

November 1, 2007

Pre-Sessional Working Group of the Committee on Economic, Social and Cultural Rights

Re: Supplementary information on the Philippines

Dear Working Group Members:

Reproductive health and rights receive broad protection under the International Covenant on Economic, Social and Cultural Rights (the Convention). Article 12(1) recognizes “the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.”¹ When interpreting the right to health, the Economic, Social and Cultural Rights Committee (the Committee), in General Comment 14, has explicitly defined this right to “include the right to control one’s health and body, including sexual and reproductive freedoms”.² It also emphasizes the need for states parties to provide a full range of high quality and affordable health care, including sexual and reproductive services, such as family planning.³ Articles 2(2) and 3 of the Convention also guarantee all persons the rights set forth in the ICESCR without discrimination, specifically as to “sex, social origin or other status”.⁴ In line with the spirit of this provision, the Committee has characterized the duty to prevent discrimination in access to health care as a “core obligation” of the state.⁵

Through this letter, the Center for Reproductive Rights⁶ would like to draw the attention of the Pre-Sessional Working Group to three interrelated issues of concern that implicate women’s reproductive rights in the Philippines — the lack of access to modern contraception, the continuing illegal status of abortion and high rates of maternal mortality—and propose questions for inclusion in the official list of questions transmitted to the government of the Philippines, prior to the formal reporting session. Contextual information has been provided in brief to enable the working group to assess the need for an official response in each case. A detailed report documenting human rights violations, entitled *Imposing Misery: The Impact of Manila’s Contraception Ban on Women and Families*, has been included to support the case for a thorough investigation.

A. INADEQUATE ACCESS TO CONTRACEPTION

A significant number of Filipino women, especially low-income women and adolescent girls, continue to experience insurmountable barriers and deep inequities in access to basic reproductive health services and information. Despite constitutional provisions for a secular state,⁷ the Catholic Church and other conservatives continue to impact reproductive health policies, violating the principle of separation of church and state. This has previously been an issue of concern for the Committee, which, in its concluding observations to the Government of the Philippines over ten years ago, noted concern for the “entrenched conservative religious influences which have often inhibited and aborted

attempts to improve the lot of the disadvantaged classes and to remove some of the socio-cultural ills which beset the Philippines”.⁸ This influence is exemplified in the order made by the Department of Health in 2002 to mainstream natural family planning (NFP) on the ground that “NFP is the only method acceptable to the Catholic Church”.⁹ The government’s promotion of NFP has had a heightened negative impact on access to family planning information and services because the government is the main provider of family planning services, with 7 out of 10 users relying on government facilities.¹⁰

The delegation of responsibility and control of budgets to local government units (LGUs) for family planning information and services, under the 1991 Local Government Code and the 1996 executive order, has created further barriers to access. The Committee noted in its 1995 Concluding Observations to the Government of the Philippines that any privatization of health services “does not in any way relieve the Government of its covenant-based obligation to use all available means to promote adequate access to health care services, particularly for the poorer segments of the population”.¹¹ The Initial-Fourth Periodic Report of the Government of the Philippines to the Committee, submitted on 14 December 2006 (Periodic Report) concedes that most LGUs consider health as a low priority in budgetary allocations” with the budget for health services “kept at a minimum”.¹²

The policy of banning all ‘artificial’ birth control methods including condoms, pills, intra-uterine devices and sterilization, introduced by a number of LGUs in recent years, still prevails in Manila City pursuant to Executive Order Number 003 (EO) of the former mayor of Manila City, Jose L. Atienza, and is having grave economic, social, physical and psychological consequences for women and their families,¹³ as described in the attached report. A study by the Allan Guttmacher Institute in collaboration with local experts (AGI Study) found a higher proportion of unintended pregnancies in Metro Manila, which includes Manila City, than anywhere else in the country,¹⁴ which is in large part due to the ban.

