizens of Manila and to relevant officials, including officials of the central government. EO 003 was condoned and even reinforced by national policies introduced as of 2001 with the aim of removing women’s access to modern contraceptive methods and promoting natural family planning only, such as the National Family Planning Strategic Plan 2002-2006, which stated that “NFP is the only method acceptable to the Catholic Church”. Further, the Committee notes that the prohibition of emergency contraception and of misoprostol is indicative of the ideological environment prevailing at the time and its retrogressive impact on the provision of reproductive health services and commodities. The Committee notes that the lack of any government response to the implementation of EO 003 in the City of Manila from 12 February 2004 to June 2007 resulted from the fact that this policy was in line with the central government’s own positions in the area of reproductive health.

10. The Committee further finds that allegations regarding the continued enforcement of EO 003 under the subsequent Mayor, Alfredo Lim who took office on 30 June 2007, was confirmed by information collected during the country visit of the designated members. Interviews with women who had sought modern contraception in health centers and hospitals between 2007 and 2011 revealed that EO 003 was still enforced in practice, despite the Mayor’s declared “pro-choice” policy, based on the principle of freedom to choose the method of contraception. Most of the interviewed women confirmed that EO 003 was still in force and that the Mayor’s policy was “pro-life”, thereby demonstrating that no change had been noticed amongst the most concerned beneficiaries.

Adoption and implementation of Executive Order 030

11. Mayor Lim adopted Executive Order No. 030 (EO 030) on 21 October 2011, explicitly containing a “pro-choice” policy “allowing couples to exercise full and absolute discretion in deciding on which form of family planning to use conformably with their religious beliefs and practices”. While acknowledging the unavailability of reproductive health services and commodities in the health facilities of the City of Manila and the shortcomings of the Manila health system, and while recognizing that women from the lowest income groups were adversely affected by the lack of access to services and information on the “full range of methods for limiting the spacing of pregnancy”, EO 030 provided that the City was “not [to] disburse and appropriate funds or finance any program or purchase materials, medicines for artificial birth control.”

12. While the Manila local government portrayed it as a positive measure which included provisions that allow the city to receive donations of contraceptives from the Department of Health and from NGOs, the Committee finds that EO 030 did not address the flaws and weaknesses of the health system as a whole, which had resulted from the implementation of EO 003. The Committee considers that the “pro-choice” policy was not accompanied by the necessary means to make these choices available and affordable. Therefore, even if women were *de jure* entitled to choose between “modern” or “natural” family planning, in practice that choice was not made possible, in the absence of available commodities, adequate information and training of healthcare personnel. The Committee therefore finds that the health system actually failed to provide women with such choices. The adoption of EO 030 was thus an inadequate response, as it did not allow public funding for the provision of the full range of reproductive health services and commodities to women in the City of Manila, nor did it provide for reinvestments in infrastructure and for the necessary capacity-building to provide these services. To fill the gaps created by the EOs, the local government placed the burden on NGOs, donors and other third parties to restore the provision of reproductive health services and commodities which, under the Local Government Code, had initially been delegated to LGUs because of their proximity to the beneficiaries.

13. The Committee finds that the continued implementation of EO 003 under Mayors Atienza and Lim, followed by the issuance and implementation of EO 030 under Mayor Lim, had detrimental consequences for economically disadvantaged women and drove them further into poverty by depriving them of an opportunity to control and space their number of children. The numerous testimonies received by the designated members during their interviews with 60 affected women revealed the pervasive impact of the consecutive implementation of EO 003 and EO 030 on the lives and health of women in the City of Manila, in particular the economic, social, physical and psychological consequences for women from low income groups. Women also described extensively the difficulties they experienced in using natural family planning methods, which many times contributed to tensions and conflicts with their husbands or partners and fostered domestic violence. The Committee further notes the damage on women’s mental and physical health resulting from multiple pregnancies and their increased exposure to HIV/AIDS and other sexually transmitted diseases.

Measures taken by the State party and shortcomings

14. The Magna Carta of Women, which incorporates key principles of the CEDAW Convention into national law, was adopted in August 2009 and contains a section focusing on women’s right to health. Section 46 specifies that any existing legislation conflicting with the content of the Magna Carta, whether national or local, will be deemed repealed, modified or amended. Although the Magna Carta establishes an operational legal framework which also covers reproductive health, the Committee notes that the lack of implementation of this framework is apparent. The absence of a national law on reproductive health has also contributed to such lack of implementation.

15. Although the delivery of health services is the responsibility of LGUs, the Department of Health issued a number of policies in the area of reproductive health. In particular, it issued Administrative Order 2008-0029 entitled “Implementing Health Reforms for the Rapid Reduction of Maternal and Neonatal Mortality” (also known as the MNCHN Strategy) to ensure the rapid reduction of maternal and child mortality. The Strategy provides that comprehensive reforms should be undertaken at the LGU level to enhance the provision of the “MNCHN core package of services”, consisting of interventions to be delivered for each life stage, such as pre-pregnancy, pregnancy, delivery, and the post-partum and newborn periods. Pre-pregnancy interventions specifically include the provision of family planning services, particularly modern family planning, as a means to reduce unmet needs and unwanted pregnancies which expose mothers to unnecessary risks resulting from pregnancy and childbirth. An MNCHN Grant

facility was established in 2009 to support LGUs in implementing the MNCHN Strategy and guidelines were adopted in 2010. It is a performance-based grant allocated and supervised by the Department of Health, which takes into account the contraceptive prevalence rate. Information showed that the City of Manila consistently underperformed in the domains assessed with respect to reproductive health.

