

**Human Rights Committee**

Office of the United Nations High Commissioner for Human Rights

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**Re: Supplementary information on the Philippines regarding restrictive laws on abortion and contraceptive information and services**

Dear Committee Members:

The Center for Reproductive Rights<sup>1</sup> (the Center) and the International Women's Human Rights Clinic at the City University of New York School of Law (IWHRC)<sup>2</sup> have prepared this letter to assist the Human Rights Committee's (HRC) Country Report Task Force for the Philippines which is scheduled to meet on March 29, 2012, in its review of the state party's compliance with the International Covenant on Civil and Political Rights (ICCPR) and formulation of the list of issues for the review. This letter focuses specifically on issues related to the status of women's reproductive rights in the Philippines, presenting evidence of grave violations of women's rights under restrictive contraceptive and abortion-related laws documented and published by the Center and local partners in two separate reports: *Imposing Misery: The Impact of Manila's Contraception Ban on Women and Families*<sup>3</sup> (*Imposing Misery*) (Annex 1), first released in 2007 and reprinted with an update in 2010, and *Forsaken Lives: The Harmful Impact of the Philippine Criminal Abortion Ban*<sup>4</sup> (*Forsaken Lives*) (Annex 2), published in 2010.

Since its first review of the Philippines in 1989, the HRC has requested information concerning adoption of public health measures and efforts to ensure women's rights by the state party.<sup>5</sup> Despite concerns about women's rights and health reflected in the HRC's questions and the HRC's recommendation that the Philippines ensure its laws comply with Covenant obligations at the conclusion of its last review in 2003,<sup>6</sup> specific laws constitute an ongoing and immediate threat to women's life, reproductive health, and rights. These laws, which include a nationwide criminal ban on abortion without any clear exceptions and restrictions on contraceptive information and services introduced by local governing bodies in the form of executive orders and ordinances that prevent government health facilities from providing modern contraceptives, have been criticized frequently by treaty monitoring bodies, including the Committee on the Rights of the Child (CRC Committee),<sup>7</sup> the Committee on the Elimination of Discrimination against Women (CEDAW Committee)<sup>8</sup>, and the Committee on Economic, Social and Cultural Rights (ESCR Committee).<sup>9</sup> However, the Philippine Government (the Government) has neglected to include any discussion of these restrictive laws in its Fourth Periodic Report to the HRC, reflecting a continuing failure to recognize that denial of reproductive health services leads to violations of women's human rights, including the rights to life, non-discrimination and equality, freedom from cruel, inhuman and degrading treatment (CIDT), and privacy as guaranteed under the ICCPR.

Impunity for violations stemming from these restrictive laws is widespread, including through denials of justice in domestic courts and the absence of other mechanisms for legal recourse. The Government must be encouraged by

the HRC to address these violations of women's civil and political rights as a result of the denial of key reproductive health services, particularly in light of the fact that domestic remedies for these violations have essentially proved to be non-existent. Through this submission, the Center and the IWHRC respectfully request that the impact of the Philippines' criminal abortion ban as well as legal restrictions on contraceptive information and services be included in the Task Force's list of issues it adopts for the Committee's review of the Philippines' compliance with the ICCPR at its 104<sup>th</sup> session in March 2012.

### **The Criminal Abortion Ban violates the ICCPR (Articles 3, 6, 7, 17)**

The Philippine Revised Penal Code of 1930 legally restricts abortion without clear exceptions, even in instances where the pregnancy endangers a woman's life or health, is a result of rape or incest, or in cases of fetal impairment, and prescribes severe criminal penalties for women and providers of abortions.<sup>10</sup> However, the criminal ban has not prevented abortions but has just made them extremely unsafe. In 2008 alone, it is estimated that over half a million abortions took place in the Philippines, resulting in 90,000 women seeking treatment for complications and 1,000 women dying.<sup>11</sup> The Center's report, *Forsaken Lives*, provides vivid accounts of women's experiences under the criminal abortion ban, including the difficult circumstances which cause women to risk their lives through unsafe abortions as well as the severe physical and mental anguish they experience as a result of resorting to dangerous methods in the absence of accessible information and services.<sup>12</sup> As discussed below, the HRC has repeatedly recognized that restrictive abortion laws violate the rights to life, non-discrimination and equality, freedom from CIDT, and privacy; the Philippine criminal abortion ban is currently one of the most restrictive in the world and clearly violates these provisions of the ICCPR.

**Right to life:** The HRC's General Comment 6 interprets **Article 6** of the ICCPR, which guarantees the right to life, as requiring measures to protect women from unnecessary losses of life related to pregnancy and childbirth.<sup>13</sup> The HRC has specifically noted that restrictive abortion laws violate the right to life by forcing women to seek unsafe abortions that threaten their lives, and has stated that governments must ensure women's access to health services so they are not forced to undergo life-threatening, clandestine abortions.<sup>14</sup> In its review of Chile, the HRC stated, "The State party has a duty to take measures to ensure the right to life of all persons, including pregnant women whose pregnancies are terminated."<sup>15</sup> The HRC has issued several concluding observations urging those states that criminalize abortion entirely or in all circumstances except to save a woman's life to revise their laws to allow for exceptions.<sup>16</sup>

**Right to equality:** In General Comment 28, the HRC recognizes that **Article 3** of the ICCPR, which guarantees equality between men and women, is implicated where women are forced to undergo "life-threatening clandestine"<sup>17</sup> abortions or are denied access to abortion in the case of rape.<sup>18</sup> This is in line with the CEDAW Committee's view that criminalization of medical services specific to women and the failure to legally provide for certain reproductive health services that only women need constitutes discrimination.<sup>19</sup>