The effects of the EO in Manila City have hit poor women and their families the hardest, with long-term and irreversible effects on their well-being, security, development and quality of life.¹⁵ The duty to ensure accessibility requires that the most vulnerable and marginalized sections of the population in particular are able to access necessary services, and that services be affordable for all.¹⁶ In the case of Manila City, a city with more than 1.5 million people, with the highest population density of any major city in the world, more than half a million women are of childbearing age.¹⁷ Often these women have over six or seven children and the reality of these women’s lives, which is documented in *Imposing Misery*, is extreme financial hardship, mental anguish and medical complications.¹⁸

As an overarching principle, the Economic, Social and Cultural Rights Covenant requires the progressive realization of the right to health, meaning that “States parties have a specific and continuing obligation to move as expeditiously and effectively as possible towards the full realization of article 12.”¹⁹ Therefore, “there is a strong presumption that retrogressive measures taken in relation to the right to health are not permissible.”²⁰ Prior

to the implementation of the ban, as evidenced in Manila City, information dissemination and services related to family planning were available. Contrary to the duty of progressively realizing optimal health, the policy of the mayor of Manila City is a step back for women's health and well-being. Today, women in Manila City want just one thing; that is, for contraceptive supplies to be restored.²¹ This is a concern, however, across the country. According to the AGI Study, nearly half of all married women of reproductive age in the Philippines have an unmet need for effective contraception.²² In 2005, the contraceptive prevalence rate (any method) for married women between the ages of 15-49 nationwide was 49% and only 33% used modern methods,²³ making the Philippines a country with one of the lowest proportion of modern contraception use in East and Southeast Asia.²⁴

This Committee has consistently commented on the need for access to contraception and family planning information and services²⁵ and has framed lack of such access as a violation of the right to health.²⁶

B. ILLEGAL STATUS OF ABORTION

The Philippines has one of the most restrictive abortion laws in the world, penalizing both the woman who undergo abortion and the providers of abortion services, without providing clear exceptions even when the woman's life or health is in danger, the pregnancy is the result of rape, or fetal impairment.²⁷ As a result, the Philippines remains far behind global trends whereby the majority of the world's people live in countries where induced abortion is permitted either for a wide range of reasons or without restriction as to reason. The current legal restriction on abortion in the Philippines derives from the Philippine Revised Penal Code of 1932, which was a mere translation of the Spanish colonial Penal Code of 1870.²⁸ In Spain, the law on abortion has been repealed and abortion is now permitted on grounds of rape and fetal impairment.²⁹ The AGI Study reveals a shocking picture of abortion in the Philippines. Despite the illegality of abortion, in 2000, approximately 473,000 women had abortions,³⁰ with an estimated 79,000 women hospitalized for complications due to abortion.³¹ As further evidence of the dire complications experienced by women, only 30% of women who attempt an unsafe abortion succeed the first time, leading to repeated attempts which increase the risk of their health and lives each time.³²

In 2000, the DOH introduced the Prevention and Management of Abortion and its Complications (PMAC) policy³³ which aims to improve the health care services for women suffering complications from induced abortion. However, not all women who need post-abortion care are able to obtain it.³⁴ The criminalization of abortion has created an extremely prohibitive environment leading to discriminatory and inhumane treatment for women seeking post-abortion care following an unsafe abortion, including reports of punitive attitudes, verbal abuse and slapping.³⁵

Denial of artificial contraception in Manila City has exacerbated the problem. According to an independent study, whilst the national abortion rate in the Philippines changed little between 1994 and 2000, large increases occurred in metropolitan Manila (from 41 to 52

per 1,000 women aged 15-44).³⁶ The Periodic Report of the Government of the Philippines also concedes that, according to indirect estimates of abortion rates, metropolitan Manila has the highest rate of abortion in the country (the Periodic Report indicates a lower rate of abortion: 33 per 1,000 women aged 15-44 years).³⁷ The Periodic Report, which notes the contribution of unsafe abortion to hemorrhage and consequently maternal deaths, is silent on the correlation between the promotion of NFP, lack of access to modern contraceptives and consequent high rates of induced, unsafe abortion. This lack of recognition of the direct correlation is erroneous and unjustifiable given that the impact of its contraception-ban policies on Filipino women and their families is a serious public health issue.³⁸ Finally, it is incoherent that the Periodic Report of the Philippines Government recognizes the ongoing suffering of women who survive abortions complications, including “acute or chronic illness and debilitating conditions such as anemia or reproductive tract infections or lifelong disabilities such as obstetric fistulae”³⁹ and yet the government continues to maintain a prohibition on all abortions.