16. The Committee considers that the efforts of the Department of Health/Center for Health Development in assisting the City of Manila in the provision of comprehensive sexual and reproductive health services, including modern methods of contraception, were insufficient. The review of the documents provided by the State party and the information provided by different stakeholders reveal clearly that no mechanism or system was established by the central government to monitor the compliance of LGU policies with national policies and to monitor their implementation at LGU level. As such, it is apparent that the compliance of EO 003 and EO 030 with the MNCHN Strategy was not examined by any of the relevant government agencies. Further, noting Section 25 (c) of the Local Government Code, which provides that if LGUs are experiencing financial problems, they shall call on national agencies to provide financial assistance, the Committee finds that the Manila local government did not take sufficient measures to comply with this provision.

17. The Committee considers that the lack of proactive action of all relevant government agencies, their insufficient authority, as well as serious lapses in the implementation of the newly established frameworks, in particular the Magna Carta and the MNCNH Strategy, and delay in enacting national legislation on reproductive health, are factors which have resulted in the insufficient and unsatisfactory response of the State party to address the situation in the City of Manila.

18. The Committee notes that, in 2012, Mayor Lim's administration made a noticeable shift in its approach and in the implementation of the new reproductive health strategy in the City of Manila with a view to ensuring access to affordable reproductive health services which include modern methods of contraception. The Committee notes that, pursuant to a request made by the Manila City Health Office through the regional office to the Department of Health on 21 June 2012, within the MNCNH Grant Facility, to re-programme remaining available funds to modern family planning, contraceptives and information materials had been made available in some health centers in Manila as from September and October 2012. However, the Committee stresses that it was not provided with information regarding the sustainability of the measures taken, as well as the requirements for the City of Manila to ensure the continued and adequate supply of commodities.

19. Efforts were also developed at the central level with the adoption of policies and programmes to reduce unmet need for modern contraception, notably the Administrative Order No 2012-0009 of 27 June 2012 on the new National Strategy Towards Reducing Unmet Need for Modern Family Planning. After having been pending before Congress for over a decade, the Act Providing for a National Policy on Responsible Parenthood and Reproductive Health (Republic Act 10354, hereinafter "the Reproductive Health Act") was approved in Congress and later signed into law by the President on 21 December 2012. Motions challenging its constitutionality were filed before the Supreme Court, pursuant to which its implementation was postponed. It is a matter of great concern to the Committee that, since March 2013, following judicial against the Act may regrettably result in a lengthier postponement of the implementation of the Act or in its partial, or even total, repeal, in contravention of the State party's obligations under the Convention, in particular under article 12. The Committee believes that the Act is an essential tool to address the visible shortcomings of the current decentralization system as well as the detrimental effects on women's access to sexual and reproductive health rights and services in Manila.

The Osil case

20. Twenty petitioners from Manila (referred to as the *Osil* case) repeatedly attempted to challenge the constitutionality of EO 003 and sought redress before the Court of Appeals, the Supreme Court and the Regional Trial Court between 2008 and 2012. All attempts remained unsuccessful and inconclusive. For example, the Regional Trial Court ruled on a motion to dismiss filed by the Office of the Mayor on 31 October 2012, 2 weeks prior to the visit of the designated members, that is, nearly three years after the motion had been filed. It has still not granted relief to the *Osil* petitioners. Despite a request by the designated members, no updated information has been received regarding the current status of the case.

III. Legal findings

a) Accountability – State party’s responsibility

21. Under international law of State responsibility, all acts of state organs are attributable to the State.⁴ Further, the accountability of States parties to implement their obligations under the Convention is engaged through the acts or omissions of all branches of Government.⁵ The Committee therefore recalls that actions of a mayor, his office and all other municipal officers, in their official capacity, are attributable to the State party, as they are state organs and that the State party is responsible for ensuring compliance with the standards of the Convention by all of its organs, including local governments, to whom powers have been devolved.

22. The Committee therefore observes that the acts and omissions of the executive power of the Manila local government, namely the issuance and implementation of EO 003 and EO 030 and associated policies, are attributable to the State party, notwithstanding the autonomy awarded to local government units by the 1991 Local Government Code which governs the constitutional structure of the State party.⁶

23. The Committee stresses that, even in the context of such a decentralized system as the State party’s, the responsibility for the implementation of the Convention lies with the State party as a whole. Decentralization of power through devolution does not in any way negate or reduce the direct responsibility of the State party to fulfil its obligation to respect and ensure the rights of all women within its jurisdiction. In this respect, the Committee recalls its General Recommendation No. 28 (2010), in which it clearly sets out State parties’ obligations in the context of decentralisation and devolution of powers:

The decentralization of power, through devolution and delegation of Government powers in both unitary and federal States, does not in any way negate or reduce the direct responsibility of the State party’s national or federal Government to fulfil its obligations to

⁴ See CCPR General Comment 31, para. 4: « All branches of government (executive, legislative and judicial), and other public or governmental authorities, at whatever level - national, regional or local – are in a position to engage the responsibility of the State Party”. See also Article 4 of the International Law Commission Articles on State Responsibility : 1. The conduct of any State organ shall be considered an act of that State under international law, whether the organ exercises legislative, executive, judicial or any other functions, whatever position it holds in the organization of the State, and whatever its character as an organ of the central Government or of a territorial unit of the State.” 2. An organ includes any person or entity which has that status in accordance with the internal law of the State.” In its Commentary, the International Law Commission clarified that mayors have been held to be State organs since they are carrying out public functions or exercising public power (para. 7, p.40).

