

Summary Submission to the UN Universal Periodic Review of

THE PHILIPPINES

13th Session of the UPR Working Group of the Human Rights Council

21 May – 1 June 2012

Submitted by:

Center for Reproductive Rights

International Women's Human Rights Clinic, City University of New York School of Law

1. Pursuant to Human Rights Council Resolution 5/1 (2007) and the guidelines for stakeholders, the Center for Reproductive Rights¹ (the Center) and the International Women’s Human Rights Clinic of the City University of New York School of Law² submit this evaluation of the Government of the Philippines’ (the Government) fulfillment of its human rights obligations and commitments, paying specific attention to issues related to the status of women’s reproductive rights in the Philippines, notably access to contraceptive information and services and the impact of the criminal abortion ban. This submission is based significantly on evidence of grave violations of women’s rights under restrictive contraceptive and abortion-related laws and policies in the Philippines documented and published by the Center and local partners in two separate reports: *Imposing Misery*³ (Annex 1) and *Forsaken Lives*⁴ (Annex 2).

NORMATIVE AND INSTITUTIONAL FRAMEWORK OF THE STATE

2. The Constitution recognizes the right of women to equality before the law and the Government’s obligation to provide essential health services. It also provides that “the State shall adopt an integrated and comprehensive approach to health development which shall endeavor to make essential goods, health and other social services available to all the people at affordable cost.”⁵ The Magna Carta of Women (Magna Carta), enacted in 2009, domesticates the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). It outlines explicit protections for women’s rights, including a state obligation to ensure “[r]esponsible, ethical, legal, safe, and effective methods of family planning.”⁶

3. Despite these provisions, the Philippines has endangered women by failing to amend the Revised Penal Code of 1930, which criminalizes abortions with no clear exceptions, even when necessary to preserve a woman’s life or health.⁷ The Government has not prioritized the implementation of the Prevention and Management of Abortion Complications Policy (2000), which was introduced to ensure the provision of humane post-abortion care and prevent mistreatment of women seeking services. (See Annex 2, pp. 33, 71, 82.) Further, in 2000, Manila City issued an executive order (EO) that acts as a total ban on modern contraceptive information and services in health facilities funded by the local government unit (LGU).⁸ Other LGUs have since enacted ideologically driven ordinances penalizing the sale, promotion, advertisement, and prescription of contraceptives, including condoms.⁹

PROMOTION AND PROTECTION OF RIGHTS ON THE GROUND

4. The Constitution and the Magna Carta protect women’s equality and health, but, in practice, these rights are consistently violated by restrictions denying women access to crucial reproductive health services. The Magna Carta’s “repealing clause” provides that it amends, modifies, or repeals contrary existing law.¹⁰ Yet, laws and policies violating reproductive rights protected by the Magna Carta remain in force, and laws contradicting both the Constitution and the Magna Carta continue to be adopted.

5. The criminal ban on abortion and legal barriers to access to contraceptive information and services violate numerous human rights, including: the rights to life; liberty and security; freedom from cruel, inhuman and degrading treatment; health; equality and non-discrimination; and privacy. These measures have impeded the Government’s progress towards reducing maternal mortality under Millennium Development Goal 5.¹¹ (See Annexes 1, pp. 45-53, and 2, pp. 93-102.)

1. Government Barriers to Contraceptive Information and Services

6. The Government is violating both domestic and international human rights laws by failing to ensure women have access to the full range of modern contraceptives, including emergency contraceptives. (See Annex 1, pp. 48-49.) In particular, the EO adopted in the Manila City acts as a *de facto* ban by denying women contraceptive information and services in Manila City-funded health facilities. (See

Annex 3 for the EO text.) Manila government officials discourage modern contraceptives by refusing to provide information or giving misinformation. Women seeking contraceptives have reported being told by health officials that modern contraceptives are “evil” and that “[c]ontraceptives are banned because the mayor is now pro-life. It [contraceptives] kills the baby.”¹² Prior to this EO, women were able to get free contraceptive pills, condoms, and injectables from their local health centers; since this EO was passed more than ten years ago, availability has disappeared. (See Annex 1 for accounts, pp. 24-44.)