C. MATERNAL MORTALITY

The Philippines has one of the highest rates of maternal mortality in East and South East Asia.⁴⁰ The current maternal mortality rate in the Philippines is 200 deaths per 100,000 live births⁴¹ (as compared with, for example, Malaysia, which had a maternal mortality rate of 41 per 100,000 live births in 2000).⁴² The government in fact notes that it is “very far behind Malaysia, Japan and Singapore” with regards to reducing its maternal mortality rate.⁴³ The Periodic Report acknowledges that there has been no significant decline in the rate of maternal mortality since the government last reported in 1994 and that the country’s health situation has barely improved unlike in other Southeast Asian countries.⁴⁴ The Philippines is clearly far from reaching the U.N. Millennium Development Goal for Maternal Mortality, to which it has committed, of reducing the maternal mortality ratio by three-quarters.⁴⁵ The Government has also conceded great disparities in health, with maternal mortality higher in poor rural and isolated areas and poor urban communities.⁴⁶ In 1995, for example, the five highest mortality provinces had maternal mortality rates twice as high as the five lowest mortality provinces.⁴⁷

In the Philippines, doctors constantly see limited access to health care and its direct contribution to pregnancy complications and maternal mortality and morbidity.⁴⁸ The director of Dr. Jose Fabella Memorial Hospital, a hospital run by the Department of Health in Manila and the country’s designated maternity hospital, described the main causes of pregnancy complications at his hospital: “To begin with, the state of the mother’s health is already compromised, because they come from a very poor family, so they are already malnourished, anemic. Too-frequent deliveries, very short spacing, sometimes no space at all. These are problems. Coupled with that there are the medical conditions of any woman.”⁴⁹

Further, a large percentage of maternal deaths are due to complications from unsafe abortion.⁵⁰ Approximately, 800 women die every year due to complications resulting from unsafe abortion.⁵¹ The Committee has consistently expressed concern to States parties about the high rates of maternal mortality,⁵² and over the relationship between

high rates of maternal mortality and unsafe abortions.⁵³ There is an obvious link between maternal mortality rates resulting from unsafe abortion and lack of access to contraception, a link that the Government has failed to recognize in its Periodic Report. Article 10 of the Convention grants special protection to pregnant women before and after delivery. A high maternal mortality rate is indicative of the government's failure to ensure the proper protection of maternal health as envisaged under international law.

The ongoing neglect of the Government of the Philippines in addressing these rights violations ensuing from inadequate access to contraception, unsafe abortion and maternal mortality is evident of its failure to guarantee the right to health to women and their families in the Philippines.

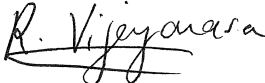
Questions:

- 1. What steps is the government taking to ensure that the mayor of Manila City overturns the Executive Order 003 (EO) "upholding natural family planning" and ensures that women are provided a full-range of family planning choices, including artificial family planning?**
- 2. What steps are being taken by the government to protect women from pregnancy-related death and morbidity due to unsafe abortion and to prevent discrimination and abuse in post-abortion care facilities?**
- 3. How does the government propose to realize in practice its stated policy goals of reducing maternal mortality in the Philippines? Where does accountability lie within the government for the persistent failure to meet the official targets for reducing the maternal death rate?**

We hope the Working Group takes this information under consideration while formulating the list of questions for the government. If you have any questions, or would like further information, please do not hesitate to contact the undersigned.

Very truly yours,


Melissa Upreti
Senior Legal Adviser, Asia and International Legal Program


Ramona Vijayarasa
Legal Fellow, International Legal Program

¹ International Covenant on Economic, Social and Cultural Rights, G.A. Res. 2200A (XXI), U.N. GAOR, Supp. No. 16, at 49, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 3 (*entered into force* Jan. 3, 1976), art. 12(1) [hereinafter Economic, Social and Cultural Rights Covenant].

² Committee on Economic, Social and Cultural Rights, Gen. Comment 14, *The Right to the Highest Attainable Standard of Health*, para. 8, U.N. Doc. E/C.12/2000/4 (2000) [hereinafter CESCR Gen. Comment 14].

³ *Id.* para. 14.

⁴ Economic, Social, and Cultural Rights Covenant, *supra* note 1, art. 2(2).