**Right to freedom from CIDT: Article 7** of the ICCPR guarantees the right to freedom from CIDT. The HRC has found that Article 7 may be implicated where abortion is not available for women who have become pregnant from rape or in cases of fetal impairment. Regarding rape, in General Comment 28, the HRC has stated that information on the availability of safe abortion to women who have become pregnant as a result of rape is required for assessment of compliance with Article 7.<sup>20</sup> General Comment 28 states that information provided on this issue "should include measures of protection, including legal remedies, for women whose rights under article 7 have been violated."<sup>21</sup> On the issue of therapeutic abortion in cases of fetal impairment, in the case of *K.L. v. Peru*, the HRC found that the physical and psychological harm arising from forcing a pregnant girl to carry a pregnancy to term despite a diagnosis of anencephaly (a fetal complication incompatible with life) was foreseeable and constituted CIDT<sup>22</sup> in violation of Article 7.<sup>23</sup> This finding has been reiterated by the HRC in the case of *L.M.R. v. Argentina*, involving the denial of an abortion to a girl with mental disabilities who had been raped, despite the fact that the abortion was legal under Argentine law.<sup>24</sup>

**Right to privacy: Article 17** guarantees freedom from arbitrary interference with privacy. The HRC has stated that interference with privacy is considered “arbitrary” even if it is based on a national law, if that law does not comply with the ICCPR.<sup>25</sup> In the Philippines, healthcare workers and others rely routinely on the criminal ban to deny women access to safe abortions; this constitutes arbitrary interference with women’s right to privacy as envisioned by the HRC under the ICCPR.

### **The Effects of the Criminal Abortion Ban on Post-Abortion Care Violate the ICCPR (Articles 3, 6, 7, 17)**

The Center’s report, *Forsaken Lives*, extensively documents the impact of the Philippine abortion ban on women seeking treatment for abortion complications, revealing that while post-abortion care is legal, the criminal ban on abortion has created an environment in which health workers routinely subject patients to mental and physical abuse, stigmatization, and judgment. Women interviewed for *Forsaken Lives* stated that they feared being reported to the authorities for having abortions;<sup>26</sup> many delayed seeking care or did not seek care at all for complications due to the fear of arrest.<sup>27</sup> Women who did seek treatment in hospitals reported being manhandled, verbally abused, threatened with arrest, and made to wait to receive care, even if they required immediate medical attention.<sup>28</sup>

The quality of post-abortion care is shaped largely by providers’ attitudes towards abortion which in turn is influenced by the criminal ban. As documented in *Forsaken Lives*, the criminal ban has created fear of criminal liability for health workers, undermining their ability to care for patients.<sup>29</sup> In fact, many providers erroneously believe they are legally required to report abortions and fear they will be implicated as accomplices if they fail to do so.<sup>30</sup> 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.<sup>31</sup> Due to the stigma of abortion, even women who have suffered from spontaneous abortions (miscarriages) face harassment and delays in treatment.<sup>32</sup> These practices involve egregious violations of medical ethics, patient confidentiality, and dignity for which there is no legal recourse and filing a complaint would entail admitting illegally inducing an abortion, forcing women to self-incriminate themselves.

The Government introduced the Prevention and Management of Post-abortion Complications (PMAC) Policy in 2000, mainly to ensure the provision of humane post-abortion care and prevent mistreatment of women seeking services,<sup>33</sup> but it has not been prioritized or meaningfully implemented. Key officials interviewed for *Forsaken Lives* were not familiar with the policy,<sup>34</sup> and many health workers complained that the Government has failed to provide necessary training, allocate adequate funding, and ensure the availability of necessary medicines needed for post-abortion care.<sup>35</sup>

For example, misoprostol, a drug that the World Health Organization (WHO) has deemed essential for the management of post-partum hemorrhage, incomplete abortion, and miscarriages,<sup>36</sup> was banned by the Philippine Bureau of Food and Drugs (BFAD) in 2002 because of its potential use as an abortifacient.<sup>37</sup> This ban endangers women’s lives by depriving health professionals of an effective treatment for post-partum hemorrhage and other complications arising from unsafe or incomplete abortions.<sup>38</sup>

The Government’s failure to ensure women’s access to timely, confidential, and non-abusive post-abortion care, including by meaningful implementation of the PMAC Policy and introduction of the harmful BFAD circular, negatively implicates the rights to life, equality and non-discrimination in healthcare, privacy, and freedom from CIDT as guaranteed under the ICCPR.

**Right to life:** The HRC has stated that **Article 6** obligates states parties to ensure the right to life of all persons, including specifically women who have terminated their pregnancies even when abortion is illegal.<sup>39</sup> The HRC has specifically criticized reporting requirements for abortion because they discourage women from seeking medical treatment, thereby endangering their lives,<sup>40</sup> and has recommended that states protect the medical

information<sup>41</sup> of women seeking post-abortion care and adopt laws to ensure that information is kept confidential.<sup>42</sup>

The Government's criminalization of abortion further creates ethical and professional dilemmas for healthcare providers, who cannot legally provide an abortion or prescribe misoprostol for post-partum hemorrhage and other complications even where they believe it is in their patients' best medical interest. The HRC has criticized laws and policies that place healthcare workers in this situation under Article 6, and has issued concluding observations urging states to avoid penalizing medical professionals in the exercise of their professional responsibilities.<sup>43</sup>

**Right to privacy:** The HRC has established in General Comment 28 that women's rights to privacy may be violated "where States impose a legal duty upon doctors and other health personnel to report cases of women who have undergone abortion."<sup>44</sup> Even in the absence of a formal reporting requirement, the existence of criminal sanctions may create the impression of an obligation, as is the case in the Philippines. As such, the HRC has urged states parties to amend laws giving rise to a reporting requirement for women who have abortion complications "to protect the confidentiality of medical information."<sup>45</sup> Further, threats of arrest by providers due to the Government's failure to clarify that reporting requirements do not exist constitute an interference with individual privacy, in that they arbitrarily interfere with women's ability to access potentially life-saving medical care;<sup>46</sup> many such cases have been documented in *Forsaken Lives*.<sup>47</sup>