⁵ General Recommendation No. 28, para. 39.

⁶ Local Government Code, section 2 : « [...] the State shall provide for a more responsive and accountable local government structure instituted through a system of decentralization whereby local government units shall be given more powers, authority, responsibilities, and resources.”

all women within its jurisdiction. In all circumstances, the State party that ratified or acceded to the Convention remains responsible for ensuring full implementation throughout the territories under its jurisdiction. In any process of devolution, States parties have to make sure that the devolved authorities have the necessary financial, human and other resources to effectively and fully implement the obligations of the State party under the Convention. The Governments of States parties must retain powers to require such full compliance with the Convention and must establish permanent coordination and monitoring mechanisms to ensure that the Convention is respected and applied to all women within their jurisdiction without discrimination. Furthermore, there must be safeguards to ensure that decentralization or devolution does not lead to discrimination with regard to the enjoyment of rights by women in different regions. Effective implementation of the Convention requires that a State party be accountable to its citizens and other members of its community at both the national and international levels. In order for this accountability function to work effectively, appropriate mechanisms and institutions must be put in place.⁷

24. The Committee notes that the Local Government Code of the State party contains specific safeguards and provides that the accountability of local government units should be ensured through the establishment of effective monitoring mechanisms. According to section 25, the supervisory powers over highly urbanized cities such as Manila, a city independent from the province, lie with the President,⁸ as opposed to other cities which are under the supervision of governors (section 29).⁹ The Committee also notes that “operative principles of decentralization” should be established in every local government unit in order to meet the priority needs and service requirements of its communities.¹⁰ The Committee

⁷ General Recommendation No. 28, paras 39-40. See also Technical guidance on the application of a human rights based approach to implementation of policies and programmes to reduce preventable maternal morbidity and mortality (A/HRC/21/22), para. 23: “Where the health system is decentralized, the national Government remains accountable for complying with human rights obligations, including those relating to sexual and reproductive health. »

⁸ Section 25 - National Supervision over Local Government Units. - (a) Consistent with the basic policy on local autonomy, the President shall exercise general supervision over local government units to ensure that their acts are within the scope of their prescribed powers and functions. **The President shall exercise supervisory authority directly over provinces, highly urbanized cities, and independent component cities; through the province with respect to component cities and municipalities; and through the city and municipality with respect to barangays. (b) National agencies and offices with project implementation functions shall coordinate with one another and with the local government units concerned in the discharge of these functions. They shall ensure the participation of local government units both in the planning and implementation of said national projects.** (c) The President may, upon request of the local government unit concerned, direct the appropriate national agency to provide financial, technical, or other forms of assistance to the local government unit. Such assistance shall be extended at no extra cost to the local government unit concerned. (d) National agencies and offices including government-owned or controlled corporations with field units or branches in a province, city, or municipality shall furnish the local chief executive concerned, for his information and guidance, monthly reports including duly certified budgetary allocations and expenditures ».

⁹ Section 29 - Provincial Relations with Component Cities and Municipalities – « The province, through the governor, shall ensure that every component city and municipality within its territorial jurisdiction acts within the scope of its prescribed powers and functions. Highly urbanized cities and independent component cities shall be independent of the province. »

¹⁰ Section 3 - Operative Principles of Decentralization - The formulation and implementation of policies and measures on local autonomy shall be guided by the following operative principles:

- (b) There shall be established in every local government unit an accountable, efficient, and dynamic organizational structure and operating mechanism that will meet the priority needs and service requirements of its communities;
- (d) The vesting of duty, responsibility and accountability in LGUs shall be accompanied with provision for reasonably adequate resources to discharge their powers and effectively carry out their functions[...];

finds, however, that such safeguards and oversight mechanisms, as required by the State party's domestic law, have not been sufficiently established to ensure that decentralization and devolution of powers to the local level in the health sector does not lead to discrimination with regard to the enjoyment of rights under the Convention by women in the City of Manila.

25. The Committee underlines that, in the context of decentralization and in the absence of a national law mandating LGUs to ensure comprehensive reproductive health rights, services and commodities, the necessity for strict safeguards to uphold the State party's obligations under the Convention was even more significant.