⁵ CESCR Gen. Comment 14, *supra* note 2, para. 19.

⁶ The Center for Reproductive Rights (formerly the Center for Reproductive Law and Policy) is a nonprofit legal advocacy organization dedicated to promoting and defending women's reproductive rights worldwide. See <http://www.reproductiverights.org/about.html>.

⁷ PHIL. CONST (1987), art. 2, § 6 (declaring separation of church and state).

⁸ *Concluding Observations to the Committee on Economic, Social and Cultural Rights: The Philippines*, 12th Sess., 29th mtg., para. 8 U.N. Doc. E/C.12/1995/7 (1995) [hereinafter *Concluding Observations of CESCR: The Philippines*].

⁹ CENTER FOR REPRODUCTIVE RIGHTS (CRR) & ASIAN-PACIFIC RESOURCE AND RESEARCH CENTER FOR WOMEN (ARROW), WOMEN OF THE WORLD (WOW): LAWS AND POLICIES AFFECTING THEIR REPRODUCTIVE LIVES (EAST AND SOUTHEAST ASIA), New York 2005, 123, 136 (citing the Department of Health, Office of the Secretary, Administrative Order No 125 S. 2002 National NFP Strategic Plan Year 2002-2006) [hereinafter CRR AND ARROW, WOW-EAST AND SOUTHEAST ASIA 2005].

¹⁰ CRR AND ARROW, WOW-EAST AND SOUTHEAST ASIA 2005, *supra* note 9, at 138.

¹¹ *Concluding Observations of CESCR: The Philippines*, *supra* note 8, para. 20.

¹² Initial-Fourth Periodic Report submitted by Government of the Philippines under articles 16 and 17 of the Covenant, Implementation of the International Covenant on Economic, Social and Cultural Rights, 15 August 2007, para. 786, U.N. Doc. E/C.12/PHL/4 [hereinafter Initial-Fourth Periodic Report of the Philippines].

¹³ See CENTER FOR REPRODUCTIVE RIGHTS (CRR), LINANGAN NG KABABAIHAN, INC. (LIKHAAN), AND REPRODUCTIVE HEALTH, RIGHTS AND ETHICS CENTER FOR STUDIES AND TRAINING (REPROCEN), IMPOSING MISERY: THE IMPACT OF MANILA'S BAN ON CONTRACEPTION, 2007 [hereinafter IMPOSING MISERY]. The Executive Order does not ban all forms of contraception on its face. In practice, however, the policy has been applied to prohibit the provision of "artificial" family planning services in all city hospitals and health centers. See IMPOSING MISERY, at 14 for detailed explanation of the EO.

¹⁴ S. SINGH ET. AL., GUTTMACHER INSTITUTE, UNINTENDED PREGNANCY AND INDUCED ABORTION IN THE PHILIPPINES: CAUSES AND CONSEQUENCES, 4 (2006) at 4 [hereinafter SINGH ET. AL., UNINTENDED PREGNANCY].

¹⁵ IMPOSING MISERY, *supra* note 13.

¹⁶ CESCR General Comment 14, *supra* note 2, para. 12(b).

¹⁷ IMPOSING MISERY, *supra* note 13, at 16.

¹⁸ IMPOSING MISERY, *supra* note 13, at 17-22.

¹⁹ CESCR General Comment 14, *supra* note 2, para. 31.

²⁰ *Id.* para. 32.

²¹ Comment to Melissa Upreti by Attorney Elizabeth Pangalangan via phone (October 26, 2007). Atty. Pangalangan has been meeting with women who have been affected by the Manila City ban to discuss strategies to overturn it.

²² SINGH ET. AL., UNINTENDED PREGNANCY, *supra* note 14, at 4.

²³ UNFPA, 2005 STATE OF THE WORLD POPULATION, The Promises of Equality: Gender Equity, Reproductive Health, and the Millennium Development Goals (2005), at 108 (*available at* <http://www.unfpa.org/publications/detail.cfm?ID=248&filterListType=1>) [hereinafter UNFPA, 2005 STATE OF THE WORLD POPULATION]

²⁴ See CRR AND ARROW, WOW-EAST AND SOUTHEAST ASIA 2005, *supra* note 9, at 14.