**Right to freedom from CIDT:** The HRC has specifically recognized that the legal prohibition against torture and ill-treatment protects "in particular . . . patients in . . . medical institutions."<sup>48</sup> This protection naturally extends to women seeking post-abortion care in health facilities. In *K.L.* and *L.M.R.*, the HRC found that the denial of a legal abortion with the knowledge of foreseeable physical or mental harm constituted CIDT. Similar to the denial of abortion, the delays and denial of post-abortion care may constitute a violation of CIDT as the physical and mental risks are also serious and foreseeable. The HRC has stated in General Comment 28 that reporting requirements for abortion may give rise to violations of **Article 7**.<sup>49</sup> The Committee against Torture (CAT Committee) has supported this position, stating in its concluding observations to Chile that the government must ensure immediate and unconditional treatment for women seeking emergency medical care for abortion complications, in compliance with WHO guidelines on post-abortion care.<sup>50</sup> Importantly, the CAT Committee has criticized the practice of coercing women seeking post-abortion care to disclose information about who performed the illegal abortion as violating the Convention against Torture, and urged Chile to take steps to eliminate the practice.<sup>51</sup>

**Right to non-discrimination:** As with the denial of legal access to abortion, the failure to remove barriers to accessing post-abortion care caused by the criminal abortion ban constitutes a failure to ensure the provision of a health service that only women need, a standard which the HRC has recognized in finding a violation of the ICCPR. In *L.M.R.*, the HRC found a violation of the obligation to provide a remedy for the violation of **Article 3**, which the author argued was breached by the government's failure to "to exercise due diligence in safeguarding a legal right to a procedure required solely by women, coupled with the arbitrary action of the medical staff."<sup>52</sup> Based on the facts documented in *Forsaken Lives*, it may be argued that the Philippines is similarly guilty of discrimination as a consequence of having failed entirely to uphold its obligation to exercise due diligence in safeguarding women's international and domestic legal right to post-abortion care, which is a medical service only women need.

### **Violations due to Lack of Access to Contraceptive Information and Services (Articles 3, 6, 17, 23)**

Rather than implementing its obligations to ensure that women have access to contraceptive information and services, over the last twelve years<sup>53</sup> the Philippines has adopted a number of retrogressive measures that restrict and undermine women's access to modern contraceptives. 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),<sup>54</sup> including condoms, pills, intrauterine devices (IUD), and surgical sterilization.<sup>55</sup> As a

result, contraceptive information and services have disappeared in many health facilities in Manila City; a large number of providers have refused to provide contraceptive information and services; and some nongovernmental and private clinics have been intimidated into halting the provision of contraceptive information and services.<sup>56</sup> 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,<sup>57</sup> 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.<sup>58</sup> The ban has disproportionately impacted poor women who, on average, have two more children than they want.<sup>59</sup> Poor women face the greatest barriers in accessing contraceptives, and as noted in the Center's report, *Imposing Misery*, they are most likely "to suffer the physical, psychological, economic and social consequences of unintended pregnancies."<sup>60</sup>

As will be discussed in detail on page seven, 20 Manila City women and men filed a court case in 2008, seeking the EO to be held unconstitutional and to be revoked; however, the case has yet to be heard on the merits.<sup>61</sup> In 2010, the Commission on Human Rights of the Philippines (CHRP) urged the Manila City government to revoke the EO<sup>62</sup> as it violates women's rights, and the Special Rapporteurs on the Right to Health (SRRH) and Violence against Women wrote letters to the Philippine Government expressing concern about the lack of contraceptive access in Manila and the resulting impact on unwanted pregnancies, unsafe abortions, and maternal mortality and morbidity.<sup>63</sup> Despite these interventions, the EO remains in force, marking twelve years during which Manila City women have been continuously exposed to the immediate physical, mental and personal risks of unplanned, unwanted pregnancy.

Taking Manila City's lead, in 2011 seven LGUs in the province of Bataan passed more restrictive ordinances that penalize the sale, promotion, advertisement, and prescription of contraceptive information and services by incorrectly equating hormonal contraception and IUDs to methods of abortion.<sup>64</sup> An ordinance in the metropolitan Manila area, Ayala Alabang, goes so far as to require a prescription to purchase condoms.<sup>65</sup> Furthermore, despite the BFAD's 1999 approval of the emergency contraceptive (EC) Postinor, in 2001, in response to a petition by a conservative Catholic group, the Philippine Department of Health (DOH) deregistered Postinor,<sup>66</sup> calling it an "abortifacient,"<sup>67</sup> despite the fact that the WHO has clarified that EC does not cause abortion as it acts prior to implantation.<sup>68</sup> The DOH's failure to act affirmatively on this issue means that EC remains unavailable in the Philippines.

**Right to life:** Studies show that if all women in the Philippines at risk for unintended pregnancy used modern contraceptives, approximately 2,100 maternal deaths would be prevented each year.<sup>69</sup> The Philippines has attempted to defend its failure to ensure the availability of contraceptives on the pretext of financial constraints.<sup>70</sup> In its concluding observations, the HRC has consistently linked the right to life under **Article 6** to access to contraception.<sup>71</sup> Moreover, the HRC has repeatedly related the unmet need for affordable access to contraceptive information and services to maternal mortality,<sup>72</sup> emphasizing that states must strengthen measures aimed at preventing unwanted pregnancies in countries like the Philippines where there is a real risk that women may undergo unsafe, clandestine, or illegal abortions to terminate pregnancy in the absence of legal abortion services.<sup>73</sup> The HRC has urged states to prevent unwanted pregnancies by ensuring a comprehensive range of contraceptives are widely available at an affordable price under Article 6.<sup>74</sup> As such, the implementation of restrictions on contraceptives in the Philippines violates the right to life of Filipino women as envisioned under the ICCPR.