26. The Committee finds that the State party has failed to address the effects of the implementation of EO 003 and EO 030 and, between 2004 and 2010, has at times either supported or condoned the policies of the City of Manila. In these circumstances, the Committee finds that the State party bears responsibility for the violations set out below (section b).

b) Violations of the rights under the Convention

Article 2 (d), 2 (f) and 12

27. The Committee recalls that General Recommendation No. 28 states that, "under article 2, States parties must address all aspects of their legal obligations under the Convention to respect, protect and fulfil women's right to non-discrimination and to the enjoyment of equality."¹¹ It further stresses that "the obligation to respect requires that States parties refrain from making laws, policies, regulations, programmes, administrative procedures and institutional structures that directly or indirectly result in the denial of the equal enjoyment by women of their civil, political, economic, social and cultural rights."¹² With regard to article 2 (d), General Recommendation No. 28 emphasises that it establishes an obligation of States parties to abstain from engaging in any act or practice of direct or indirect discrimination against women, that States parties must ensure that State institutions, agents, laws and policies do not directly or explicitly discriminate against women and that laws, policies or actions which have the effect or result of generating discrimination are abolished.¹³

28. The Committee recalls the tacit acceptance by the central Government of the policies issued by the Manila local government and its failure to take any action against the local public authorities, as of February 2004. It also notes that, even though the Manila local government failed to comply with national policies developed as of 2008 in the field of sexual and reproductive health rights and services (MNCHN Strategy and Grant), the central government took insufficient and inadequate measures to address the flaws of the Manila health system, as described in the factual findings. The Committee further notes the lack of comprehensive review of the regulations in place, although required by the Magna Carta when it was enacted in 2009. The Committee recalls that the information before it demonstrates the adverse effects of the implementation of EO 003 and of the lack of resource allocations in the subsequent EO 030 on women's sexual and reproductive health rights in the City of Manila, especially among economically disadvantaged women. The

(e) Provinces with respect to component cities and municipalities, and cities and municipalities with respect to component barangays, shall ensure that the acts of their component units are within the scope of their prescribed powers and functions;

(j) Effective mechanisms for ensuring the accountability of local government units to their respective constituents shall be strengthened in order to upgrade continually the quality of local leadership.

¹¹ General Recommendation No 28, para. 9.

¹² General Recommendation No 28, para. 9.

¹³ General Recommendation No. 28, para. 35.

Committee also recalls that these effects were duly brought to the attention of the State party.

29. The Committee underlines the Concluding Observations of the Human Rights Committee which urged the State party to “lift EO 030 in so far as it prohibits the disbursement of funds for the purchase of materials and medicines for artificial birth control”.¹⁴

30. The Committee observes further that the State party’s criminal legislation and its strict application has further intensified the harmful effects of the EOs, as shown by numerous testimonies of women and health personnel during the visit of the designated members.

31. General Recommendation No. 24 underlines the responsibility of States parties to ensure that legislation and executive action and policy comply with their obligations under article 12 to eliminate discrimination against women in their access to health care services, particularly in the areas of sexual and reproductive health. The Committee recalls that, in accordance with international law of State responsibility, the obligation under article 2 (d) of the Convention is binding on all organs of a State party at all levels of government.¹⁵ The adoption and implementation of EOs 003 and 030 by the Manila local government are therefore attributable to the State party which failed to ensure that the local government would refrain from engaging in any act or practice of discrimination against women, as required by article 2 (d), and to take all necessary measures, in accordance with article 2(f), to modify or abolish existing laws, regulations, customs and practises which constitute discrimination against women.

Articles 12 and 10 (h)

32. The Committee recalls its General Recommendation No. 24 according to which it is discriminatory for a State party to refuse to legally provide for the performance of certain reproductive health services for women.¹⁶ The General Recommendation further underlines that distinctive health features that differ for women in comparison to men include biological factors such as women’s reproductive functions.¹⁷ Given that such factors have a bearing on women’s reproductive health needs, the Committee considers that substantive equality requires that State parties attend to the risk factors that predominantly affect women. Since only women can become pregnant, lack of access to contraceptives is therefore bound to affect their health disproportionately. The Committee finds that women in the City of Manila primarily bore the consequences of and were disproportionately disadvantaged by the inability to access and use the full range of reproductive health services, including modern methods of contraception.

33. The Committee recalls its factual findings regarding the consequences of the implementation of EO 003 and 030 on women, and observes that such implementation over many years had a severe impact on their health, as well as on their access to adequate health care services. The Committee observes that the lives and health of many women were put at risk, as they were compelled to have more children than they wanted or than their health permitted them to have. The Committee particularly takes notes of the potentially life-

¹⁴ HRC Concluding Observations, October 2012, CCPR/C/PHL/C/4, para. 13.

¹⁵ See General Recommendation No. 28, para. 39 and CCPR, General Comment No. 31, para. 4.

¹⁶ General Recommendation No. 24, para. 11 : « Measures to eliminate discrimination against women are considered to be inappropriate if a health care system lacks services to prevent, detect and treat illnesses specific to women. It is discriminatory for a State party to refuse to legally provide for the performance of certain reproductive health services for women. For instance, if health service providers refuse to perform such services based on conscientious objection, measures should be introduced to ensure that women are referred to alternative health providers.”

¹⁷ General Recommendation No. 24, para. 12. See also *Maria de Lourdes da Silva Pimentel v. Brazil*, Communicatio No. 17/2008, CEDAW/C/49/D/17/2008, para. 7.6.

threatening consequences of unplanned and/or unwanted pregnancies as a direct consequence of the denial of access to the full range of contraceptive methods as well as of the strict criminalization of abortion without any exemptions provided for in the State party's legislation. Complications resulting from unsafe and illegal abortions are a prominent cause of maternal death in the City of Manila, as acknowledged by the State party. It is therefore evident for the Committee that the failure of the State party to provide the full range of sexual and reproductive health services, commodities and information resulted in unplanned pregnancies, unsafe abortions and unnecessary and preventable maternal deaths.