7. The ban has had a chilling effect on the provision of information and services in private facilities technically not subject to the order. Due to the EO, private clinics and clinics run by nongovernmental organizations (NGOs) that previously provided contraceptive information and services have been forced to shut down. (See Annex 1, p. 17.) This ban, operating in a country where almost 70% of people rely on local government health facilities for reproductive health commodities and services including modern contraceptives,¹³ has had a significant impact. Metro Manila, an area which includes Manila City, has a higher proportion of unintended pregnancies than anywhere else in the Philippines.¹⁴ The ban operates in a national context where unmet need for family planning has increased in the country from 17% to 22% in just five years,¹⁵ and there are an estimated 1.9 million unintended pregnancies annually.¹⁶ Over half of maternal deaths in the Philippines occur to women with unintended pregnancies,¹⁷ meaning that the inability to access contraceptive information and services can have fatal consequences. The EO exacerbates high levels of unintended pregnancy and disproportionately impacts poor women who on average have two more children than they want¹⁸ and rely on city health services.

8. The EO violates women’s rights to access to a full range of contraceptive methods, services and information, to decide the number and spacing of one’s children, non-discrimination, health, privacy, and freedom of religion under UN human rights treaties ratified by the Government. Denial of contraceptive information and services constitutes gender discrimination due to the disproportionate impact suffered by women. (See Annex 1, pp. 45-53 for legal analysis.) UN bodies have repeatedly stated that governments must ensure affordable contraceptive information and services.¹⁹ The ban constitutes a retrogressive measure that rescinds access to healthcare services that women once enjoyed.

9. UN bodies have consistently criticized legal barriers to women’s access to contraceptive information and services in the Philippines and recommended revocation of the EO. (See Annex 1, pp. 48-53.) In 2006, the Committee on the Elimination of Discrimination against Women (CEDAW Committee) recommended that the Government make “a comprehensive range of contraceptives more widely available and without any restriction and by increasing knowledge and awareness about family planning.”²⁰ The Committee on Economic, Social and Cultural Rights (ESCR Committee) made a similar recommendation in 2008.²¹ In 2009, the Committee on the Rights of the Child found that despite adoption of the Magna Carta, there is a “lack of effective measures to promote the reproductive rights of women and girls and that particular beliefs and religious values are preventing their fulfilment.”²² It urged the Philippines to immediately adopt legislation protecting reproductive health and to ensure “wide access to a broad variety of contraceptives without any restrictions.”²³

10. In 2009, the Special Rapporteurs on the Right to Health (SRRH) and Violence Against Women sent letters to the Government expressing concern about the lack of access to contraception in Manila and the resulting “pervasive effects,”²⁴ including unwanted pregnancies, unsafe abortions, maternal mortality and morbidity, lack of education and employment, hunger, and poverty.²⁵ The government’s response stated that contraceptives are not distributed in public health facilities due to financial constraints.²⁶ This practice effectively denies poor women their basic right to contraceptive information and services, directly contradicting the recommendation made by Nigeria during the 2008 UPR to increase efforts to

meet the basic needs of the poor.²⁷ In 2011, the SRRH recognized that criminal laws and other legal restrictions that prevent access to reproductive health information and services violate the right to health, and identified the EO as one such legal restriction.²⁸

11. In January 2008, the EO was challenged in the lawsuit *Osil et al. v. City of Manila*. The petitioners argued that the EO exceeds the mayor's authority and violates the Constitution and international legal obligations.²⁹ The case has been languishing in courts for nearly four years and is currently pending in the Regional Trial Court, which has not issued a single order or scheduled a hearing since late 2009, effectively denying the petitioners a legal remedy. (See Annex 1, pp. 6-7.)

12. In September 2010, the Philippine Commission on Human Rights (PCHR) found that the EO violates CEDAW. It recommended that Manila City immediately revoke the EO and ensure the availability of contraceptives, and encouraged other LGUs to make modern contraceptives available in health centers or municipal clinics. The PCHR further recommended that the Manila City government issue an apology to the *Osil* petitioners and all women who have been denied contraceptive access because of the EO. It urged the Regional Trial Court to consider the Philippines' international obligations in deciding *Osil*.³⁰ To date, neither has the government implemented any of these recommendations, nor has the Court ordered any remedy. (See Annex 1, pp. 5-11, 19-20.)