**Rights to privacy & to found a family:** These restrictions violate **Articles 17 and 23**, which protect women's right to privacy free from arbitrary interference as well as the right to be free from arbitrary or unlawful interference into one's privacy, family, or home.<sup>75</sup> The HRC has stated that decisions concerning whether and when to found a family are intricately linked to the right to privacy.<sup>76</sup> The HRC has interpreted this right to include a state obligation to prohibit all interference with an individual's right to privacy by both public and private actors; to accomplish this, states must implement legislative frameworks and other measures protecting individual privacy.<sup>77</sup> By failing to revoke the EO and the many ordinances that currently restrict access to modern contraceptives, the Government has violated women's right to privacy and to make decisions concerning whether

and when to found a family. Women interviewed for *Imposing Misery* repeatedly expressed that the EO prevented them from making decisions in the best interest of their existing families, including by jeopardizing their financial and physical ability to care for their families.<sup>78</sup>

**Right to non-discrimination: Article 3** requires states parties to eliminate discrimination against women,<sup>79</sup> and the HRC has called on states to report on steps taken to “ensure that traditional, historical, religious or cultural attitudes are not used to justify violations of women’s right to equality before the law and to equal enjoyment of all Covenant rights” under Article 3.<sup>80</sup> The HRC has established that denial of reproductive health services to women can lead to discrimination, as seen most recently in *L.M.R.*<sup>81</sup> Specifically, the Philippines’ restrictions on contraceptives place an unreasonable, undue hardship on women in regulating their fertility by giving them only one option for preventing pregnancy--refusing sex with their partners.<sup>82</sup> This burden strains relationships and, as documented in *Imposing Misery*, has led to cases of sexual violence.<sup>83</sup> 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<sup>84</sup> and specifically cited the EO as an example of restrictive reproductive health legislation that “infringe[s] upon the right of women and girls to make free and informed choices about their sexual and reproductive health and reflect discriminatory notions of women’s roles in the family and society.”<sup>85</sup>

### **Violations Due to Permitting Religious Ideology and Traditional Attitudes to Infringe on Women’s Rights**

Although the Philippines is a secular state, the influence of religious ideology and traditional attitudes about women are especially strong in the area of women’s reproductive health and rights. The influence of religious ideology is reflected indisputably in the criminal abortion ban and the restrictions on access to contraceptive information and services.<sup>86</sup> In General Comment 22, the HRC has made it clear that even if a specific religion is established as the official or traditional religion of the state or if a particular religion’s followers comprise the majority of the population (as is the case in the Philippines, where 80% of the population is Roman Catholic<sup>87</sup>), such religions “shall not result in any impairment of the enjoyment of any of the rights under the Covenant.”<sup>88</sup> Further, as discussed above, the HRC has emphasized that states must “ensure that traditional, historical, religious<sup>89</sup> or cultural<sup>90</sup> attitudes are not used to justify violations of women’s right to equality before the law and to equal enjoyment of all Covenant rights.”<sup>91</sup> The CRC Committee has specifically noted the role of religious opposition in the Philippines’ failure to promote women’s and girls’ reproductive rights, stating that “particular beliefs and religious values are preventing [the] fulfilment” of the Magna Carta of Women (MCW),<sup>92</sup> a national law introduced in 2009, to promote women’s equality and end discrimination against women.

### **Lack of Implementation and Effective Remedies for Violations (Article 2)**

The Philippines has breached **Article 2** by failing to implement rights guaranteed under the ICCPR and denying effective legal remedies for violations of its own Constitution, domestic legislation implementing human rights obligations including the 2009 MCW, and the Covenant. The Philippine Constitution recognizes a woman’s right to equality before the law and obligates the Government to provide for essential health services.<sup>93</sup> Consistent with its mandate to promote women’s equality and empowerment, the MCW obligates the state to provide access to “legal, ethical, medically safe and effective methods of family planning,”<sup>94</sup> and provides for immediate repeal of inconsistent laws, including EOs and local ordinances.<sup>95</sup> In addition, it imposes a three-year deadline for the Government, including LGUs, to review, amend, or repeal existing laws that are discriminatory.<sup>96</sup> In its Fourth Periodic Report, the Philippines highlights the MCW as a “comprehensive women’s human rights law,” and an example of its compliance under Article 2.<sup>97</sup> However, almost three years after the MCW’s enactment and nearing the end of the deadline established in the law, the Philippines has done nothing to repeal or amend discriminatory reproductive health laws and policies. The Government’s inaction has resulted in ongoing, irreparable violations of a woman’s right to equality and access to essential health services.

Article 2(2) requires states to take necessary steps to give effect to Covenant rights in the domestic legal context.<sup>98</sup> Despite this, the Philippines has failed to implement its obligations to protect, respect, and ensure women’s rights

to life, equality and non-discrimination, privacy and freedom from CIDT, and to provide an effective remedy for violation of these rights. The Government's ability to fully implement the Philippines' obligation under Article 2(2) to adopt domestic laws protecting women's rights under the Covenant is undermined by the provisions discussed above that prevent access to legal abortions.<sup>99</sup> Further, claims in the Government's Fourth Periodic Report that the MCW implements its ICCPR obligations are belied by the fact that the EO remains in effect.<sup>100</sup> Rather than working to fulfill the Government's obligation to provide access to contraceptive information and services,<sup>101</sup> LGUs have introduced or passed more restrictive laws that either outrightly deny or significantly undermine contraceptive information and services.