34. The Committee finds that EO 003 effectively resulted in a systematic denial of affordable access to modern methods of contraception and related information and services. This ban particularly harmed disadvantaged groups of women, including poor women and adolescent girls, as well as women in abusive relationships. For example, adolescent girls were exposed to an increased risk of unwanted pregnancies and pregnancy-related injuries or death following unprotected or coerced sex, to which they are particularly vulnerable. Further, the inability of women with little or no income to control their fertility is directly linked to high poverty levels in Manila. The Committee notes that the impact of EO 003 was compounded by the funding ban contained in EO 030. The Committee finds that the State party failed to eliminate economic and social barriers to reproductive health services, so that all women, irrespective of their age and income level, would have equal access to affordable services responding to their specific health needs. The Committee also stresses that the lack of access to modern methods of contraception has resulted in an increasing exposure of women to HIV/AIDS and other sexually transmitted diseases.

35. Recalling that access to sexual and reproductive health services presupposes the availability and affordability of adequate and sustainable services and commodities, the Committee concludes that the State party has failed to take appropriate and effective measures to ensure access to sexual and reproductive health services and commodities for women in the City of Manila. The programmes and policies developed by the State party at the national level, in particular the MNCNH Strategy and Grant, albeit being commendable efforts, have been insufficient to address the shortcomings and failures of the local government. Further, the Committee rejects the State party's explanations regarding cost considerations to justify the issuance of EO 030 which have resulted in the impairment of women's health.

36. The Committee concludes that the State party has failed to ensure access to the full range of sexual and reproductive health services and commodities, including information and counseling on modern methods of family planning, in violation of article 12 of the Convention. It also considers that the State party has failed to remove barriers to ensure women's effective access to sexual and reproductive health services.¹⁸ The Committee finds that such failure amounts to discrimination and to a violation of article 12.

37. Further, the Committee recalls its General Recommendation No. 21, stressing that "in order to make an informed decision about safe and reliable contraceptive measures, women must have information about contraceptive measures and their use, and guaranteed access to sex education and family planning services, as provided in article 10 (h) of the Convention."¹⁹ The Committee considers that women have a "right protected by article 10

¹⁸ See General Recommendation No. 24, para. 21: "States parties should report on measures taken to eliminate barriers that women face in gaining access to health care services and what measures they have taken to ensure women timely and affordable access to such services. Barriers include requirements or conditions that prejudice women's access such as high fees for health care services, the requirement for preliminary authorization by spouse, parent or hospital authorities, distance from health facilities and absence of convenient and affordable public transport."

¹⁹ General Recommendation No. 21, para. 22.

(h) to be provided with appropriate information and advice on family planning through the hospital personnel”²⁰ in order to enable them to make fully informed choices regarding their reproductive health.

38. The Committee recalls that women in the City of Manila, especially young women and teenage girls, in the City of Manila have not had access to adequate information about modern methods of contraception as a result of the implementation of EO 003 and 030 and/or have been consistently misinformed about the risks, side effects and benefits of modern contraception. The Committee finds that women’s practical access to reproductive health services was therefore compromised by their lack of knowledge or awareness for informed decision-making, such as information on the legal permissibility of being provided with modern contraceptives in public health facilities, their effectiveness as well as their risks and benefits. The Committee also finds that many women in the City of Manila have been making their choices on the basis of misinformation received, for example, on the adverse effects of oral contraception or of ligation procedures.

39. The Committee concludes that the failure to provide information about modern contraceptive methods and their use also violates article 10 (h) of the Convention, which requires States parties to provide access to health-related education, including information and advice on family planning.

Article 16 (1) (e)

40. In its General Recommendation No. 21, the Committee recalls that the number and spacing of their children have an impact on women's lives and also affect their physical and mental health, as well as that of their children and that, for these reasons, women are entitled to decide on the number and spacing of their children.²¹ The Committee further observed that “there is general agreement that where there are freely available appropriate measures for the voluntary regulation of fertility, the health, development and well-being of all members of the family improves” and that “such services improve the general quality of life and health of the population, and the voluntary regulation of population growth helps preserve the environment and achieve sustainable economic and social development”.²²

41. The Committee considers that, through the policies of the Manila local government and their implementation, the State party has undermined the right of women to decide freely and responsibly on the number and spacing of their children, by advocating and providing only natural methods of family planning. Women in the City of Manila were denied access to information and services relating to modern methods of contraception, thus depriving them of their ability and autonomy to make fundamental and intimate decisions affecting their bodies and lives in an informed and safe manner. The rights of women to family planning and to exercise their choice and independence in making decisions with respect to the number and spacing of their children were thereby rendered futile and their denial exacerbated inequalities between men and women in marriage and family relations. The Committee thus finds that the State party failed to provide education, services and the necessary means to fulfil its obligations under article 16 (1) (e).