13. The fact that the EO still stands suggests that the courts and Government are complicit in violations of women's reproductive rights. Local organizations report that seven LGUs in Bataan province have passed even more restrictive ordinances prohibiting modern contraceptives, both by private as well as public facilities.³¹ These ordinances incorrectly equate hormonal contraception and IUDs with abortifacients and on this basis prohibit their distribution, prescription or advertisement. They also prohibit the LGUs from dispensing or using funds to purchase or provide contraceptives.³² These ordinances are being legally challenged as violating the Constitution, domestic laws such as the Local Government Code of 1991, and the Magna Carta, as well as for violating international law.³³

14. In 2001, in response to an allegation of a conservative Catholic group, the Philippine Department of Health deregistered the emergency contraceptive Postinor, calling it an "abortifacient,"³⁴ despite the fact that the World Health Organization (WHO) has stated that emergency contraceptives do not cause abortion.³⁵ Emergency contraceptives remain unavailable in the Philippines.

2. Human Rights Violations Arising from the Criminal Abortion Ban

a. The Criminal Ban Has Resulted in Unsafe Abortion and Maternal Death

15. Criminalizing abortion without clear exceptions, even when a woman's life or health is endangered, has forced Filipino women to resort to unsafe, clandestine abortions. In 2008, despite the ban, over half a million abortions took place in the Philippines, 90,000 women were hospitalized with related complications, and 1,000 women died from complications.³⁶ UN bodies and experts have repeatedly stated that criminal abortion bans violate women's rights to life, liberty and security, health, non-discrimination, and freedom from cruel, inhuman and degrading treatment. (See Annex 2, pp. 90-110.)

16. UN bodies have repeatedly recommended that the Philippines remove criminal penalties on abortion. In 2008, the ESCR Committee expressed concern that clandestine abortions are a principle cause of maternal death and that the Philippine abortion ban includes cases where a pregnancy compromises a woman's life or health or is the result of rape or incest, recommending that the Philippines "address, as a matter of priority, the problem of maternal deaths as a result of clandestine abortions, and consider reviewing its legislation criminalizing abortion in all circumstances."³⁷ The CEDAW Committee also

expressed concern about maternal mortality from unsafe abortion, and urged the Philippines to remove provisions penalizing women who have had abortions.³⁸

b. Abuses in Post-Abortion Care Violates Women's Human Rights

17. Post-abortion care is legal, but the criminal ban on abortion has created an environment where health workers routinely subject patients to mental and physical abuse, stigmatization, and judgment. Evidence shows that the abusive treatment of women seeking medical attention for post-abortion complications is commonplace and frequently rises to the level of cruel, inhuman or degrading treatment. These practices involve egregious violations of medical ethics, patient confidentiality, and dignity for which there is no legal recourse as filing a complaint would entail admitting illegally inducing an abortion. (See Annex 2, pp. 42-60 for accounts of public shaming, verbal, and emotional abuses.)

18. The quality of post-abortion care is shaped by providers' attitudes towards abortion which in turn is largely influenced by the criminal ban. The criminal ban has created fear of criminal liability for health workers, undermining their ability to care for patients. Many providers erroneously believe they are legally required to report abortions and fear they will be implicated as accomplices if they fail to report. Patients report being manhandled, verbally abused, threatened with arrest, and made to wait to receive care, even if they require immediate medical attention. Often, health workers who suspect a woman of having induced an abortion interrogate the woman, coercing her to admit she had an abortion and threatening to deny medical treatment or report her to the police. Stigma and lack of confidentiality can discourage women from seeking post-abortion care until it is too late. (See Annex 2, pp. 53-60, 63, 71.)

19. The criminal abortion ban has created other barriers to women's healthcare. Misoprostol, a drug that the WHO has deemed essential for the management of post-partum hemorrhage, incomplete abortion, and miscarriages, is banned because it can also be used as an abortifacient.³⁹ As such, the ban endangers women's lives by depriving health professionals of an effective treatment for complications arising from post-partum hemorrhage, miscarriages, and unsafe abortions. (See Annex 2, pp. 38-40, 42-60, 67, 98 for accounts of barriers to pregnancy-related care arising from the ban.)