Article 2(3) requires that states ensure that individuals have accessible, effective, and appropriate remedies to vindicate their rights.<sup>102</sup> The HRC attaches special importance to the establishment of appropriate judicial and administrative mechanisms to address claims of rights violations,<sup>103</sup> and concrete steps to ensure the cessation of an ongoing violation.<sup>104</sup> It has stated that an effective remedy may require states to implement provisional or interim measures to avoid continuing violations and to provide reparations.<sup>105</sup>

Although Philippine citizens have sought to vindicate their rights in the courts, they have been denied an effective remedy. In the 2008 lawsuit *Lourdes E. Osil v. Office of the Mayor of the City of Manila*, the petitioners sought a temporary restraining order and/or preliminary injunction to cease implementation of the EO which was essentially ignored. In fact, the case has been dismissed on numerous questionable technical grounds by the Supreme Court and the Court of Appeals and has been awaiting a Regional Trial Court ruling since 2009,<sup>106</sup> leading to what may be considered an unreasonable delay; the HRC has criticized lengthy delays in court proceedings and has found delays of two and five years to be unreasonable.<sup>107</sup> Meanwhile, in 2010, the CHRP issued a public statement noting that the EO violated the Convention on the Elimination of All Forms of Discrimination against Women and urged the Regional Trial Court to consider the Philippines' international obligations when considering the *Osil* case.<sup>108</sup> To date its recommendations have been ignored.

### **Questions for the Philippine Government**

In light of the above, we would like to urge the Task Force to select the above-mentioned issues for review with the state and to consider asking the follow questions. What steps is the Government taking to:

- remove criminal penalties for abortion and create explicit exceptions for safe and legal abortions on grounds recognized by UN bodies, including the HRC, such as where the woman's life or health are in danger, and in cases of rape, incest, or fetal impairment?
- establish formal mechanisms to prevent and provide legal recourse and reparations for human rights abuses against women seeking post-abortion care?
- remove legal barriers to contraception, including the Manila City EO and other local ordinances, and to 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?
- introduce EC in public and private health clinics and pharmacies?
- ensure a legal remedy is provided for the petitioners in the *Osil* case, who have been left without access to justice through the delays and denials of the Philippine judicial system?
- fully implement the MCW and take specific steps to formally repeal laws, policies, and ordinances restricting access to contraceptives and reproductive health services that violate the MCW by August 2012 (the three year deadline set in the MCW for repeal of contradictory laws)?

We hope that the information provided in this letter will be useful to the Task Force in drafting the list of issues to be raised with the Government during its fourth periodic review. Please do not hesitate to contact us should you have any questions.

Sincerely,



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<sup>1</sup> 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.

<sup>2</sup> 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.

<sup>3</sup> CENTER FOR REPRODUCTIVE RIGHTS, *IMPOSING MISERY: THE IMPACT OF MANILA'S CONTRACEPTION BAN ON WOMEN AND FAMILIES* (2010), available at <http://bit.ly/sspNhy> [hereinafter *IMPOSING MISERY*].

<sup>4</sup> CENTER FOR REPRODUCTIVE RIGHTS, *FORSAKEN LIVES: THE HARMFUL IMPACT OF THE PHILIPPINE CRIMINAL ABORTION BAN* (2010), available at <http://bit.ly/tfIKNN> [hereinafter *FORSAKEN LIVES*]. (Philippines will hereinafter be referenced as Phil.).

<sup>5</sup> Human Rights Comm. (HRC), *Report of the HRC*, paras. 318, 321, 44<sup>th</sup> Sess., Supp. No. 40, U.N. Doc. A/44/40 (1989).

<sup>6</sup> HRC, *Concluding Observations (CO): Phil.*, paras. 6, 20, U.N. Doc. CCPR/CO/79/PHL (2003).

<sup>7</sup> CRC Comm., *CO: Phil.*, paras. 61-62, U.N. Doc. CRC/C/PHL/CO/3-4 (2009) [hereinafter CRC Comm., *CO: Phil.*].

<sup>8</sup> CEDAW Comm., *CO: Phil.*, paras. 27-28, U.N. Doc. CEDAW/C/PHI/CO/6 (2006).

<sup>9</sup> Comm. on Economic, Social and Cultural Rights (ESCR Comm.), *CO: Phil.*, para. 31, U.N. Doc. E/C.12/PHL/CO/4 (2008).

<sup>10</sup> REVISED PENAL CODE (1930), Act No. 3815, art. 259 (Phil.).

<sup>11</sup> Guttmacher Institute, *Meeting Women's Contraceptive Needs in the Phil.*, 1 IN BRIEF 2 (2009), available at [http://www.guttmacher.org/pubs/2009/04/15/IB\\_MWCNP.pdf](http://www.guttmacher.org/pubs/2009/04/15/IB_MWCNP.pdf).

<sup>12</sup> *FORSAKEN LIVES*, *supra* note 4, at 42-60.

<sup>13</sup> HRC, *Gen. Comment No. 6: The right to life (art. 6)*, (16<sup>th</sup> Sess., 1982), in *Compilation of Gen. Comments and Gen. Recommendations by Human Rights Treaty Bodies*, at 176, U.N. Doc. HRI/GEN/1/Rev.9 (Vol. 1) (2008).

<sup>14</sup> HRC, *CO: Peru*, para. 20, U.N. Doc. CCPR/CO/70/PER (2000); *Chile*, para. 15, U.N. Doc. CCPR/CO/79/Add.104 (1999) [hereinafter HRC, *CO: Chile*]; *Venezuela*, para. 19, U.N. Doc. CCPR/CO/71/VEN (2001) [hereinafter HRC, *CO: Venezuela*]; *Poland*, para. 8, U.N. Doc. CCPR/CO/82/POL (2004); *Guatemala*, para. 19, U.N. Doc. CCPR/CO/72/GTM (2001); *Nicaragua*, para. 13, U.N. Doc. CCPR/C/NIC/CO/3 (2008) [hereinafter HRC, *CO: Nicaragua*]; *Mali*, para. 14, U.N. Doc. CCPR/CO/77/MLI (2003) [hereinafter HRC, *CO: Mali*]; *Colombia*, para. 13, U.N. Doc. CCPR/CO/80/COL (2004).