Article 5 and 12

42. The Committee considers that article 5, read together with articles 12 and 16, require States parties to eliminate gender stereotypes that impede equality in the health sector and in marriage and family relations. The Committee’s General Recommendation No. 24 recognises the link between article 5 (b) and article 12, in that it requires States parties to ensure that family education includes a proper understanding of maternity as a social

²⁰ See *A.S vs Hungary* Communication No. 4/2004, CEDAW/C/36/D/4/2004, para. 11.2.

²¹ General Recommendation No. 21, para. 23.

²² General Recommendation No. 21, paras 21-23.

function.²³ The Committee is of the view that gender stereotypes may impact women's capacity to make free and informed decisions and choices about their health care, sexuality and reproduction and, in turn, also impact on their autonomy to determine their own roles in society.

43. Thus, the Committee finds that the implementation of EOs 003 and 030 with regard to the delivery of reproductive health services and commodities in the City of Manila reinforced gender stereotypes prejudicial to women, as they incorporated and conveyed stereotyped images of women's primary role as child bearers and child rearers, thereby perpetuating discriminatory stereotypes already prevalent in the Filipino society. Such stereotypes further contributed to the belief that it was acceptable to deny women access to modern methods of contraception because of their natural role as mothers and had the effect of impairing the enjoyment by women of their rights under article 12 of the Convention. The Committee concludes that the State party has violated its obligations under article 5 of the Convention.

Articles 2 (c) and 12

44. The Committee notes that the court action, which was initially filed before the Court of Appeals on 29 January 2008, then refiled before the Supreme Court on 29 September 2008, and finally brought before the Regional Trial Court on 20 April 2009 by twenty petitioners to challenge EO 003 (*Osil* case), is still pending before the latter at the time of the adoption of the report. The Committee recalls that the Court of Appeals took three months to adjudicate the matter, instead of the 24 hours prescribed by the Rules of Civil Procedure and dismissed the petition without a hearing on the merits on the grounds of failure to submit tax declarations. It notes further that, on 6 October 2008, the Supreme Court failed to rule on the merits of the case regarding the nineteen petitioners who had signed the petition and on 15 December 2008 also dismissed a motion for reconsideration of the case. The Committee further notes that the petition brought before the Manila Regional Trial Court on 20 April 2009 is still pending and that the Court has taken over three years to rule on a motion of the Office of Mayor to dismiss the petition. In these circumstances, the Committee concludes that the judicial process has been unduly delayed, thereby undermining the effectiveness of available remedies.

45. The Committee stresses that, according to General Recommendation No. 28, State parties must "ensure that courts are bound to apply the principle of equality as embodied in the Convention and to interpret the law, to the maximum extent possible, in line with the obligations of States parties under the Convention".²⁴ General Recommendation No. 28 also requires States parties "to ensure that women have recourse to affordable, accessible and timely remedies [...] to be settled in a fair hearing by a competent and independent court or tribunal, where appropriate". The Committee recalls that the undertakings under article 2 (c) of the Convention are stringent obligations of result. It follows that the State party has failed to put in place a system to ensure effective judicial protection and to provide effective judicial remedies for human rights violations experienced by women in the City of Manila as a result of EO 003, as evidenced by the failure and unwillingness of the judiciary to adjudicate without undue delay the *Osil* case concerning the revocation of the disputed EO. In such circumstances, the Committee considers that the State party failed to comply with its obligations under article 2 (c) of the Convention to ensure effective judicial action and protection.²⁵

²³ General Recommendation No. 24, para. 28.

²⁴ General Recommendation No. 28, para. 33.

²⁵ According to General Recommendation No. 24 (para. 13), referring to women's rights to health care, « Failure to put in place a system which ensures effective judicial action constitute a violation of article 12 »

c) Grave or systematic nature of the violations

46. Within the meaning of Article 8 of the Optional Protocol to the Convention and Rule 83 of the Rules of Procedure, the “violations by a State party of the rights set forth under the Convention” must be grave or systematic. In light of the information received and obtained before, during and immediately after the visit of the designated members and recalling that the provisions mentioned below should be read together with General Recommendations Nos. 21, 24 and 28, the Committee finds that the State party has failed to fulfil its obligations under the Convention and is thereby responsible for the following violations, which it considers to be both grave and systematic:

- the violations of the rights under Article 12, read alone;
- the violations of the rights under Article 12, read in conjunction with Article 2 (c), (d), (f), with Article 5 and with Article 10 (h);
- the violations of the rights under Article 16 (1) (e), read alone.

47. The Committee’s determination regarding the gravity of the violations takes into account, notably, the scale, prevalence, nature and impact of the violations found. The number of persons affected by the policies embodied in the EOs is significantly high, as thousands of women of child-bearing age continue to have inadequate access to sexual and reproductive health services in the City of Manila, bearing in mind that teenage girls start having children at a young age. The implementation of both EO 003 and EO 030 has led to higher rates of unwanted pregnancies and unsafe abortions, increased maternal morbidity and mortality and increased exposure to sexually transmitted diseases and HIV. The Committee also takes note of the potentially life-threatening consequences of resorting to unsafe abortion as a method of contraception and recalls that there is a direct link between high maternal mortality rates resulting from unsafe abortion and lack of access to modern methods of contraception. In addition, the Committee stressed that each of the violations established reach the required threshold of gravity given the significant consequences, as detailed in the findings, for women’s health, personal development and economic security, particularly for economically disadvantaged women. The denial of access to affordable sexual and reproductive health services, including the full range of methods of contraception, had severe consequences not only for the lives and health of many women, but also impacted on their enjoyment of several rights set forth in the Convention in areas such as employment and education. By limiting women’s rights to freely choose the number and spacing of their children, women and girls were effectively undermined in accessing and pursuing the same education and employment opportunities as men, and thereby driven further into or maintained in poverty.