²⁵ CENTER FOR REPRODUCTIVE RIGHTS & UNIVERSITY OF TORONTO PROGRAMME OF REPRODUCTIVE AND SEXUAL HEALTH LAW. BRINGING RIGHTS TO BEAR: AN ANALYSIS OF THE WORK OF UN TREATY MONITORING BODIES ON REPRODUCTIVE AND SEXUAL RIGHTS 153 (2002) at 131 [hereinafter BRINGING RIGHTS TO BEAR]. This is supported by the Committee's Concluding Observations to the following

countries as cited in this publication. *See e.g.*, **Armenia**, 08/12/99, U.N. Doc. E/C.12/1/Add.39, ¶ 15; **Cameroon**, 08/12/99, U.N. Doc. E/C.12/1/Add.40, ¶ 25; **Dominican Republic**, 12/12/97, U.N. Doc. E/C.12/1/Add.16, ¶ 15; **Dominican Republic**, 06/12/96, U.N. Doc. E/C.12/1/Add.6, ¶ 22; **Honduras**, 21/05/2001, U.N. Doc. E/C.12/1/Add.57, ¶ 27; **Paraguay**, 28/05/96, U.N. Doc. E/C.12/1/Add.1, ¶ 16; **Poland**, 16/06/98, U.N. Doc. E/C.12/1/Add.26, ¶ 12; **Saint Vincent and the Grenadines**, 02/12/97, U.N. Doc. E/C.12/1/Add.21, ¶ 12.

²⁶ *Id.* This is supported by the Committee's Concluding Observations to the following countries as cited in this publication. *See* **Cameroon**, 08/12/99, U.N. Doc. E/C.12/1/Add.40, ¶ 25; **Paraguay**, 28/05/96, U.N. Doc. E/C.12/1/Add.1, ¶ 16.

²⁷ The Revised Penal Code of the Philippines, arts. 256, 258, 259.

²⁸ The Revised Penal Code of the Philippines, as amended, arts. 256-259 [hereinafter The Revised Penal Code]; Pacifico Agabin, *The Legal Perspective on Abortion*, II (1) J. REPROD. HEALTH, RTS. AND ETHICS 2 (1995); The Philippine restriction on abortion, one of the vestiges of Spanish colonization in the Philippines, was lifted directly from the old Spanish Penal Code of 1870.

²⁹ CENTER FOR REPRODUCTIVE RIGHTS, RELIGIOUS VOICES WORLDWIDE SUPPORT CHOICE: PRO-CHOICE PERSPECTIVES IN FIVE WORLD RELIGIONS. Briefing paper. (2005) available at http://www.reproductiverights.org/pdf/pub_bp_tk_religious.pdf; Center for Reproductive Rights, poster, *The World's Abortion Laws 2007*.

³⁰ SINGH ET. AL., UNINTENDED PREGNANCY, *supra* note 14, at 4.

³¹ *Id.* at 5.

³² *Id.* at 5.

³³ Department of Health, Prevention, and Management of Abortion and Its Complications (PMAC) Policy, Administrative Order No. 45-B, s2000, at 1 (May 2, 2000) [hereinafter PMAC Policy].

³⁴ *Id.*

³⁵ Ermita Declaration, "Respect, Protect, and Fulfill SRHR for All," adopted during the First National Consultation Meeting Among Members and Partners of the Reproductive Rights Resource Group-Philippines, May 27-30, 2003, Ermita, Manila.

³⁶ *See*, Fatima Juarez, Josefina Cabigon, Susheela Singh and Rubina Hussain, *The Incidence of Induced Abortion in the Philippines: Current Level and Recent Trends*, 31(3) INT'L FAMILY PLANNING PERSPECTIVES, (September 2005), at 140.

³⁷ Initial-Fourth Periodic Report of the Philippines, *supra* note 12, para. 776.

³⁸ *Id.* para. 776.

³⁹ *Id.* para. 776.

⁴⁰ UNFPA, 2005 STATE OF THE WORLD POPULATION, *supra* note 22, at 108.

⁴¹ Population Reference Bureau, *Women of Our World 2005*, available at <http://www.prb.org/pdf05/WomenOfOurWorld2005.pdf>.