<sup>15</sup> HRC, *Report of the HRC, Volume I*, § G (Chile), para. 211, 54<sup>th</sup> Sess., Supp. No. 40, U.N. Doc. A/54/40 (1999).

<sup>16</sup> *Id.*; HRC, *CO: Nicaragua*, *supra* note 14, para. 13; Comm. against Torture (CAT Comm.), *CO: Nicaragua*, para. 16, U.N. Doc. CAT/C/NIC/CO/1 (2009).

<sup>17</sup> HRC, *Gen. Comment No. 28: Equality of rights between men and women (art. 3)*, para. 10, U.N. Doc. CCPR/C/21/Rev.1/Add.10 (2000) [hereinafter HRC, *Gen. Comment No. 28*].

<sup>18</sup> *Id.* para. 11.

<sup>19</sup> CEDAW Comm., *Gen. Recommendation No. 24: Women and health (art. 12)*, paras. 11, 14, U.N. Doc. A/54/38/Rev.1 (1999).

<sup>20</sup> HRC, *Gen. Comment No. 28*, *supra* note 17, para. 11.

<sup>21</sup> *Id.*

<sup>22</sup> *K.L. v. Peru*, Commc'n No. 1153/2003, para. 2.2, U.N. Doc. CCPR/C/85/D/1153/2003 (2005) [hereinafter *K.L. v. Peru*].

<sup>23</sup> *Id.* paras. 2.7, 6.3.

<sup>24</sup> HRC, *Views of the HRC under art. 5, para. 4, of the Optional Protocol to the ICCPR (101st session) concerning Commc'n No. 1608/2007*, para. 9.2, U.N. Doc. CCPR/C/101/D/1608/2007 (2011) [hereinafter HRC, *Views: Commc'n No. 1608/2007*].

<sup>25</sup> HRC, *Gen. Comment No. 16: The right to respect of privacy, family, home and correspondence, and protection of honour and reputation (art. 17)*, (32<sup>nd</sup> Sess., 1988), in *Compilation of Gen. Comments and Gen. Recommendations by Human Rights Treaty Bodies*, at 191, para. 4, U.N. Doc. HRI/GEN/1/Rev.9 (Vol. 1) (2008) [hereinafter HRC, *Gen. Comment No. 16*].

<sup>26</sup> *FORSAKEN LIVES*, *supra* note 4, at 94-95.

<sup>27</sup> *Id.* at 56, 95.

<sup>28</sup> *Id.* at 53-56.

<sup>29</sup> *Id.* at 66-67.

<sup>30</sup> *Id.* at 71.

<sup>31</sup> *Id.* at 53-54.

<sup>32</sup> *Id.* at 56, citing Metro Manila-based NGO, Interview with Maria, Metro Manila (Feb. 7, 2003).

<sup>33</sup> *Id.* at 33, citing DOH, Prevention and Management of Abortion and its Complications, Admin. Order No. 45-Bs. 2000 (2000) (Phil.) (on file at the Center for Reproductive Rights).

<sup>34</sup> *Id.* at 71, citing Interview with directors of OnM and Tondo General, Metro Manila (May 17, 2010); Interview with Undersecretary, DOJ, Metro Manila (Feb. 2010).

<sup>35</sup> *Id.*, citing Interview with consultant, Department of Obstetrics and Gynecology, PGH, Metro Manila (Feb. 24, 2009); Interview with Dr. Marita Reyes, Chair of the Philippine Health Research Ethics Board (PHREB), Metro Manila (Feb. 17, 2009); *see also id.* at 72, citing Interview with physician, Department of Obstetrics and Gynecology, PGH, Metro Manila (Feb. 24, 2009).

<sup>36</sup> WORLD HEALTH ORG. (WHO), MODEL LIST OF ESSENTIAL MEDICINES 28 (16<sup>th</sup> ed., updated, 2010).

<sup>37</sup> FORSAKEN LIVES, *supra* note 4, at 84, citing Bureau of Food and Drugs (BFAD), Advisory 2002-02 (Aug. 12, 2002) (on file with the Center for Reproductive Rights).

<sup>38</sup> *See id.* at 71-73; *see also* E-mail from prominent reproductive health advocate and medical doctor to Melissa Upreti, Regional Director for Asia, Center for Reproductive Rights (Nov. 27, 2009, 6:29AM EST) (on file at the Center for Reproductive Rights).

<sup>39</sup> HRC, *CO: Chile*, *supra* note 14, para. 15; *Venezuela*, *supra* note 14, para. 19.

<sup>40</sup> *Id.*; *see also* HRC, *Gen. Comment No. 28*, *supra* note 17, para. 20.

<sup>41</sup> HRC, *CO: Venezuela*, *supra* note 14, para. 19.

<sup>42</sup> HRC, *CO: Chile*, *supra* note 14, para. 15.

<sup>43</sup> HRC, *CO: Nicaragua*, *supra* note 14, para. 13.

<sup>44</sup> HRC, *Gen. Comment No. 28*, *supra* note 17, para. 20.

<sup>45</sup> HRC, *CO: Chile*, *supra* note 14, para. 15.

<sup>46</sup> FORSAKEN LIVES, *supra* note 4, at 71, 101.

<sup>47</sup> *Id.* at 52-57.

<sup>48</sup> HRC, *Gen. Comment No. 20: Prohibition of torture, or other cruel, inhuman or degrading treatment or punishment (art. 7)*, (44<sup>th</sup> Sess., 1992), in *Compilation of Gen. Comments and Gen. Recommendations by Human Rights Treaty Bodies*, at 200, para. 5, U.N. Doc. HRI/GEN/1/Rev.9 (Vol. 1) (2008).