20. The CEDAW Committee has expressed concern about maternal mortality from unsafe abortion and the poor quality of post-abortion care, and called on the Philippines to provide access to quality services for the treatment of complications arising from unsafe abortions in compliance with the Beijing Declaration and Platform for Action.⁴⁰ However, the Philippines has yet to ensure access to humane and compassionate post-abortion care services and to remove criminal penalties for abortion.

LACK OF COOPERATION WITH HUMAN RIGHTS MECHANISMS

21. The Philippines' general refusal to cooperate with human rights bodies, including its failure to meaningfully implement the 2008 UPR recommendations, is of great concern. For example, despite the fact that the Philippines committed during the 2008 UPR to continue to develop a gender-responsive approach for issues concerning women in the judicial system, the legal system has failed to recognize that the rights of women in Manila City have been violated by the EO and to provide a remedy.

22. National and international NGOs have sought an official inquiry by the CEDAW Committee under article 8 of the OP into women's rights violations under the EO. It is of concern that an inquiry has still not been conducted as of the date of this submission, over 4 years after the request was communicated.

23. The Philippines has in the past acted with impunity despite official findings of human rights violations. In 2010, the CEDAW Committee issued a ruling in *Karen Tayag Vertido v. the Philippines*,

concerning denials of timely justice and remedy in a rape case. The CEDAW Committee found violations of General Recommendation 19 on violence against women, as well as of articles 2(c) and (f), which require states to ensure effective legal mechanisms to address gender discrimination and to modify discriminatory laws, and 5(a), requiring elimination of prejudices based on the stereotyped roles of women and men. The CEDAW Committee recommended that the Government provide compensation to the complainant,⁴¹ but the Government has denied compensation, stating that there is no right to remedy under CEDAW so compensation is not a state obligation.⁴² The CEDAW Committee also called upon the Government to take measures to ensure timely adjudication of rape cases, amend the definition of rape in current legislation to remove requirements of force and proof of penetration, and implement training on CEDAW for judges, lawyers, and law enforcement personnel.⁴³ It is of concern that the Government only committed to “review and fine-tune” the rape law, despite its clear inadequacies, which gave rise to the denial of justice in the first place.⁴⁴

24. The Philippines has also failed to implement recommendations made by the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions in 2007.⁴⁵ In 2009, the Rapporteur found that the Philippines failed to make any substantial progress and violations have substantially escalated.⁴⁶

BEST PRACTICES

25. The Philippines has taken an exemplary step to promote women’s rights by introducing legislation based on CEDAW known as the Magna Carta, 2009. In 2010, the Philippines Commission on Women adopted the Implementing Rules and Regulation for the Magna Carta, which establish government agencies’ and NGOs’ obligations to ensure women’s rights under the Magna Carta.⁴⁷ Despite this, however, neither restrictive family planning laws nor the criminal abortion ban have been struck down.

RECOMMENDATIONS

Women in the Philippines live in a regime that compels pregnancy and childbirth through some of the world’s most restrictive laws and policies. There is an urgent need for reform of these laws and policies, as recommended widely by human rights bodies and UN experts. Specifically, the Government should:

1. Fully implement the Magna Carta and take specific steps to formally repeal laws, policies and ordinances issues by the Government and LGUs that violate the Magna Carta;
2. Revoke the EO which for over ten years has denied Manila City residents access to contraceptive information and services, and enact national legislation establishing the obligation of national and local government bodies to ensure access to, and the affordability of a full range of modern contraceptives;
3. Take positive steps to ensure that emergency contraception is available in public and private health clinics and pharmacies;
4. Remove criminal penalties for abortion and create explicit exceptions for safe and legal abortions on grounds recognized by UN bodies, including where the woman’s life or health are in danger, and in cases of rape, incest, or fetal impairment;
5. Establish formal mechanisms to prevent human rights abuses against women seeking post-abortion care and to provide legal remedies when their rights are violated; and
6. Engage constructively with the CEDAW inquiry procedure.