⁴² *Id.*; *See also* World Health Organisation, *Mortality Country Fact Sheet 2006*, available at http://www.who.int/whosis/mort/profiles/mort_wpro_mys_malaysia.pdf.

⁴³ Initial-Fourth Periodic Report of the Philippines, *supra* note 12, para. 705.

⁴⁴ *Id.* para. 705. According to the Periodic Report, the Philippines had a maternal mortality rate of 190 per 100,000 in 1970 and 179.7 in 1995, with the maternal mortality rate estimated in 1998 in the National Demographic Health Survey as 172 per 100,000 live births from 1991-1997.

⁴⁵ U.N. Millennium Development Goals, MDG 5, available at <http://www.un.org/millenniumgoals/index.html>.

⁴⁶ Initial-Fourth Periodic Report of the Philippines, *supra* note 12, paras. 71, 780.

⁴⁷ *Id.* para. 708.

⁴⁸ IMPOSING MISERY, *supra* note 13, at 21.

⁴⁹ *Id.* citing Interview with Dr. Ruben Flores, Medical Center Chief II, Dr. Jose Fabella Memorial Hospital, Manila, Phil. (Jan. 19, 2007)

⁵⁰ Programme of Action of the International Conference on Population and Development, Cairo, Egypt, Sept. 5-13, 1994, U.N. Doc. A/CONF.171/13/Rev.1 (1995), para. 8.19.

⁵¹ SINGH ET. AL., UNINTENDED PREGNANCY, *supra* note 14, at 5.

⁵² BRINGING RIGHTS TO BEAR, *supra* note 25, at 118. This is supported by the Committee's Concluding Observations to the following countries as cited in this publication. *See e.g.*, **Argentina**, 08/12/99, U.N.

Doc. E/C.12/1/Add.38, ¶ 24; **Bolivia**, 21/05/2001, U.N. Doc. E/C.12/1/Add.60, ¶ 23; **Cameroon**, 08/12/99, U.N. Doc. E/C.12/1/Add.40, ¶ 25; **Dominican Republic**, 12/12/97, U.N. Doc. E/C.12/1/Add.16, ¶ 15; **Dominican Republic**, 06/12/96, U.N. Doc. E/C.12/1/Add.6, ¶ 22; **Gambia**, 31/05/94, U.N. Doc. E/C.12/1994/9, ¶ 16; **Mali**, 21/12/94, U.N. Doc. E/C.12/1994/17, ¶ 13; **Mexico**, 08/12/99, U.N. Doc. E/C.12/1/Add.41, ¶ 29; **Mongolia**, 01/09/2000, U.N. Doc. E/C.12/1/Add.47, ¶ 15; **Morocco**, 01/12/2000, U.N. Doc. E/C.12/1/Add.55, ¶ 29; **Nepal**, 24/09/2001, U.N. Doc. E/C.12/1/Add.66, ¶ 32; **Panama**, 24/09/2001, U.N. Doc. E/C.12/1/Add.64, ¶ 20; **Paraguay**, 28/05/96, U.N. Doc. E/C.12/1/Add.1, ¶ 16; **Peru**, 16/05/97, U.N. Doc. E/C.12/Add.1/14, ¶ 16; **Senegal**, 24/09/2001, U.N. Doc. E/C.12/1/Add.62, ¶ 26; **Solomon Islands**, 14/05/99, U.N. Doc. E/C.12/1/Add.33, ¶ 22.

⁵³ *Id.* This is supported by the Committee's Concluding Observations to the following countries as cited in this publication. *See e.g.*, **Cameroon**, 08/12/99, U.N. Doc. E/C.12/1/Add.40, ¶ 25; **Mauritius**, 31/05/94, U.N. Doc. E/C.12/1994/8, ¶ 15; **Mexico**, 08/12/99, U.N. Doc. E/C.12/1/Add.41, ¶ 29; **Nepal**, 24/09/2001, U.N. Doc. E/C.12/1/Add.66, ¶ 32; **Panama**, 24/09/2001, U.N. Doc. E/C.12/1/Add.64, ¶ 20; **Poland**, 16/06/98, U.N. Doc. E/C.12/1/Add.26, ¶ 12; **Senegal**, 24/09/2001, U.N. Doc. E/C.12/1/Add.62, ¶ 26.