<sup>49</sup> HRC, *Gen. Comment No. 28*, *supra* note 17, para. 20.

<sup>50</sup> CAT Comm., *CO: Chile*, para. 7(m), U.N. Doc. CAT/C/CR/32/5 (2004).

<sup>51</sup> *Id.* paras. 6(j), 7(m).

<sup>52</sup> HRC, *Views: Commc'n No. 1608/2007*, *supra* note 24, para. 3.5.

<sup>53</sup> IMPOSING MISERY, *supra* note 3, at 31-32.

<sup>54</sup> Declaring Total Commitment and Support to the Responsible Parenthood Movement in the City of Manila and Enunciating Policy Declarations in Pursuit Thereof, Exec. Ord. No. 003, (2000) (Phil.) [hereinafter Exec. Ord. No. 003].

<sup>55</sup> *Id.*

<sup>56</sup> IMPOSING MISERY, *supra* note 3, at 24.

<sup>57</sup> NAT'L STATISTICS OFFICE, PHIL. NAT'L DEMOGRAPHIC AND HEALTH SURVEY 2003 67, tbl. 5.12 (2004) [hereinafter PHIL. NAT'L DEMOGRAPHIC AND HEALTH SURVEY 2003].

<sup>58</sup> GUTTMACHER INSTITUTE, UNINTENDED PREGNANCY AND INDUCED ABORTION IN THE PHIL.: CAUSES AND CONSEQUENCES 4 (2006).

<sup>59</sup> PHIL. NAT'L DEMOGRAPHIC AND HEALTH SURVEY 2003, *supra* note 57, at 102, tbl. 7.10.

<sup>60</sup> IMPOSING MISERY, *supra* note 3, at 24.

<sup>61</sup> Lourdes E. Osil v. Office of the Mayor of the City of Manila, and the City Health Department of the City of Manila, SP Proc. No. 102331, (C.A., Jan. 29, 2008) (Phil.) [hereinafter Lourdes E. Osil v. Mayor of Manila]. *See also* IMPOSING MISERY, *supra* note 3, at 6-7; Meeting with attorneys for Lourdes E. Osil v. Mayor of Manila case, Roque & Butuyan Law Offices, Metro Manila (Oct. 15, 2011).

<sup>62</sup> 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 (2010) [hereinafter EO NO. 003: DISCRIMINATORY OR RIGHTS BASED?].

<sup>63</sup> SRVAW, *Addendum, Commc'ns to and from Gov'ts*, paras. 314, 317, U.N. Doc. A/HRC/14/22/Add.1 (2010) [hereinafter SRVAW, *Commc'ns to and from Gov'ts*].

<sup>64</sup> ENGENDERIGHTS, INC., POSITION PAPER ON THE UNCONSTITUTIONALITY OF SEVEN BARANGAY ORDINANCES IN BALANGA, BATAAN THAT INFRINGE ON REPRODUCTIVE HEALTH RIGHTS 1-2 (2011).

<sup>65</sup> An Ordinance Providing for the Safety and Protection of the Unborn Child within the Territorial Jurisdiction of Barangay Ayala Alabang; Fixing Penalties for its Violations, and, for other Purposes. Barangay Ordinance No. 01, § 37 (2011) (Phil.).

<sup>66</sup> *See* FORSAKEN LIVES, *supra* note 4, at 87. Following a challenge to the DOH's action, a DOH expert committee voted to permit the use of the drug. However, the DOH has not taken any steps to make Postinor available to women.

<sup>67</sup> *See Supplementary Information to the CEDAW Comm.: Phil.*, ENGENDERIGHTS, § 2 (Aug. 8, 2006), <http://www.engenderights.org/?q=node/35>.

<sup>68</sup> WHO, Emergency Contraception, Fact sheet No. 244 (updated, Oct. 2005).

<sup>69</sup> Guttmacher Institute, *Facts on Barriers to Contraceptive Use in the Phil.*, IN BRIEF 4 (2010), available at <http://www.guttmacher.org/pubs/FB-contraceptives-philippines.pdf>.

<sup>70</sup> SRVAW, *Commc'ns to and from Gov'ts*, *supra* note 63, para. 329.

<sup>71</sup> See HRC, *CO: Colombia*, para. 37, U.N. Doc. CCPR/C/79/Add.76 (1997); *Hungary*, para. 11, U.N. Doc. CCPR/CO/74/HUN (2002) [hereinafter HRC, *CO: Hungary*].

<sup>72</sup> See HRC, *CO: Cameroon*, para. 13, U.N. Doc. CCPR/C/CMR/CO/4 (2010) [hereinafter HRC, *CO: Cameroon*]; *Democratic Rep. of Congo*, para. 14, U.N. Doc. CCPR/C/COD/CO/3 (2006); *Equatorial Guinea*, para. 9, U.N. Doc. CCPR/CO/79/GNQ (2004) [hereinafter HRC, *CO: Equatorial Guinea*]; *Hungary*, *supra* note 71, para. 11; *Mali*, *supra* note 14, para. 14; *Mongolia*, para. 8(b), U.N. Doc. CCPR/C/79/Add.120 (2000) [hereinafter HRC, *CO: Mongolia*].

<sup>73</sup> See HRC, *CO: Cameroon*, *supra* note 72, para. 13; *Colombia*, para. 19, U.N. Doc. CCPR/C/COL/6 (2010); *Equatorial Guinea*, *supra* note 72, para. 9; *Mali*, *supra* note 14, para. 14; *Mongolia*, *supra* note 72, para. 8(b).

<sup>74</sup> See HRC, *CO: Poland*, para. 12, U.N. Doc. CCPR/C/POL/CO/6 (2010); *Rep. of Moldova*, para. 17(a), U.N. Doc. CCPR/C/MDA/CO/2 (2009).

<sup>75</sup> HRC, *Gen. Comment No. 16*, *supra* note 25, para. 1.