- ¹ The Center for Reproductive Rights is an independent, non-profit organization with ECOSOC consultative status since 1997 that works to protect women's reproductive rights throughout the world.
- ² The International Human Rights Clinic at CUNY Law School works with domestic and international partners to advance and ensure women's human rights, including equality and non-discrimination, reproductive and sexual rights, economic and social rights and freedom from violence.
- ³ CENTER FOR REPRODUCTIVE RIGHTS, IMPOSING MISERY (2010), *available at* <http://bit.ly/sspNhy>.
- ⁴ CENTER FOR REPRODUCTIVE RIGHTS, FORSAKEN LIVES: THE HARMFUL IMPACT OF THE PHILIPPINE CRIMINAL ABORTION BAN (2010), *available at* <http://bit.ly/tfIKNN>. (Philippines will hereinafter be referenced as Phil.).
- ⁵ CONST. (1987), art. III, sec. 1; art. II, secs. 14-15; art. XIII, sec. 11 (Phil.).
- ⁶ An Act Providing for the Magna Carta of Women, Rep. Act No. 9710, ch. IV, § 17(a)(3) (2008) (Phil.).
- ⁷ REVISED PENAL CODE, Act No. 3815, arts. 256-59 (Phil.).
- ⁸ Declaring Total Commitment and Support to the Responsible Parenthood Movement in the City of Manila and Enunciating Police Declarations in Pursuit Thereof, Exec. Ord. No. 003, (2000) (Phil.).
- ⁹ Reinir Padua, *7 Bataan villages ban artificial contraceptives*, THE PHIL. STAR (Updated Sept. 9, 2011).
- ¹⁰ Magna Carta of Women, *supra* note 6, ch. VI, sec. 46.
- ¹¹ NAT'L ECONOMIC AND DEV. AUTHORITY, PHIL. MIDTERM PROGRESS REPORT ON THE MILLENNIUM DEVELOPMENT GOALS 2007 34 (2007).
- ¹² CENTER FOR REPRODUCTIVE RIGHTS, IMPOSING MISERY, *supra* note 3, at 33.
- ¹³ NAT'L STATISTICS OFFICE, PHIL. NAT'L DEMOGRAPHIC AND HEALTH SURVEY 2003 67, tbl. 5.12 (2004).
- ¹⁴ GUTTMACHER INSTITUTE, UNINTENDED PREGNANCY AND INDUCED ABORTION IN THE PHIL.: CAUSES AND CONSEQUENCES 4 (2006).
- ¹⁵ NAT'L STATISTICS OFFICE, PHIL. NAT'L DEMOGRAPHIC AND HEALTH SURVEY 2008 85 (2009).
- ¹⁶ Guttmacher Institute, *Meeting Women's Contraceptive Needs in the Phil.*, 1 IN BRIEF 3 (2009).
- ¹⁷ Guttmacher Institute, *Facts on Barriers to Contraceptive Use In the Phil.*, IN BRIEF 4 (2010).
- ¹⁸ PHIL. NAT'L DEMOGRAPHIC AND HEALTH SURVEY 2003, *supra* note 13, at 102, tbl. 7.10. *See also* UN Exec, *RP may miss global goal to cut maternity deaths*, ASSOCIATED PRESS (Mar. 29, 2007).
- ¹⁹ *See, e.g.*, CEDAW Comm., *Concluding Observations (CO): Slovakia*, ¶¶ 42-43, U.N. Doc. CEDAW/C/SVK/CO/4 (2008); *see also* Human Rights Comm., *CO: Poland*, ¶ 9, U.N. Doc. CCPR/CO/82/POL (2004); CRC Comm., *Gen. Comment No. 3*, ¶ 20, U.N. Doc. CRC/GC/2003/3 (2003); ESCR Comm., *Gen. Comment No. 14*, ¶¶ 12(b)(iii), 43, U.N. Doc. E/C.12/2000/4 (2000).
- ²⁰ CEDAW Comm., *CO: Phil.*, ¶ 28, U.N. Doc. CEDAW/C/PHI/CO/6 (2006).
- ²¹ ESCR Comm., *CO: Phil.*, ¶ 31, U.N. Doc. E/C.12/PHL/CO/4 (2008).
- ²² CRC Comm., *CO: The Phil.*, ¶ 61, U.N. Doc. CRC/C/PHL/CO/3-4 (2009).
- ²³ *Id.* ¶¶ 61-62.