48. The Committee considers that the systematic denial of equal rights for women can take place either deliberately, namely with the State party’s intent of committing those acts or as a result of discriminatory laws or policies, with or without such purpose. The systematic nature of violations can also be assessed in light of the presence of a significant and persistent pattern of acts which do not result from a random occurrence. The Committee holds the view that the systematic character of each of the violations found is evident from the prevalent pattern of violations which occurred as a result of policies disproportionately impacting women and discriminating against them. The Committee takes note that while the lack of access to contraception is generally problematic throughout the State party, the situation in the City of Manila is particularly egregious as a result of an official and deliberate policy which places a certain ideology above the well-being of women and was designed and implemented by the Manila local government to deny access to the full range of modern contraceptive methods, information and services. The Committee believes that these violations are not isolated cases, as the continued implementation of EO 003 over a decade resulted in the health system’s incapacity to deliver sexual and reproductive health services other than “natural family planning” and caused women to continuously face significant barriers to accessing affordable sexual and

reproductive health services, commodities and information. The factual findings above demonstrate that the State party condoned a situation, which lasted for more than 12 years, during the successive terms of two different mayors of the City of Manila.

IV. Recommendations

49. In accordance with its jurisprudence and its General Recommendation No. 24, the Committee recalls that the practical realization of substantive equality requires accommodating the specific, distinct health needs and interests of women including those relating to their fertility and entails *respecting, protecting, and fulfilling*²⁶ women's reproductive rights, by providing them with universal access to a full range of contraceptives and related information, as well as counselling, and services.

50. In light of the findings of the present report and in line with relevant recommendations addressed to the State party by other United Nations bodies, the Committee refers to its previous concluding observations and its General Recommendations Nos. 21, 24 and 28, and makes the following recommendations to the State party.

a) Institutional and legal framework

51. The Committee calls on the State party to:

i. **Fully enforce the Magna Carta of Women and its Implementing Rules and Regulations which guarantee, inter alia, women's access to effective methods of family planning.**

ii. **Upon the disposal of the constitutional challenges before the Supreme Court and if declared constitutional, ensure the immediate implementation of the Reproductive Health Act and its Implementing Rules and Regulations, including provisions that guarantee universal access to the full range of reproductive health services and information for women, especially for economically disadvantaged women; ensure that the decentralization of health services and autonomy of local government units do not constitute barriers to the implementation of the new legal framework and establish mechanisms at all levels of government to ensure its strict enforcement throughout the territory of the State party.**

iii. **Complete, without delay and within a fixed timeframe, the review of remaining discriminatory laws and/or regulations in the field of reproductive health, as required by the Magna Carta, and modify or repeal such provisions where necessary.**

iv. **Ensure that Executive Orders 003 and 030 are officially revoked, as a matter of urgency, and that health care providers, as well as the general public, in particular women, are timely and duly informed of such revocation.**

v. **Amend articles 256 to 259 of its Criminal Code in order to legalize abortion in cases of rape, incest, threats to the life and/or health of the mother, or serious malformation of the foetus and decriminalize all other cases where**

²⁶ See in particular para. 37 of General Recommendation No. 24 (1999) on women and health: "The duty of States parties to ensure, on a basis of equality between men and women, access to health care services, information and education implies an obligation to respect, protect and fulfil women's rights to health care" and that "States parties have the responsibility to ensure that legislation and executive action and policy comply with these three obligations".

women undergo abortion, as well as adopt necessary procedural rules to guarantee effective access to legal abortion.

vi. Reinforce the existing national machinery, i.e. the Philippine Commission on Women, by strengthening its mandate, authority and visibility, as well as its human, financial and technical resources, to monitor compliance by local governments with international standards and national laws concerning the provision of reproductive health services; consider decentralising its activity by establishing regional offices; and enhance its coordination with the Department of Health, the Department of Interior and Local Government and the Commission on Human Rights of the Philippines in the area of reproductive health.

vii. In line with its duty under the provisions of the Magna Carta on the promotion and protection of women's rights, consider broadening the mandate of the Commission on Human Rights to allow it to receive complaints and to provide remedies in cases of violations of, in particular, women's reproductive rights; provide the Commission with adequate financial, human and technical resources to ensure that it can effectively discharge its current and additional functions; and take all necessary measures to ensure its full financial autonomy.

viii. In light of the decentralization of health services to local government units, establish effective monitoring and oversight mechanisms, as provided for in the Local Government Code, to ensure (1) that reproductive health related legislation, strategies and policies adopted and implemented by local government units strictly comply with the State party's obligations under the Convention, that they are based on scientific evidence and do not discriminate against women in practice, (2) the availability, accessibility and affordability of reproductive health services and commodities at all levels of government, throughout the territory of the State party.