<sup>76</sup> See HRC, *Gen. Comment No. 28*, *supra* note 17, para. 20; *K.L. v. Peru*, *supra* note 22, para. 6.4; *Tysiac v. Poland*, Application No. 5410/03, Eur. Ct. H.R., paras. 106-107 (Mar. 20, 2007).

<sup>77</sup> HRC, *Gen. Comment No. 16*, *supra* note 25, para. 1.

<sup>78</sup> IMPOSING MISERY, *supra* note 3, at 25-30.

<sup>79</sup> Int'l Covenant on Civil and Political Rights, art. 3, G.A. Res. 2200A (XXI), UN GAOR, 21<sup>st</sup> Sess., Supp. No. 16, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171 (entered into force Mar. 23, 1976).

<sup>80</sup> HRC, *Gen. Comment No. 28*, *supra* note 17, para. 5.

<sup>81</sup> HRC, *Views: Comm'n No. 1608/2007*, *supra* note 24, paras. 9.4, 10. (no explicit finding of art. 3 violation, but findings of omission in providing remedies for art. 2 constitute a violation in relation to art. 3).

<sup>82</sup> IMPOSING MISERY, *supra* note 3, at 31, 50.

<sup>83</sup> *Id.* at 31.

<sup>84</sup> Special Rapporteur on the Right to Health, *Right of everyone to the enjoyment of the highest attainable standard of physical and mental health*, para. 48, U.N. Doc. A/66/254 (2011).

<sup>85</sup> *Id.* para. 53.

<sup>86</sup> See FORSAKEN LIVES, *supra* note 4, at 29, 77, 84-89.

<sup>87</sup> NAT'L COMM'N ON THE ROLE OF FILIPINO WOMEN, REPRODUCTIVE HEALTH, RESPONSIBLE PARENTHOOD AND POPULATION DEV'T BILL SITUATIONER 4 (2009), <http://www.ncrfw.gov.ph/index.php/legislativeadvocacy/58-advocacy-reproductivehealth/79-advocacy-reproductivehealthsituationer?format=pdf>; see also Rep. of the Phil., Nat'l Statistics Office, *2000 Census: Additional Three Persons Per Minute*, <http://www.census.gov.ph/data/pressrelease/2003/pr0323tx.html>; Central Intelligence Agency, *The World Fact Book, Phil.*, <https://www.cia.gov/library/publications/the-world-factbook/geos/rp.html> (follow hyperlink under "People") (last accessed June 18, 2010).

<sup>88</sup> HRC, *Gen. Comment No. 22: The right to freedom of thought, conscience and religion (art. 18)*, para. 9, U.N. Doc. CCPR/C/21/Rev.1/Add.4 (1993).

<sup>89</sup> HRC, *CO: Tunisia*, para. 3, U.N. Doc. CCPR/C/TUN/CO/5 (2008) (The Comm. considers that [religion and religious extremism] cannot serve as a justification for derogations or restrictions not authorized by the Covenant).

<sup>90</sup> HRC, *CO: Yemen*, para. 5, U.N. Doc. CCPR/CO/84/YEM (2005) (The Comm...stresses the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms).

<sup>91</sup> HRC, *Gen. Comment No. 28*, *supra* note 17, para. 5.

<sup>92</sup> CRC Comm., *CO: Phil.*, *supra* note 7, para. 61.

<sup>93</sup> CONST. (1987), art. II, §§ 14- 15, art. III, § 1 (Phil.).

<sup>94</sup> An Act Providing for the Magna Carta of Women, Rep. Act No. 9710, ch. III, § 13(a)(3) (2008) (Phil.) [hereinafter Magna Carta of Women].

<sup>95</sup> *Id.* ch. VI, § 37; PHIL. COMM'N ON WOMEN, REP. ACT NO. 9710, THE MAGNA CARTA OF WOMEN, IMPLEMENTING RULES AND REGULATIONS 54-55, rule IV, § 15 (2010).

<sup>96</sup> *Id.* at 55, rule IV, § 15(C); Magna Carta of Women, *supra* note 94, ch. III, § 8.

<sup>97</sup> HRC, *Consideration of reports submitted by States parties under article 40 of the Covenant: Fourth periodic reports of States parties: Phil.*, paras. 29, 103, 114, 115. U.N. Doc. CCPR/C/PHL/4 (2011) [hereinafter HRC, *Fourth periodic report: Phil.*].

<sup>98</sup> HRC, *Gen. Comment No. 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, para. 13, U.N. Doc. CCPR/C/21/Rev.1/Add. 13 (2004) [hereinafter HRC, *Gen. Comment No. 31*].

<sup>99</sup> Magna Carta of Women, *supra* note 94, ch. III, § 13(a)(8).

<sup>100</sup> HRC, *Fourth periodic report: Phil.*, *supra* note 97, para. 104.

<sup>101</sup> Magna Carta of Women, *supra* note 94, ch. III, § 13(a)(3).

<sup>102</sup> HRC, *Gen. Comment No. 31*, *supra* note 98, para. 15.

<sup>103</sup> *Id.*

<sup>104</sup> *Id.*

<sup>105</sup> *Id.* para. 19.

<sup>106</sup> Lourdes E. Osil v. Mayor of Manila, *supra* note 61, paras. 1.5, 2.2, 2.7.

<sup>107</sup> Rogerson v. Australia, HRC, Comm'n No. 802/1998, para. 9.3, U.N. Doc. CCPR/C/74/D/805/1998 (2002) [trial delay of two years]; Delgado Páez v. Colombia, HRC, Comm'n No. 195/1985, para. 5.3, U.N. Doc. CCPR/C/39/D/195/1985 (1990) [delay of five years].

<sup>108</sup> EO NO. 003: DISCRIMINATORY OR RIGHTS BASED?, *supra* note 62, at 4-5.