- ²⁴ SR on Violence against Women, *Addendum, Commc'ns to and from Gov'ts*, ¶ 317, U.N. Doc. A/HRC/14/22/Add.1 (2010).
- ²⁵ *Id.*
- ²⁶ *Id.* ¶ 329.
- ²⁷ UPR, *Report of the Working Group on the UPR: The Phil.*, ¶ 50, U.N. Doc. A/HRC/8/28 (2008).
- ²⁸ *See generally* SR on the Right to Health, *Right of everyone to the enjoyment of the highest attainable standard of physical and mental health*, U.N. Doc. A/66/254 (2011).
- ²⁹ Lourdes E. Osil v. Office of the City of the Mayor of Manila, and the City Health Department of the City of Manila, SP Proc. No. 102331, ¶¶ 1.5, 2.2, 2.7 (C.A., Jan. 29, 2008) (Phil.).
- ³⁰ COMM'N ON HUMAN RIGHTS OF THE PHIL., EO NO. 003: DISCRIMINATORY OR RIGHTS BASED? CHR ADVISORY ON THE LOCAL ORDINANCE BY THE CITY OF MANILA, CHR (IV) A2010-005 4-5 (2010).
- ³¹ Padua, *7 Bataan villages ban artificial contraceptives*, *supra* note 9; Barangay Cupang Proper Ordinance No. 004, Series of 2011; Barangay Cupang West Ordinance No. 08, Series of 2011; Barangay Puerto Rivas Ibaba Ordinance No. 09, Series of 2011; Barangay Puerto Rivas Itaas Ordinance No. 01, Series of 2011; Barangay Puerto Rivas Lote Ordinance No. 03-01, Series of 2011; Barangay Tortugas Ordinance No. 03, Series of 2011; Barangay Tanato Ordinance, Series of 2011.
- ³² *See, e.g.*, Barangay Tortugas Ordinance, *supra* note 31, §§ 4, (5), 6(1), 6(4).
- ³³ Padua, *7 Bataan villages ban artificial contraceptives*, *supra* note 9.
- ³⁴ *See Supplementary Information to the Committee on the Elimination of Discrimination against Women: Phil.*, ENGENDERRIGHTS, ¶ 2 (Aug. 8, 2006), <http://www.engenderights.org/?q=node/35>.
- ³⁵ World Health Organization (WHO), Emergency Contraception, Fact sheet No. 244 (Updated Oct. 2005).
- ³⁶ Guttmacher Institute, *Meeting Women's Contraceptive Needs in the Phil.*, *supra* note 16, at 2.
- ³⁷ ESCR Comm., *CO: Phil.*, *supra* note 21, ¶ 31.
- ³⁸ CEDAW Comm., *CO: Phil.*, *supra* note 20, ¶ 28.
- ³⁹ *See* WHO, MODEL LIST OF ESSENTIAL MEDICINES 28 (16th ed., updated, 2009).
- ⁴⁰ CEDAW Comm., *CO: Phil.*, *supra* note 20, ¶ 28.
- ⁴¹ CEDAW Comm., *Communication No. 18/2008*, ¶ 8.9, U.N. Doc. CEDAW/C/46/D/18/2008 (2010).
- ⁴² Response of the Gov't of the Republic of the Phil. to the Views of the United Nations Committee on the Elimination of All Forms of Discrimination Against Women in Communication No. 18/2008, ¶ 7 (Apr. 2011).
- ⁴³ *Id.* ¶¶ 10-13.
- ⁴⁴ *Id.* ¶ 11.
- ⁴⁵ SR on Extrajudicial, Summary or Arbitrary Executions (SREX), *Civil and Political Rights, Including the Questions of Disappearances and Summary Executions*, ¶¶ 63-66, U.N. Doc. A/HRC/4/20/Add.3 (2007).
- ⁴⁶ SREX, *Addendum, Follow-up to Country Recommendations – Phil.*, ¶ 43, U.N. Doc. A/HRC/11/2/Add.8 (2009).

⁴⁷ Phil. Comm'n on Women, *PCW Board adopts MCW IRR* (Apr. 7, 2010), <http://pcw.gov.ph/index.php/ncrfw-photo-releases/409-news-pcw-adopts-mcw-irr>; *see generally* PHIL. COMM'N ON WOMEN, *THE MAGNA CARTA OF WOMEN, IMPLEMENTING RULES AND REGULATIONS* (2010).