ix. Strengthen existing coordination and reporting mechanisms between the Department of Health, its regional health centers and the health departments of local government units to ensure the implementation of national strategies and policies relating to sexual and reproductive health.

x. Ensure that local government units put in place effective legal remedies for women seeking redress for violations of their right of access to sexual and reproductive health services; ensure that the courts adjudicate on cases involving women's sexual and reproductive health rights without undue delay; and remove the barriers that women are facing in accessing justice.

xi. Ensure that the Convention, the Committee's General Recommendations, the Optional Protocol and the views of the Committee under the Optional Protocol be made an integral part of the education and training of judges, lawyers and prosecutors at the national, regional and municipal levels, with a view to ensuring the effective application of women's health rights, including relevant provisions of the Magna Carta and the Reproductive Health Act.

xii. In line with its Constitution providing for the separation of the Church and the State, ensure that State policies and legislation give priority to the protection of women's health rights, in particular their sexual and reproductive health rights, over any religious postulates that may lead to *de facto* or *de jure* discrimination against women and negatively impact their access to sexual and reproductive health services, commodities and information, including by designing strategies to sensitize members of parliament, government officials, political parties, as well as local government's executive and legislative, with a

view to eliminating all ideological barriers limiting women's access to sexual reproductive health services, commodities and information.

b) Sexual and reproductive health rights and services

52. The Committee further urges that the State party:

i. Address the unmet need for contraception, especially in the City of Manila, with a particular focus on economically disadvantaged women and adolescent girls, by ensuring (1) universal and affordable access to the full range of sexual and reproductive health services, commodities and related information, which must include the availability of the safest and most technologically advanced methods of contraception, including oral contraception and emergency contraception, intra-uterine devices and ligation services and (2) adequate provision in national and local government budgets for sufficient supply of such contraceptive methods in all public health facilities, with a particular focus on local government units with low contraceptive prevalence rate; take all necessary measures to remove all economic and structural barriers that result in unequal access to sexual and reproductive health services, including limitations pertaining to women's marital status, age and number of children; and consider expanding the public health insurance system to cover the costs of modern contraceptive methods.

ii. Ensure that non-biased, scientifically sound and rights-based counseling and information on sexual and reproductive health services, including on all methods of contraception, are provided in all governmental, provincial and municipal health facilities in the State party to address rampant misinformation and to ensure that women can make informed decisions about the number and spacing of children and do not have to resort to unsafe abortions.

iii. Reintroduce emergency contraception in the State party, in particular to prevent early and unplanned pregnancies and in cases of sexual violence, as well as promote and raise awareness about the benefits of emergency contraceptives in such situations, particularly among adolescent girls.

iv. Ensure that systematic training on sexual and reproductive health rights, services and commodities is provided to healthcare professionals in all public hospitals, health centers and lying clinics, as well as to community health teams, especially in the City of Manila, with a view to addressing the loss of institutional capacity and knowledge, as well as the erosion of skills resulting from the enforcement of Executive Orders 003 and 030; and monitor the adequate allocation of funding by local government units for such systematic training to ensure that it is commensurate with their needs.

v. Provide women with access to quality post-abortion care in all public health facilities, especially in case of complications resulting from unsafe abortions, including by reintroducing misoprostol, in order to reduce women's maternal mortality and morbidity rates; ensure that women experiencing abortion-related complications are not reported to the law enforcement authorities, threatened with arrest, or subjected to physical or verbal abuse, discrimination, stigma, delays in access to or denial of care; adopt a patient privacy policy to ensure doctor-patient confidentiality, specifically when treating women for abortion-related complications; ensure effective reporting procedures, available for women in need of post-abortion care to complain about abuse and discrimination, without fear of retaliation; and conduct research on the incidence of unsafe abortions in the State party and their

impact on women's health and maternal mortality and morbidity, and make such information available to the Committee in its next periodic report.

vi. Establish a regulatory framework and mechanism for the practice of conscientious objection by individual health professionals in order to ensure that such individual practice does not influence women's decision-making in relation to their sexual and reproductive health and/or impede their access to sexual and reproductive health services, and ensure the provision of adequate sexual and reproductive health services by alternative medical health personnel.

vii. Ensure that local government units establish health care protocols and hospital procedures to prevent and sanction abuse of and discrimination against women, as well as complaint mechanisms within the decentralized health care systems, such as specialized investigation and appeal procedures or female health ombudspersons, to investigate complaints and impose appropriate sanctions on health care professionals responsible of abuse of and discrimination against female patients.

viii. Integrate age-appropriate education on sexual and reproductive health in school curricula, including comprehensive sex education covering prevention of early pregnancies and sexually transmitted diseases for adolescent girls and boys, including HIV/AIDS.

ix. Conduct education and awareness-raising campaigns to enhance women and adolescent girls' awareness of sexual and reproductive health rights and services, especially on the use and the lawfulness of modern contraceptive methods in the State party, and on the risks related to unsafe abortion. Such campaigns should also address health-related misconceptions about modern methods of contraception, as well as gender-based stereotypes discouraging the use of modern contraceptive methods.

x. Continue seeking technical support from the international community, as well as financial aid where relevant, and strengthen its collaboration with and support to civil society organizations, including women's organizations, in order to enhance women's access to sexual and reproductive health services, commodities, and information, including by fostering national consultation on these issues.
